



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R05-OAR-2020-0518; FRL-10020-54-Region 5]

**Air Plan Approval; Wisconsin; Large Municipal Waste Combustors
Negative Declaration Withdrawal for Designated Facilities and
Pollutants**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Wisconsin's request for withdrawal of the previously approved Large Municipal Waste Combustors (LMWC) Negative Declaration. The Wisconsin Department of Natural Resources (WDNR) submitted its LMWC Negative Declaration withdrawal on September 25, 2020, certifying that the State of Wisconsin has only one LMWC unit currently operating and requesting that the Federal plan continue to apply to the single source in the state.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2020-0518, at <http://www.regulations.gov> or via email to hulting.melissa@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may

publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **"FOR FURTHER INFORMATION CONTACT"** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background

Section 111(d) of the Clean Air Act (Act) requires that EPA develop regulations providing that states must submit to EPA plans establishing standards of performance for certain existing sources of pollutants. A standard of performance would apply to

the existing source associated with pollutants that are noncriteria pollutants (*i.e.*, pollutants for which there is no national ambient air quality standard) and are not on a list published under section 108 of the Act or emitted from a source category regulated under section 112 of the Act. Section 129 of the Act, and 40 CFR part 60, subpart B, apply the section 111(d) requirements to existing solid waste combustors, including LMWCs, and provide that EPA should include, as part of the performance standards, emissions guidelines (EGs) that include the plan elements required by section 129.

The regulation at 40 CFR part 60, subpart B, contains general provisions applicable to the adoption and submittal of state plans for subject facilities under sections 111(d) and 129 (111(d)/129 plan) and negative declarations if no such facilities exist in the state. 40 CFR part 62, subpart A, provides the procedural framework for the submission of the plans and negative declarations. If, at a later date, an existing LMWC is found in a state that previously submitted a negative declaration, the Federal plan implementing the LMWC EGs would automatically apply to that unit.

EPA promulgated new source performance standards and EGs for LMWCs on December 19, 1995 (60 FR 65387), and amended them most recently on May 10, 2006 (71 FR 27324). However, on March 20, 2007, EPA issued a notice of reconsideration for three sections of the final rule (72 FR 13016). The standards and EGs are codified at 40 CFR part 60, subparts Cb and Eb,

respectively.

A LMWC unit, as defined in 40 CFR 60.32b, means any municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste. The designated facilities to which the original EG's applied were existing LMWC units for which construction was commenced on or before September 20, 1994.

States were required to submit negative declarations or state plans for existing LMWCs, pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. WDNR submitted a negative declaration under LMWC on September 26, 1997, certifying that it had no existing LMWCs. On November 12, 1998, EPA finalized the Federal plan under 40 CFR part 62, subpart FFF (65 FR 33461). EPA approved WDNR's negative declaration under 40 CFR 62.12360 on May 24, 2000 (65 FR 33461).

On September 25, 2020, WDNR submitted its LMWC negative declaration withdrawal, in which it certifies that there is one LMWC unit currently operating in Wisconsin. The only LMWC unit is at Xcel French Island, located in La Crosse, WI. Because there is only one source, WDNR is requesting that the previously approved negative declaration be withdrawn and that the Federal plan continue to apply to the source.

Section 111(d)/129 requires states to submit state plans when LMWC units exist in its boundaries, and requires EPA to develop a Federal plan to cover facilities when states do not develop state plans. EPA understands that the extensive time

and resources that would be required by WDNR to adopt a rule and submit a state plan are disproportionate to the single affected source in Wisconsin. EPA's Federal plan implementing the EG's would continue to apply to the source in Wisconsin (as well as to any existing affected sources if found at a later date), upon approval of the withdrawal of the negative declaration.

Wisconsin would implement and enforce the Federal plan through its Title V permitting process. This is described in a February 19, 2002 WDNR and EPA Region 5 Memorandum of Agreement. This action should not be construed as an approval of a state plan or delegation of the Federal plan. Wisconsin's section 111(d)/129 obligations are separate from Wisconsin's obligations under title V of the Act. Wisconsin understands and accepts this limitation.

II. Proposed EPA Action

EPA is proposing to approve Wisconsin's request for withdrawal of a previously approved Negative Declaration and to amend 40 CFR part 62 to reflect WDNR's withdrawal. WDNR submitted its LMWC Negative Declaration withdrawal on September 25, 2020, certifying that there is only one LMWC unit, as defined under 40 CFR 60.31b, currently operating in the State of Wisconsin and requested that the Federal plan apply to the single source in the State. EPA understands that the extensive work that would be required by WDNR to prepare an approved state plan would be disproportionate to the single affected source in Wisconsin, and is proposing to approve the withdrawal and have

the Federal plan apply to the known affected source.

III. Statutory and Executive Order Reviews

A. General Requirements

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and merely notifies the public of EPA's approval for a withdrawal of a previously approved LMWC Negative Declaration. This action imposes no requirements beyond those imposed by the state. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has

jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a withdrawal, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a withdrawal.

In reviewing section 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. With regard to withdrawals for designated facilities received by EPA from states, EPA's role is to notify the public of the approval of the state's withdrawal and revise 40 CFR part 62 accordingly. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a section 111(d)/129 withdrawal for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 withdrawal, to use VCS in place of

a section 111(d)/129 withdrawal submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and record-keeping requirements, Large Municipal Waste Combustors.

Dated: February 22, 2021

Cheryl Newton,
Acting Regional Administrator, Region 5

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