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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051-7004a; DE068-7004a; PA186-7004a; FRL-7434-3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, the District of Columbia, and Philadelphia, Pennsylvania; Control of Emissions From Existing Commercial/Industrial Solid Waste (CISWI) Incinerator Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that commercial/industrial solid waste incinerator (CISWI) units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction.

DATES: This final rule is effective March 3, 2003 unless within February 3, 2003 adverse or critical comments are received. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814-2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the CAA requires 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 EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for CISWI units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 1, 2000 (65 FR 75338), EPA promulgated CISWI unit new source performance standards and EG, 40 CFR part 60, subparts CCCC and DDDD, respectively.

The designated facility to which the EG apply is each existing CISWI unit, as defined in subpart DDDD, that commenced construction on or before November 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When 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 111(d)/129 plan.

II. Final EPA Action

The District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania have determined that there are no designated facilities, subject to the CISWI unit EG requirements, in their respective air pollution control jurisdiction. Accordingly, each air pollution control agency has submitted to EPA a negative declaration letter certifying this fact. The submittal dates of these letters are November 27,

November 16, and February 9, 2001, respectively.

Therefore, EPA is amending part 62 to reflect the receipt of these negative declaration letters from the noted air pollution control agencies. Amendments are being made to 40 CFR part 62, subparts J (District of Columbia), I (Delaware), and NN (Pennsylvania). With respect to subpart NN, this action is only applicable to the City of Philadelphia air pollution control agency's jurisdiction; it does not include the remaining geographical areas of Pennsylvania.

After publication of this **Federal Register** notice, if a CISWI facility is later found within either one of the three noted jurisdictions, then the overlooked facility will become subject to the requirements of the Federal CISWI 111(d)/129 plan, including the compliance schedule, when promulgated. The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d)/129 plan from the jurisdiction with the overlooked CISWI facility.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. In the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve each negative declaration should relevant adverse or critical comments be filed.

This rule will be effective March 3, 2003 without further notice unless the Agency receives relevant adverse comments by February 3, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. 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 imposes no additional requirements beyond those imposed by state law. 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 also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, 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 state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air 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.*).

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 rule 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**. This rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 2003. 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 approving the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania 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, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and

recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Subpart I is amended by adding an undesignated center heading and § 62.1985 to read as follows:

Emissions From Existing Commercial/Industrial Solid Waste Incineration Units

§ 62.1985 Identification of plan—negative declaration.

Letter from the Delaware Department of Natural Resources and Environmental Control submitted November 16, 2001, certifying that there are no existing commercial/industrial solid waste incineration units within the State of Delaware that are subject to 40 CFR part 60, subpart DDDD.

Subpart J—District of Columbia

3. Subpart J is amended by adding an undesignated center heading and § 62.2155 to read as follows:

Emissions From Existing Commercial/Industrial Solid Waste Incineration Units

§ 62.2155 Identification of plan—negative declaration.

Letter from the District of Columbia Department of Health, Environmental Health Administration, submitted November 27, 2001, certifying that there are no existing commercial/industrial solid waste incineration units within the District of Columbia that are subject to 40 CFR part 60, subpart DDDD.

Subpart NN—Pennsylvania

4. Subpart NN is amended by adding an undesignated center heading and § 62.9670 to read as follows:

Emissions From Existing Commercial/Industrial Solid Waste Incineration Units

§ 62.9670 Identification of plan—negative declaration.

Letter from the City of Philadelphia, Department of Public Health, submitted February 9, 2001, certifying that there are no existing commercial/industrial

solid waste incineration units within the City of Philadelphia, Pennsylvania that are subject to 40 CFR part 60, subpart DDDD.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051-7003a; DE068-7003a; PA187-7003a, PA186-7003a; FRL-7434-5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, the District of Columbia, Allegheny County and Philadelphia, Pennsylvania; Control of Emissions From Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, Allegheny County and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that small municipal waste combustion (MWC) units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction.

DATES: This final rule is effective March 3, 2003 unless within February 3, 2003 adverse or critical comments are received. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814-2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the CAA requires 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 EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for small MWC units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 6, 2000 (65 FR 76350, and 76378), EPA promulgated small municipal waste combustion unit new source performance standards, 40 CFR part 60, subparts AAAA, and emission guidelines (EG), subpart BBBB, respectively.

The designated facility to which the EG apply is each existing small MWC unit that has a design combustion capacity of 35 to 250 tons per day of municipal solid waste (MSW) and commenced construction on or before August 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When 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 111(d)/129 plan.

II. Final EPA Action

The District of Columbia, the State of Delaware, Allegheny County and the City of Philadelphia, Pennsylvania have

determined that there are no designated facilities, subject to the small MWC unit EG requirements, in their respective air pollution control jurisdiction.

Accordingly, each air pollution control agency has submitted to EPA a negative declaration letter certifying this fact.

The submittal dates of these letters are November 27, November 16, November 21, and February 9, 2001, respectively.

Therefore, EPA is amending part 62 to reflect the receipt of these negative declaration letters from the noted air pollution control agencies.

Amendments are being made to 40 CFR part 62, subparts J (District of Columbia), I (Delaware), and NN (Pennsylvania). With respect to subpart NN, this action is only applicable to Allegheny County and the City of Philadelphia air pollution control agency jurisdictions, and does not include the remaining geographical areas of Pennsylvania which will be covered in the future by either a Pennsylvania or Federal plan.

After publication of this **Federal Register** notice, if a small MWC facility is later found within either one of the four noted jurisdictions, then the overlooked facility will become subject to the requirements of the Federal small MWC 111(d)/129 plan, including the compliance schedule, when promulgated. The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d)/129 plan from the jurisdiction with the overlooked facility.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. In the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve each negative declaration should relevant adverse or critical comments be filed.

This rule will be effective March 3, 2003 without further notice unless the Agency receives relevant adverse comments by February 3, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph,