



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 62**

**[EPA-R06-OAR-2020-0610; FRL-12763-01-R6]**

### **Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Oklahoma; Control of Emissions From Existing Other Solid Waste Incineration Units, Hospital/Medical/Infectious Waste Incinerator Units, and Commercial and Industrial Solid Waste Incineration Units**

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

**ACTION:** Proposed rule; withdrawal of proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is notifying the public that we have received CAA section 111(d)/129 negative declarations from Oklahoma for existing incinerators subject to the Other Solid Waste Incineration units (OSWI), Hospital/Medical/Infectious Waste Incinerator units (HMIWI), and Commercial and Industrial Solid Waste Incineration Units (CISWI) Emission Guidelines (EG). These negative declarations certify that existing incinerators subject to the OSWI, HMIWI, and CISWI EG and the requirements of sections 111(d) and 129 of the CAA do not exist within specified jurisdictions in Oklahoma. The EPA is proposing to accept the negative declarations and amend the agency regulations in accordance with the requirements of the CAA. In addition, EPA is withdrawing its prior proposed approval of the Oklahoma CISWI plan revision due to Oklahoma's submission of its negative declaration for incinerators subject to the CISWI EG and its withdrawal of the CISWI plan revision.

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

As of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], the proposed rule published on July 19, 2024 (89 FR 58685) is withdrawn.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2020-0610, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The 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. The 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 Matthew Gesualdo, (214)-665-6530, [gesualdo.matthew@epa.gov](mailto:gesualdo.matthew@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov). While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Matthew Gesualdo, EPA Region 6 Office, Air and Radiation Division - State Planning and Implementation Branch, (214)-665-6530, [gesualdo.matthew@epa.gov](mailto:gesualdo.matthew@epa.gov). We encourage the public to submit comments via <https://www.regulations.gov>. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

### *A. Rulemaking History*

On July 10, 2020 (85 FR 41484), we published a proposed rule notifying the public that we had received CAA section 111(d)/129 negative declarations from Arkansas, Louisiana, Oklahoma, New Mexico, and Albuquerque-Bernalillo County, New Mexico, for existing HMIWI. These negative declarations certify that HMIWI subject to the requirements of sections 111(d) and 129 of the CAA do not exist within the jurisdictions of Arkansas, Louisiana, Oklahoma, New Mexico, and Albuquerque-Bernalillo County. In the final rule on March 2, 2021 (86 FR 12109), we finalized action on the HMIWI negative declarations from Arkansas, Louisiana, New Mexico, and Albuquerque-Bernalillo County, New Mexico. In the same rulemaking, we also stated that we would act on the Oklahoma HMIWI negative declaration in a future, separate rulemaking.

On September 30, 2020, ODEQ submitted revisions to the Oklahoma CAA section 111(d)/129 CISWI plan to implement and enforce the CISWI EG at 40 CFR part 60, subpart DDDD. EPA proposed to approve these revisions on July 19, 2024 (89 FR 58685). On September 13, 2024, ODEQ submitted a negative declaration for incinerators subject to the CISWI EG and withdrew the 2020 CISWI plan. EPA is withdrawing its proposed approval of the revised ODEQ CISWI plan following the plan’s withdrawal by ODEQ. EPA will not be taking a final action on the July 19, 2024 (89 FR 58685), proposed approval.

In this proposed rulemaking, we are: (1) re-proposing on the Oklahoma HMIWI negative declaration as well as (2) proposing on the Oklahoma OSWI and CISWI negative declarations for the first time. We are notifying the public that we have received negative declaration letters from Oklahoma for incinerators subject to the OSWI,

HMIWI, and CISWI EG and are proposing to amend the Code of Federal Regulations (CFR) in accordance with CAA requirements. Details on CAA sections 111(d) and 129, the OSWI, HMIWI, and CISWI EG, and the negative declarations submitted by Oklahoma can be found in the following subsections.

