



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

#### [EPA-R01-OAR-2012-0707; A-1-FRL-9908-37-Region 1]

### **Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Connecticut, Maine, New Hampshire, and Vermont; Withdrawal of State Plan for Designated Facilities and Pollutants: New Hampshire; Technical Corrections to Approved State Plans (Negative Declarations): Rhode Island and Vermont**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving negative declarations for hospital/medical/infectious waste incinerators (HMIWI) for the State of Connecticut and the State of New Hampshire and negative declarations for sewage sludge incinerators (SSI) for the State of Maine and the State of Vermont. EPA is also approving the withdrawal of a previously-approved State Plan for HMIWI in the State of New Hampshire. Lastly, EPA is making technical corrections to Clean Air Act Sections 111(d) and 129 State Plan (Negative Declaration) approvals for Other Solid Waste Incinerators (OSWI) for the State of Rhode Island and the State of Vermont.

**DATES:** This direct final rule will be effective **[Insert date 60 days from date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R01-OAR-2012-0707 by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [mcdonnell.ida@epa.gov](mailto:mcdonnell.ida@epa.gov)
3. Fax: (617) 918-0653
4. Mail: "Docket Identification Number EPA-R01-OAR-2012-0707", Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, & Indoor Programs Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 – 3912.
5. Hand Delivery or Courier. Deliver your comments to: Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, & Indoor Programs Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 – 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2012-0707. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit

through [www.regulations.gov](http://www.regulations.gov), or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630; Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017; Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095; Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908-5767; Vermont Department of Environmental Conservation, Air Pollution Control Division, One National Life Drive, Davis (North) Building 2nd Floor, Montpelier, VT 05620-3802).

**FOR FURTHER INFORMATION CONTACT:** Patrick Bird, Air Permits, Toxics, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: OEP05-2, Boston, MA, 02109-0287. The telephone number is (617) 918-1287. Mr. Bird can also be reached via electronic mail at [bird.patrick@epa.gov](mailto:bird.patrick@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background

## II. Hospital/Medical/Infectious Waste Incinerators

A. Connecticut

B. New Hampshire

## III. Sewage Sludge Incinerators

A. Maine

B. Vermont

## IV. Other Solid Waste Incinerators

A. Rhode Island

B. Vermont

## V. Final Actions

## VI. Statutory and Executive Order Reviews

### **I. Background**

Sections 111(d) and 129 of the Clean Air Act (the Act) require submittal of state plans to control certain pollutants (designated pollutants) at existing solid waste combustion facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same source category and EPA has established emission guidelines for such existing sources. If a state fails to submit a satisfactory plan, the Act provides EPA the authority to prescribe a plan for regulating designated pollutants at designated facilities. The EPA-prescribed plan, also known as a federal plan, is generally delegated to states with designated facilities but no EPA-approved state-specific plan. If no such designated facilities exist within a state's jurisdiction, a state may submit a negative declaration in lieu of a state plan.

## **II. Hospital/Medical/Infectious Waste Incinerators**

New source performance standards (NSPS) for new stationary source hospital/medical/infectious waste incinerators (HMIWI) and emission guidelines (EG) for existing source HMIWI were originally promulgated on September 15, 1997 (62 FR 48348). The rule underwent a number of revisions and amendments throughout the 2000s and was most recently finalized on April 4, 2011(76 FR 18407). EG for existing HMIWI are applicable to units for which construction commenced on or before December 1, 2008 or for which modification or reconstruction commenced no later than April 6, 2010. EG for existing HMIWI are codified at 40 CFR Part 60, Subpart Ce.

### **A. Connecticut**

EPA inventoried one existing HMIWI in the State of Connecticut; however the unit, owned by Bristol-Myers Squibb Company and located at their Wallingford, CT facility, was rendered inoperable in early September 2012. An inspection conducted on September 24, 2012 by the Connecticut Department of Energy & Environmental Protection (CT DEEP) confirmed the HMIWI was rendered inoperable, and therefore no longer subject to HMIWI EG.

CT DEEP intended to request delegation of the HMIWI federal plan. With the closure of its only existing HMIWI unit, CT DEEP submitted a negative declaration on January 25, 2013 indicating no existing HMIWI operate within the State of Connecticut.

### **B. New Hampshire**

On August 8, 2011, the New Hampshire Department of Environmental Services (NH DES) submitted a negative declaration certifying no existing HMIWI operate within the State of New

Hampshire. EPA published approval of a New Hampshire State Plan for existing HMIWI on February 8, 2000 (65 FR 6008), and the August 2011 negative declaration could not be approved until the State Plan was withdrawn by the State. On September 9, 2011, NH DES formally requested EPA to withdraw the State Plan for existing HMIWI, citing the closure of all HMIWI units in the State. EPA requested documentation of the closure of certain HMIWI that operated into the late 2000s. NH DES complied with this request, and on October 9, 2012, submitted an updated negative declaration. The October 2012 negative declaration included supporting documents which demonstrated the units in question were permanently shut down and rendered inoperable. Furthermore, NH DES submitted documents citing RSA 125-N-6, a state regulation enacted by the General Court of New Hampshire which prohibits the reactivation of closed HMIWIs or the construction of new HMIWIs.

### **III. Sewage Sludge Incinerators**

NSPS for sewage sludge incinerators (SSI) for which construction commenced after October 14, 2010 or modification or reconstruction commenced after September 21, 2011 and EGs for existing SSI constructed on or before October 14, 2010 were promulgated by EPA on March 21, 2011 (76 FR 15372). The EG for existing SSI are codified at 40 CFR Part 60, Subpart MMMM.

#### **A. Maine**

Maine Department of Environmental Protection (ME DEP) submitted a negative declaration on July 20, 2012 certifying no existing SSI operate within the State of Maine. ME DEP air and water licensing staff confirmed the absence of existing SSI within the State's jurisdiction prior to its submittal of the negative declaration.

## **B. Vermont**

Vermont Department of Environmental Conservation submitted a negative declaration on February 10, 2012 certifying no existing SSI operate within the State of Vermont.

## **IV. Other Solid Waste Incinerators**

NSPS for other solid waste incinerators (OSWI) for which construction commenced after December 9, 2004 or modifications or reconstruction commenced on or after June 16, 2006 and EGs for existing OSWI constructed on or before December 9, 2004 were promulgated by EPA on December 16, 2005 (70 FR 74870). The EG for existing OSWI are codified at 40 CFR Part 60, Subpart FFFF.

EPA became aware of two clerical errors inadvertently codified under 40 CFR Part 62, Subpart OO (Rhode Island) and UU (Vermont). The following paragraphs explain the errors in greater detail and discuss the corrective actions EPA is making in today's Federal Register.

### **A. Rhode Island**

On April 6, 2007, EPA approved a negative declaration in lieu of a state plan for existing OSWI in the State of Rhode Island (72 FR 17027). The approved regulatory text at 40 CFR 62.9995 incorrectly states:

“On November 8, 2006, the Rhode Island Department of Environmental Management submitted a letter certifying that there are no existing other solid waste incineration units in the state subject to the emission guidelines under part 60, subpart EEEE of this chapter.”

40 CFR Part 60, Subpart EEEE refers to NSPS affecting new or modified OSWI. 40 CFR 62.9995 must be amended by removing reference to Subpart EEEE and adding reference to EG applicable to existing OSWI codified at 40 CFR Part 60, Subpart FFFF.

## **B. Vermont**

On September 13, 2006, EPA approved a negative declaration in lieu of a state plan for existing OSWI in the State of Vermont (71 FR 53972). The approved regulatory text at 40 CFR 62.11490 incorrectly states:

“On June 30, 2006, the Vermont Department of Environmental Conservation submitted a letter certifying that there are no existing other solid waste incineration units in the state subject to the emission guidelines under part 60, subpart EEEE of this chapter.”

40 CFR Part 60, Subpart EEEE refers to NSPS affecting new or modified OSWI. 40 CFR 62.11490 must be amended by removing reference to Subpart EEEE and adding reference to EG applicable to existing OSWI codified at 40 CFR Part 60, Subpart FFFF.

