



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R02-OAR-2014-0127, FRL-9908-45-Region-2]

Approval and Promulgation of State Plans for Designated
Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State plan submitted by New York State to implement and enforce the Emission Guidelines (EG) for existing sewage sludge incineration (SSI) units. The State plan is consistent with the EG promulgated by EPA on March 21, 2011. New York's plan establishes emission limits and other requirements for the purpose of reducing toxic air emissions and other air pollutants from SSI units throughout the State. New York submitted its plan to fulfill the requirements of sections 111(d) and 129 of the Clean Air Act.

DATES: Written comments must be received on or before [insert date 30 days from date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2014-0127 by one of the following methods:

- www.regulations.gov. Follow the on-line instructions for submitting comments.
- E-mail: <mailto:Ruvo.Richard@epa.gov>
- Mail: EPA-R02-OAR-2014-0127, Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.
- Hand Delivery: Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. 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 federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R02-OAR-2014-0127. 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, 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 information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The 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 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dpckets.htm>.

Docket: All documents in the electronic docket are listed in

the 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, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella
(Gardella.anthony@epa.gov), Air Programs Branch, 290 Broadway,
25th Floor, New York, New York 10007-1866, (212) 637-3892.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the Supplementary Information section:

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I. EPA Action

- A. What action is EPA proposing today?

EPA is proposing to approve New York's State plan, submitted on July 1, 2013, for the control of air emissions from existing sewage sludge incinerator (SSI) units throughout the State, except for any existing SSI units located in Indian Nation Land. New York submitted its plan to fulfill the requirements of section 111(d) and 129 of the Clean Air Act (CAA). The State plan adopts and implements the Emission Guidelines (EG) applicable to existing SSI units, and establishes emission limits and other requirements for units constructed on or before October 14, 2010. This proposed approval, once finalized and effective, will make the New York SSI rules included in the State plan federally enforceable.

B. Why is EPA taking this action?

EPA has evaluated New York's SSI State plan for consistency with the CAA, EPA guidelines and policy. EPA has determined that New York's State plan meets all applicable requirements and therefore, EPA is proposing to approve New York's State plan to implement and enforce the EG applicable to existing SSI units.

C. Who is affected by New York's State plan?

New York's State plan regulates all the units designated by the EG for existing SSI units which commenced construction on or

before October 14, 2010 and which are located at a wastewater treatment facility designed to treat domestic sewage sludge. If the owner or operator of an SSI unit made changes after September 21, 2011, that meet the definition of modification (see Title 40, Code of Federal Regulations, section 60.5250 (40 CFR 60.5250)), the SSI unit becomes subject to subpart LLLL (New Source Performance Standards for New Sewage Sludge Incineration Units) of 40 CFR part 60, and the State plan no longer applies to that unit.

D. How does this approval affect sources located in Indian Nation Land?

New York's State plan is not applicable to units located in Indian Nation Land. Therefore, if there are any existing SSI units located in Indian Nation Land these existing SSI units will be subject to the Federal plan.

II. Background

A. What is a State plan?

Section 111 of the CAA, "Standards of Performance for New Stationary Sources," authorizes EPA to set air emissions standards for certain categories of sources. These standards are called New Source Performance Standards (NSPS). When a NSPS

is promulgated for new sources, section 111(d) also requires that EPA publish an EG applicable to control the same pollutants from existing (or designated) facilities. States with designated facilities must then develop a State plan to adopt the EG into the State's body of regulations. States must also include in their State plan other requirements, such as inventories, legal authority, reporting and recordkeeping, and public participation documentation, to demonstrate their ability to enforce the State plans.

Section 129 of the CAA requires EPA to establish performance standards and emission guidelines for various types of new and existing solid waste incineration units. Section 129(b)(2) requires States to submit to EPA for approval section 111(d)/129 plans that implement and enforce the promulgated EG. Section 129(b)(3) requires EPA to promulgate a Federal plan (FP) within two years from the date on which the EG, or when revision to the EG, is promulgated. The FP is applicable to affected facilities when the state has failed to receive EPA approval of the section 111(d)/129 plan. The FP remains in effect until the state submits and receives EPA approval of its section 111(d)/129 plan.

State plan submittals under CAA sections 111(d) and 129 must be consistent with the relevant EG, in this instance 40 CFR part 60, subpart M, and the requirements of 40 CFR part 60, subpart B and part 62, subpart A. Section 129 of the CAA regulates air pollutants that include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, and mercury), hydrogen chloride, sulfur dioxide, nitrogen oxides, particulate matter, and opacity (as appropriate).

B. What is an SSI State plan?

An SSI State plan is a State plan, as described above, that controls air pollutant emissions from existing sewage sludge incinerators located at a wastewater treatment facility designed to treat domestic sewage sludge and that commenced construction on or before October 14, 2010. The applicable types of SSI units include fluidized bed and multiple hearth incinerators.

C. Why is EPA requiring New York to submit an SSI State plan?

When EPA developed the NSPS for SSI units, we simultaneously developed the EG to control air emissions from existing SSI units (see 76 FR 15371, March 21, 2011). Under section 129 of the CAA, the EG is not federally enforceable; therefore, section 129 of the CAA also requires states to submit

to EPA for approval State plans that implement and enforce the EG. Under section 129 of the CAA, these State plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA.