*B. Clean Air Act Sections 111(d) and 129*

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and the EPA has established emission guidelines for such existing sources. CAA section 129 directs the EPA to establish standards of performance for new sources (NSPS) and emissions guidelines (EG) for existing sources for each category of solid waste incineration unit. Under CAA section 129, NSPS and EG must contain numerical emissions limitations for particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. While NSPS are directly applicable to affected facilities, EG for existing units are intended for states to use to develop a state plan to submit to the EPA. Once approved by the EPA, the state plan becomes federally enforceable. If a state does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a Federal plan.

The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans for controlling designated pollutants.

Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which EPA will approve or disapprove such plans submitted by a state. When existing designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may

submit a letter of certification to that effect (i.e., negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a CAA section 111(d)/129 plan.

*C. Other Solid Waste Incineration Units Emission Guidelines*

EPA promulgated the OSWI NSPS and EG on December 16, 2005, codified at 40 CFR part 60, subparts EEEE and FFFF, respectively (70 FR 74870). Thus, states were required to submit plans for incinerators subject to the OSWI EG pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. The designated facilities to which the OSWI EG apply are existing incinerators<sup>1</sup> subject to the OSWI EG that commenced construction on or before December 9, 2004, and were not modified or reconstructed on or after June 16, 2006, as specified in 40 CFR 60.2991 and 60.2992, with limited exceptions as provided under 40 CFR 60.2993. EPA proposed revisions to the OSWI EG and NSPS on August 31, 2020 (85 FR 54178). These revisions were promulgated on April 17, 2024 (89 FR 27392), removing the title V permitting requirements for air curtain incinerators (ACIs) that only burn wood waste, clean lumber, yard waste, or a mixture of those, and are not located at title V major sources or subject to title V for other reasons. Technical corrections addressing inadvertent errors in the regulatory text amended the rule on November 14, 2024 (89 FR 89928).

*D. Hospital/Medical/Infectious Waste Units Emission Guidelines*

On September 15, 1997, the EPA first promulgated the HMIWI NSPS at 40 CFR part 60, subpart Ec, and the HMIWI EG at 40 CFR part 60, subpart Ce (62 FR 48348). The HMIWI NSPS and EG were amended on October 6, 2009 (74 FR 51368), and on April 4, 2011 76 FR 18407). The Federal plan for HMIWI subject to the EG at subpart Ce was first promulgated on August 15, 2000 (65 FR 49868), at 40 CFR part 62, subpart HHH.

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<sup>1</sup> These incinerators include both OSWI and air curtain incinerators (ACI). The ACI that are subject to the OSWI EG at 40 CFR part 60, subpart FFFF, are those ACI that may not fit the definition of an “OSWI” under the OSWI EG due to burning certain types of wastes. See 40 CFR 60.2994(b) and 40 CFR 60.3078.

The HMIWI Federal plan was amended on May 13, 2013 (78 FR 28051), to incorporate the HMIWI EG revisions. As provided under 40 CFR 60.32e(a), the designated facilities to which the EG apply are HMIWI that: (1) commenced construction on or before June 20, 1996, or commenced modification on or before March 16, 1998; or (2) commenced construction after June 20, 1996, but no later than December 1, 2008, or commenced modification after March 16, 1998, but no later than April 6, 2010, with limited exceptions as provided in 40 CFR 60.32e(b) through (h).

*E. Commercial and Industrial Solid Waste Incineration Units Emission Guidelines*

On December 1, 2000 (65 FR 75338), EPA promulgated the CISWI NSPS at 40 CFR part 60, subpart CCCC, and the CISWI EG at 40 CFR part 60, subpart DDDD. On March 21, 2011 (76 FR 15704), after voluntarily remanding the 2000 CISWI NSPS and EG, the EPA promulgated revised CISWI NSPS and EG in a final rule. Correspondingly, on the same date, EPA promulgated a final rule under the Resource Conservation and Recovery Act (RCRA) to identify which non-hazardous secondary materials, when used as fuels or ingredients in combustion units, are “solid wastes” (March 21, 2011, 76 FR 15456).<sup>2</sup> EPA subsequently promulgated amendments to both March 21, 2011 rules on February 7, 2013 (78 FR 9112), to clarify several provisions in order to implement the non-hazardous secondary materials rule as EPA originally intended. Reconsideration of certain aspects of the final CISWI rule resulted in minor amendments (81 FR 40956, June 23, 2016).<sup>3</sup> On April 16, 2019 (84 FR 15846), EPA finalized further amendments to the CISWI NSPS