## **V. Final Actions**

EPA is approving the negative declarations for HMIWI for the State of Connecticut and the State of New Hampshire and negative declarations for SSI for the State of Maine and the State of Vermont. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source categories.

EPA is approving the NH DES request for withdrawal of the New Hampshire HMIWI State Plan. NH DES has successfully demonstrated that no existing HMIWI operate within the State. The negative declaration submitted by NH DES for existing HMIWI (also being approved in today's action) will serve in lieu of a state plan.

Lastly, EPA is approving technical corrections to 40 CFR Part 62, Subpart OO (Rhode Island) and UU (Vermont). This action corrects clerical errors made during the approval of OSWI State Plans (Negative Declarations) for the State of Rhode Island and the State of Vermont.

EPA is publishing these actions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declarations, State Plan withdrawal, and technical corrections should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on

the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule. 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.

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

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the CAA and applicable Federal regulations. 40 CFR 62.04. Thus, in reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 Clean Air Act; 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this direct final rulemaking is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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).

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 **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this

action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Reporting and recordkeeping requirements.

Dated: February 27, 2014

H. Curtis Spalding,  
Regional Administrator,  
EPA New England.

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 H - Connecticut**

2. Add § 62.1725 and an undesignated heading to subpart H to read as follows:

**Air Emissions From Existing Hospital/Medical/Infectious Waste Incineration Units**

**§ 62.1725 Identification of plan – negative declaration**

On January 25, 2013, the State of Connecticut Department of Energy and Environmental Protection submitted a letter certifying no Hospital/Medical/Infectious Waste Incineration units subject to 40 CFR part 60, subpart Ce operate within its jurisdiction.

**Subpart U - Maine**

3. Add § 62.4990 and a new undesignated center heading to subpart U to read as follows:

**Air Emissions From Existing Sewage Sludge Incineration Units**

**§ 62.4990 Identification of plan – negative declaration.**

On July 20, 2012, the State of Maine Department of Environmental Protection submitted a letter certifying no Sewage Sludge Incineration units subject to 40 CFR part 60, subpart MMMM operate within its jurisdiction.

**Subpart EE – New Hampshire****§ 62.7325 [Amended]**

4. Amend § 62.7325 by removing and reserving paragraphs (b)(2) and (c)(2).
5. Revise § 62.7450 to read as follows:

**§ 62.7450 Identification of plan – negative declaration.**

On August 2, 2011, September 9, 2011, and October 9, 2012 the State of New Hampshire Department of Environmental Services submitted letters certifying no Hospital/Medical/Infectious Waste Incineration units subject to 40 CFR part 60, subpart Ce operate within its jurisdiction.

**Subpart OO – Rhode Island**

6. Revise § 62.9995 to read as follows:

**§ 62.9995 Identification of plan – negative declaration.**

On November 8, 2006, The State of Rhode Island Department of Environmental Management submitted a letter certifying no Other Solid Waste Incineration units subject to 40 CFR part 60, subpart FFFF operate within its jurisdiction.

**Subpart UU – Vermont**

7. Revise § 62.11490 to read as follows:

**§ 62.11490 Identification of plan – negative declaration.**

On June 30, 2006, the State of Vermont Department of Environmental Conservation submitted a letter certifying no Other Solid Waste Incineration units subject to 40 CFR part 60, subpart FFFF operate within its jurisdiction.

8. Add § 62.11495 and an undesignated center heading to subpart UU to read as follows:

**Air Emissions From Existing Sewage Sludge Incinerators**

**§ 62.11495 Identification of plan – negative declaration.**

On February 10, 2012, the State of Vermont Department of Environmental Conservation submitted a letter certifying no Sewage Sludge Incineration units subject to 40 CFR part 60, subpart Mmmm operate within its jurisdiction.

[FR Doc. 2014-06375 Filed 03/24/2014 at 8:45 am; Publication Date: 03/25/2014]