



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R10-OAR-2026-0694; FRL-13223-01-R10]

Approval and Promulgation of Delegation of Authority for Designated Facilities and Pollutants; Washington; Northwest Clean Air Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving delegation of authority to the Northwest Clean Air Agency (NWCAA) for implementing and enforcing the Federal plan requirements for sewage sludge incineration (SSI) units. The Federal plan addresses the implementation and enforcement of emission limits and other control requirements for designated air pollutants. On December 11, 2018, the EPA Region 10 Regional Administrator and the Executive Director of NWCAA signed a Memorandum of Agreement (MOA) concerning delegation of authority of the Federal plan to NWCAA, which became effective upon signature. The geographic area covered by this MOA comprises Island, Skagit, and Whatcom Counties in the State of Washington, except in Indian country. This document informs the public of the MOA, provides a copy of the signed document, and amends regulatory text in accordance with the Clean Air Act (CAA).

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2026-0694. All documents in the docket are listed on the website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information, Proprietary Business Information, 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 electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-0256 or hunt.jeff@epa.gov.

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

I. Background

Section 129 of the CAA, titled, “Solid Waste Combustion,” requires the EPA to develop and adopt standards for solid waste incineration units pursuant to CAA section 111. Section 111 of the CAA, “Standards of Performance for New Stationary Sources,” directs the EPA to establish emission standards for stationary sources of air pollution that could potentially endanger public health or welfare. These standards are referred to as the New Source Performance Standards (NSPS). Section 111(b) directs the EPA to publish and periodically revise a list of categories of stationary sources which cause or significantly contribute to air pollution, and to establish the NSPS within these categories. Section 111(d) addresses the process by which the EPA and States regulate standards of performance for existing sources belonging to those categories established in section 111(b). When the NSPS are promulgated for new sources, section 111(d) of this CAA and the EPA regulations require that the EPA publish an Emission Guideline (EG) to regulate the same pollutants from existing facilities. While the NSPS are directly applicable to new sources, an EG for an existing source (designated facility) is intended for States to use to develop a State plan to submit to the EPA. CAA section 111 and 40 CFR 60.27(c) and (d) require the EPA to develop, implement, and enforce a Federal plan for designated facilities located in any State or Indian country that does not have an approved State plan under CAA section 111 that implements the EG. These Federal plans are published in 40 CFR part 62 *Approval and Promulgation of State Plans for Designated Facilities and Pollutants*.

A State, or local clean air agency in this case, may then meet its CAA section 111(d)

obligations by submitting a formal written request for delegation of authority to implement and enforce the Federal plans. On July 26, 2017, NWCAA requested delegation of authority to implement and enforce the following Federal plan in 40 CFR part 62:

- Subpart LLL: *Federal Plan for Sewage Sludge Incineration Units Constructed on or before October 14, 2010*, in lieu of the requirement to submit a State plan pursuant to 40 CFR part 60, subpart MMMM: *Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units*.

The criteria for delegation of the Federal plan for SSI units are found in the emission guidelines for SSI units at 40 CFR 60.5045(a) and repeated in the Federal plan for SSI units at 40 CFR 62.15865(a). The framework for the EPA to transfer implementation and enforcement authority requires the State or local agency to request delegation through a letter that:

- Demonstrates the State or local agency has adequate resources, as well as the legal authority, to administer and enforce the program;
- Includes an inventory of designated facilities and an inventory of the designated units' air emissions;
- Certifies a public hearing was held on the State or local agency delegation request; and
- A commitment to enter into an MOA between the State or local agency and the EPA that sets forth the terms and conditions of the delegation, the effective date of the agreement, and the mechanism to transfer authority.

Upon signature of the agreement, the approved document will be published in the *Federal Register*, thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

II. Memorandum of Agreement Contents and the EPA Analysis

The EPA has evaluated NWCAA's Federal plan delegation request submittal to determine whether the package meets the applicable requirements. The EPA's detailed rationale and discussion on the submittal can be found in the Technical Support Document (TSD), located

in the docket for this action. The applicable provisions and the EPA's analysis are briefly summarized as follows:

- NWCAA demonstrated adequate resources and legal authority to administer Federal plans. NWCAA is the operating permitting authority and the new source review permitting authority in non-Tribal land¹ in Island, Skagit, and Whatcom counties² and has the authority to implement and enforce delegated standards in 40 CFR parts 60, 61, and 63. NWCAA provided a letter from legal counsel identifying statutes in the Revised Code of Washington giving NWCAA the authority to promulgate rules and regulations; carry out the Federal plan; adopt emission limits and compliance schedules; enforce applicable laws, regulations standards and compliance schedules; obtain information to determine compliance; and require the installation of control equipment.
- NWCAA provided an inventory of SSI units subject to the SSI Federal plan and the results of recent emissions tests.
- NWCAA held a public comment period lasting from June 7 to July 14, 2017, ending with a public hearing on July 13, 2017. No member of the public attended the hearing and NWCAA received no comments during the public comment period.
- NWCAA committed to enter an MOA to meet the requirements for delegation of the Federal plan for SSI units.

The MOA was signed by the EPA Region 10 Regional Administrator and the NWCAA Executive Director on December 11, 2018, and became effective upon signature. The effective MOA applies to the designated facilities within NWCAA's jurisdiction and is not implemented and enforced on Indian land.

¹ Our approval excludes Indian country as defined in 18 U.S.C. 1151. Under this definition, the EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

² Under State law NWCAA's jurisdiction excludes facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173-405, 173-410, and 173-415 Washington Administrative Code (WAC); and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173-400-700.

The EPA has evaluated NWCAA's submittal for consistency with the CAA, EPA regulations, and EPA policy. The EPA determined that NWCAA has met all the requirements of the EPA's guidance for obtaining the delegation of authority to implement and enforce the Federal plan.

III. Good Cause Findings

Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary.

The EPA conducted full notice and comment rulemaking in promulgating the Federal plan (40 CFR part 62, subpart LLL). The EPA has already approved the delegation of authority to implement and enforce the Federal plan to NWCAA, effective following the signature of both parties on the MOA. NWCAA also held a public hearing and solicited public comment about the request for delegation of authority, pursuant to the requirements in 40 CFR 60.23(d), 60.23(e), and 62.15865(a)(3). Notice and comment are "unnecessary" as this final rule only takes the ministerial action of updating the regulatory text in 40 CFR part 62 to reflect this transfer of authority. It does not alter the universe of sources regulated under the Federal plan and it does not change the regulatory requirements applicable to those sources.

Section 553(d)(3) of the Administrative Procedures Act, 5 U.S.C. 553(d)(3), provides that the required publication of service of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule. The EPA has determined that there is good cause for this rule to become effective upon publication. Delaying the effective date is unnecessary and contrary to the public interest because the EPA has already approved the delegation of authority to implement and

enforce the Federal plan to NWCAA, effective following the signature of both parties on the MOA. In addition, this rulemaking does not affect any of the substantive requirements in the delegated Federal plan nor impact the compliance obligations of any sources subject to the Federal plans.

IV. Final Action

The EPA is amending regulatory text at 40 CFR part 62, subpart WW – Washington, to promulgate the approved delegation of authority through the MOA to NWCAA for implementing and enforcing Federal plan requirements under 40 CFR part 62, subpart LLL.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to delegate the authority to implement a CAA section 111(d) Federal plan that complies with the provisions of the CAA and applicable Federal regulations. (40 CFR 60.27). In reviewing CAA section 111(d) delegation requests, the EPA's role is to approve State choices, provided they meet the criteria of the CAA and the EPA's implementing regulations. Accordingly, this action merely codifies in the Code of Federal Regulations the EPA's delegation of authority to implement the Federal plan and does not impose additional requirements beyond those imposed by the already applicable Federal plan.

A. Executive Order 12866: Regulatory Planning and Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

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.*).

D. Regulatory Flexibility Act

This action merely codifies in the approval of the transfer of authority from EPA to NWCAA for the SSI units Federal plan. 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.*).

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 does not impose additional requirements beyond those imposed by the already-applicable Federal plan. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. 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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

This action is not subject to Executive Order 13045 because it is not 3(f)(1) significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or 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 Advancement Act

This rule does not involve technical standards and is therefore not subject to the requirements of section 1(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

K. Congressional Review Act

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. 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 rule 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 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, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: May 5, 2026.

Emma Pokon,
Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 62 is amended 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 WW—Washington

2. Revise § 62.11893 to read as follows:

§ 62.11893 Identification of plan-delegation of authority.

(a) *Northwest Clean Air Agency--(1) Identification of plan—delegation of authority.* On December 11, 2018, the EPA signed a Memorandum of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart LLL (the “Federal plan”) by which the Federal plan will be administered by the Northwest Clean Air Agency (NWCAA) for designated facilities under the agency’s jurisdiction in Island, Skagit, and Whatcom Counties in the State of Washington, excluding Indian Country as defined in 18 U.S.C. 1151.

(2) *Identification of sources.* The MOA and related Federal plan apply to all sewage sludge incineration (SSI) units, as defined in § 62.16045, that commenced construction on or before October 14, 2010. See § 62.15855. Subpart LLL does not apply to units that are not located at wastewater treatment plants designed to treat domestic sewage sludge. See 40 CFR 62.15860.

(3) *Effective date of delegation.* The delegation became fully effective on December 11, 2018, upon the signature of both parties.

(b) *Southwest Clean Air Agency--(1) Identification of plan—delegation of authority.* On March 27, 2023, the EPA signed a Memorandum of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart LLL (the “Federal plan”) by which the Federal plan will be administered by the Southwest Clean Air Agency (SWCAA) for designated facilities under the agency’s jurisdiction in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties in the State of Washington, excluding Indian Country as defined in 18

U.S.C. 1151.

(2) *Identification of sources.* The MOA and related Federal plan apply to all sewage sludge incineration (SSI) units, as defined in § 62.16045, that commenced construction on or before October 14, 2010. See § 62.15855. Subpart LLL does not apply to units that are not located at wastewater treatment plants designed to treat domestic sewage sludge. See 40 CFR 62.15860.

(3) *Effective date of delegation.* The delegation became fully effective on March 28, 2023, upon the signature of both parties.

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