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<sup>2</sup> See 40 CFR part 241, Solid Wastes Used as Fuels or Ingredients in Combustion Units, also known as the “Non-Hazardous Secondary Material Rule.” The identification of solid waste in the Non-Hazardous Secondary Material Rule is used to determine whether a combustion unit is required to meet the emissions standards for solid waste incineration units issued under sections 111 and 129 of the Act, or meet the emissions standards for commercial, industrial, and institutional boilers issued under section 112 of the Act.

<sup>3</sup> In the June 23, 2016 (81 FR 40956), final action, the EPA finalized amendments on these four topics: Definition of “continuous emission monitoring system (CEMS) data during startup and shutdown periods;” particulate matter (PM) limit for the waste-burning kiln subcategory; fuel variability factor (FVF) for coal-burning energy recovery units (ERUs); and the definition of “kiln.”

and EG in order to provide clarity and address implementation issues.<sup>4</sup> The CISWI NSPS and EG were significantly revised in the March 21, 2011 (76 FR 15704), and February 7, 2013 (78 FR 9112), rules, and the subsequent final rule on June 23, 2016 (81 FR 40956), and April 16, 2019 (84 FR 15846), contained minor amendments to the CISWI rules that did not make any changes to the applicability of the designated facilities, including 40 CFR 60.2505, ‘Am I affected by this subpart?’’. The Federal plan for CISWI subject to the EG at subpart DDDD was first promulgated on October 3, 2003 (68 FR 57539), at 40 CFR part 62, subpart III. The CISWI Federal plan was amended on December 11, 2024 (89 FR 100092), to incorporate the CISWI EG revisions. As provided by 40 CFR 60.2505, the designated facilities to which the CISWI EG apply are CISWI and air curtain incinerators (ACI)<sup>5</sup> that commenced construction on or before June 4, 2010, or for which modification or reconstruction was commenced on or before August 7, 2013, with limited exceptions as provided under 40 CFR 60.2555.

#### *F. Negative Declarations from Oklahoma*

In order to fulfill obligations under CAA sections 111(d) and 129, the Oklahoma Department of Environmental Quality (ODEQ) submitted negative declarations for incinerators subject to the OSWI EG, HMIWI EG, and CISWI EG for its air pollution control jurisdiction. The submittal of these negative declarations exempts Oklahoma from the requirement to submit a state plan for incinerators subject to the OSWI EG under 40 CFR part 60, subpart FFFF, the HMIWI EG under 40 CFR part 60, subpart Ce, and the CISWI EG under 40 CFR part 60, subpart DDDD.

The ODEQ has determined that there are no sources subject to the OSWI EG, the HMIWI EG, or the CISWI EG in accordance with CAA sections 111(d) and 129

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<sup>4</sup> In the April 16, 2019 (84 FR 15846), final action, the EPA made technical amendments to correct and clarify various parts of the June 23, 2016 (81 FR 40956), final rule; this includes issues with implementation of the standards, testing and monitoring issues and inconsistencies, and other regulatory provisions.

<sup>5</sup> These air curtain incinerators (ACI) that are subject to the CISWI EG at 40 CFR part 60, subpart DDDD, are those ACI that may not fit the definition of a ‘‘CISWI’’ under the CISWI EG. See 40 CFR 60.2875.

requirements in its individual air pollution control jurisdiction in Oklahoma. ODEQ submitted their OSWI, HMIWI, and CISWI negative declaration letters to the EPA on August 10, 2020, April 1, 2020, and September 13, 2024, respectively. ODEQ subsequently confirmed to EPA on November 4, 2024, that its OSWI negative declaration letter, dated August 10, 2020, its HMIWI negative declaration letter, dated April 1, 2020, and its CISWI negative declaration letter, dated September 13, 2024, cover all areas within Oklahoma with the exception of the excluded Indian country lands.<sup>6</sup> Copies of ODEQ's negative declaration letters are included in the docket for this proposed rule.