The procedures for adopting and submitting State plans are located in 40 CFR part 60, subpart B. If a state fails to have an approvable plan in place by March 21, 2013, the EPA is required to promulgate a federal plan to establish requirements for those sources not under an EPA-approved State plan. The procedures for EPA's approval and disapproval of State plans are located in 40 CFR part 62, subpart A. EPA is proposing to approve New York's State plan since it is deemed at least as protective as the standards set in the EG. New York has developed and submitted a State plan, as required by sections 111(d)/129 of the CAA, to gain federal approval to implement and enforce the EG for existing SSI units.

D. What are the requirements for an SSI State plan?

A section 111(d) State plan submittal must meet the requirements of 40 CFR part 60, subpart B, sections 60.23 through 60.26, and the EG found at 40 CFR part 60, subpart M (see 76 FR 15371, March 21, 2011). Subpart B contains the

procedures for the adoption and submittal of State plans. This subpart addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements.

EPA promulgated the EG at 40 CFR part 60, subpart MMMM on March 21, 2011. Subpart MMMM contains guidelines to the states for submittal of plans that address existing SSI units. In addition, subpart MMMM contains the technical requirements for existing SSI units located at a wastewater treatment plant designed to treat domestic sewage sludge and applies to SSI units that commenced construction on or before October 14, 2010. A state can address the SSI technical requirements by adopting its own regulation that includes all the applicable requirements of subpart MMMM or by adopting by reference subpart MMMM. The section 111(d) State plan is required to be submitted within one year of the EG promulgation date, i.e. by March 21, 2012. Prior to submittal to EPA, the State must make available to the public the State plan and provide opportunity for public comment, including a public hearing.

III. New York's State Plan

A. What is contained in the New York State plan?

On July 1, 2013¹, the New York State Department of Environmental Conservation (NYSDEC) submitted its section 111(d) State plan for implementing EPA's EG for existing SSI units located in New York State.

New York has adopted by reference the applicable requirements of the EG in Part 200 of Title 6 of the New York Code of Rules and Regulations (6NYCRR) of the State of New York, entitled "General Provisions" and in Subpart 219-1 of 6NYCRR entitled "Incineration-General Provisions" and Subpart 219-9 of 6NYCRR entitled "Emission Guidelines and Compliance Schedules for Existing Sewage Sludge Incineration Units." These amended regulations became effective on May 12, 2012. By incorporating the EG by reference into Part 200, NYSDEC has the authority to include them as applicable within Subpart 219-9, which addresses the applicability of the various Part 219 (New York's incineration rules) requirements. Part 219 now includes the new requirements incorporated from the EG, as well as the necessary compliance schedules and necessary definition changes required

¹ In an email dated 02/28/14, New York responded to an EPA request to provide clarifying information concerning the State's plan. This clarifying information also is available in EPA's docket at www.regulations.gov.

for the transformation of emission guidelines into a State plan. As a result, the Part 219 requirements are enforceable by New York and become federally enforceable once the State plan is approved by EPA.

Section 60.5015 of the EG describes all of the required elements that must be included in a state's plan for SSI units. New York's State plan includes all of the required elements described in section 60.5015 of the EG, as summarized herein:

(1) A demonstration of the State's legal authority to implement the sections 111(d) and 129 State plan;

(2) State rules adopted into 6NYCRR Parts 200 and 219 as the mechanism for implementing and enforcing the State plan;

(3) An inventory of twelve known SSI facilities, including twenty-one SSI units, along with an inventory of their air pollutant emissions (see sections A and B of New York's State plan as well as the clarifying information submitted by New York). Of these twenty-one SSI units, at least seven units, and possibly more, will have ceased operation by the March 21, 2016 compliance date. Also, the inventory includes an additional nine facilities with fifteen SSI units that have expired permits and that are no longer in operation - New York has indicated in its State plan that these facilities would be

considered new facilities subject to 40 CFR part 60, subpart LLLL (Standards of Performance for New Stationary Sources) should they apply for a new air permit;

(4) Emission limits, emission standards, operator training and qualification requirements, and operating limits that are at least as protective as the EG;

(5) Enforceable compliance schedules incorporated into Subpart 219-9, part of New York's incineration rule, as follows: either (a) a one year schedule whereby full compliance is achieved by twelve months after EPA's approval of New York's State plan or June 21, 2013, whichever is earlier, or (b) an extended schedule whereby full compliance is achieved by thirty-six months after EPA's approval of New York's State plan or March 21, 2016, whichever is earlier.

(6) Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

(7) Records of the public hearing on the State plan; and,

(8) Provisions for annual state progress reports to EPA on implementation of the State plan.

EPA proposes to determine that New York's State plan for SSI units includes all the required State plan elements described in section 60.5015 of the EG.

B. What approval criteria did we use to evaluate New York's State plan?

EPA reviewed New York's State plan for approval against the following criteria: 40 CFR 60.23 through 60.26, "Subpart B- Adoption and Submittal of State Plans for Designated Facilities;" and 40 CFR 60.5000 through 60.5250, "Subpart MMMM- Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units;" And 40 CFR 62, subpart A, "General Provisions" for "Approval and Promulgation of State Plans for Designated Facilities and Pollutants."

IV. What is EPA's Conclusion?

The EPA has determined that New York's State plan meets all the applicable approval criteria as discussed above and, therefore, EPA is proposing to approve New York State's sections 111(d) and 129 State plan for existing sewage sludge incineration units.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule also does 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), nor will it 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), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing NYSDEC's submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 NYSDEC submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a NYSDEC submission, to use VCS in

place of a NYSDEC submission that otherwise satisfies the provisions of the CAA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule for the approval of NYSDEC's section 111(d)/129 plan for SSI units 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, 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.

Date: March 12, 2014.

Judith A. Enck,
Regional Administrator,
Region 2.

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