



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R03-OAR-2019-0527; FRL-10018-21-Region 3]

## Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; State of Maryland; Control of Emissions from Existing Sewage Sludge

### Incineration Units

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the State of Maryland for Sewage Sludge Incineration (SSI) units. This negative declaration submitted by the Maryland Department of the Environment (MDE) certifies that SSI units subject to sections 111(d) and 129 of the Clean Air Act (CAA) do not exist within the jurisdiction of the State of Maryland. EPA is approving this certification in accordance with the requirements of the CAA.

**DATES:** This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2019-0527. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Matthew Willson, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The telephone number is (215) 814-5795. Mr. Willson can also be reached via electronic mail at Willson.Matthew@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 15, 2020 (85 FR 42807), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of a negative declaration submitted by the State of Maryland for Sewage Sludge Incineration (SSI) units. This negative declaration submitted by MDE certifies that SSI units subject to sections 111(d) and 129 of the CAA do not exist within the jurisdiction of the State of Maryland. The negative declaration was submitted by MDE on January 20, 2017.

The CAA requires that state regulatory agencies implement emission guidelines and associated compliance times using a state plan developed under sections 111(d) and 129 of the CAA. The general provisions for the submittal and approval of state plans are codified in 40 Code of Federal Regulations (CFR) part 60, subpart B and 40 CFR part 62, subpart A. Section 111(d) establishes general requirements and procedures on state plan submittals for the control of designated pollutants. Section 129 requires emission guidelines to be promulgated for all categories of solid waste incineration units, including SSI units. SSI units are defined at 40 CFR 60.5250 as “an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter. Sewage sludge incineration unit designs include fluidized bed and multiple hearth. A SSI unit also includes, but is not limited to, the sewage sludge feed system, auxiliary fuel feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The SSI unit includes all ash handling systems connected to the bottom ash handling system. The combustion unit bottom ash system ends at the truck loading station or similar equipment that transfers the ash to final disposal. The

SSI unit does not include air pollution control equipment or the stack.”

Section 129 mandates that all plan requirements be at least as protective as the promulgated emission guidelines. This includes fixed final compliance dates, fixed compliance schedules, and title V permitting requirements for all affected sources. Section 129 also requires that state plans be submitted to EPA within one year after EPA's promulgation of the emission guidelines and compliance times.

States have options other than submitting a state plan in order to fulfill their obligations under CAA sections 111(d) and 129. If a state does not have any existing SSI units for the relevant emission guidelines, a letter can be submitted certifying that no such units exist within the state (i.e., negative declaration) in lieu of a state plan, in accordance with 40 CFR 60.5010. The negative declaration exempts the state from the requirements of subpart B that would otherwise require the submittal of a CAA section 111(d)/129 plan.

On March 21, 2011 (76 FR 15372), EPA finalized emission guidelines for SSI units at 40 CFR part 60, subpart M. Following the 2011 final rule, MDE determined that there was one SSI facility in Maryland that met the applicability criteria for the Federal plan. On January 20, 2017, MDE submitted a letter to EPA requesting full delegation of authority to implement the SSI Federal plan. However, that facility has now permanently shut down and has relinquished its title V permit to operate. Accordingly, MDE sent a negative declaration for SSI units on April 3, 2020.

## **II. Final Action**

In this action, EPA amends 40 CFR part 62 to reflect receipt of the negative declaration letter from MDE, received April 3, 2020, certifying that there are no existing SSI units subject to 40 CFR part 60, subpart M, in accordance with section 111(d) and 129 of the CAA. EPA is accepting the negative declaration in accordance with the requirements of the CAA and 40 CFR 60.23(b) and 62.06.

## **III. Statutory and Executive Order Reviews**

## A. General Requirements

EPA's role with regard to negative declarations for designated facilities received by EPA from states is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. This action approves the state's negative declaration as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving a negative declaration submitted by MDE stating that there are no Sewage Sludge Incineration (SSI) units in the state of Maryland subject to sections 111(d) and 129 of the CAA, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

## **List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sewage sludge incineration units.

Dated: February 3, 2021

Diana Esher,  
Acting Regional Administrator,  
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 62 as follows:

### **PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart V—Maryland**

2. Add an undesignated center heading and § 62.4690 to read as follows:

#### **Air Emissions From Existing Sewage Sludge Incinerators (SSI)—Section 111(d)/129**

##### **Federal Plan Delegations**

##### **§ 62.4690 Identification of plan—negative declaration.**

Letter from the State of Maryland, Department of the Environment, submitted April 3, 2020, certifying that there are no existing sewage sludge incineration units within the State of Maryland that are subject to 40 CFR part 60, subpart MMMM.