## **II. Proposed Action**

The EPA is proposing to amend 40 CFR part 62, subpart LL, to reflect receipt of the negative declaration letters from ODEQ, submitted on August 10, 2020, April 1, 2020, and September 13, 2024, respectively, certifying that there are no incinerators subject to the OSWI EG at 40 CFR part 60, subpart FFFF, the HMIWI EG at 40 CFR part 60, subpart Ce, and the CISWI EG at 40 CFR part 60, subpart DDDD under the specified jurisdictions of Oklahoma in accordance with 40 CFR 60.2982, 40 CFR 60.2510, 40 CFR 60.23(b), 40 CFR 62.06, and sections 111(d) and 129 of the CAA. EPA is also withdrawing its proposed approval of the revised ODEQ CISWI plan following the plan's withdrawal by ODEQ. EPA will not be taking a final action on the July 19, 2024 (89 FR 58685), proposed approval.

## **III. Impact on Areas of Indian Country**

Following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005:

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<sup>6</sup> The OSWI and HMIWI confirmation email from ODEQ, dated February 2, 2021, can be found in the docket at Document ID No. EPA-R06-OAR-2020-0610. The CISWI confirmation email from ODEQ, dated November 4, 2024, can be found in the docket at Document ID No. EPA-R06-OAR-2020-0610.

A Legacy for Users, Pub. L. 109-59, 119 Stat. 1144, 1937 (August 10, 2005) (“SAFETEA”), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA outside of Indian country. The State’s request excluded certain areas of Indian country further described below.

The EPA has approved Oklahoma’s SAFETEA request to administer all of the States’s EPA-approved environmental regulatory programs in the requested areas of Indian country. As requested by Oklahoma, EPA’s approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

The EPA’s approval under SAFETEA expressly provided that to the extent the EPA's prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.<sup>7</sup> The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

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<sup>7</sup> The EPA’s prior approvals relating to Oklahoma’s state plans frequently noted that the state plans were not approved to apply in areas of Indian country (except as explained in the D.C. Circuit’s decision in *ODEQ v. EPA*) located in the State. *See, e.g.*, 89 FR 58685 (July 19, 2024). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

As explained above, the EPA is proposing to amend 40 CFR part 62, subpart LL, to reflect receipt of negative declaration letters for incinerators subject to the OSWI EG, HMIWI EG, and CISWI EG which will apply statewide in Oklahoma, including to all areas of Indian country in the State of Oklahoma other than the excluded Indian country lands as described above.

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

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d)/129 state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason:

*A. Executive Order 12866: Regulatory Planning and Review*

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993) and was therefore not subject to a requirement for Executive Order 12866 review.

*B. Executive Order 14192: Unleashing Prosperity Through Deregulation*

This action is not an Executive Order 14192 regulatory action because this action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA (44 U.S.C. 3501 *et seq.*) because it does not contain any information collection activities.

*D. Regulatory Flexibility Act (RFA)*

This action is certified to not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action will approve a state plan pursuant to CAA section 111(d)/129 and will therefore have no net regulatory burden for all directly regulated small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will 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.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

The negative declarations for incinerators subject to the OSWI EG, HMIWI EG, and CISWI EG will apply, if finalized as proposed, to certain areas of Indian country throughout Oklahoma as discussed in the preamble, and therefore EPA acceptance of them will have tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA

Policy on Consultation with Indian Tribes (December 7, 2023), the EPA has offered consultation to tribal governments that may be affected by this action and provided information about this action.

*H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it approves a state program.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution and Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards. This action 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 Clean Air Act.

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

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

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

Dated: June 26, 2025.

**Walter Mason,**  
*Regional Administrator, Region 6.*

