



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R02-OAR-2014-0127; FRL-9912-05-Region 2]

Approval and Promulgation of State Plans for Designated Facilities; New York; Control of Emissions from Existing Sewage Sludge Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the section 111(d)/129 plan submitted by New York State for the purpose of implementing and enforcing the emission guidelines for existing sewage sludge incineration (SSI) units. The intended effect of this action is to approve a plan required by the Clean Air Act (CAA) which establishes emission limits and other requirements for existing sewage sludge incineration units and provides for the implementation and enforcement of those limits and other requirements. New York submitted its plan to fulfill the requirements of sections 111 and 129 of the CAA.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. **EPA-R02-OAR-2014-0127**. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., 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 through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella (Gardella.Anthony@EPA.Gov), Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3892.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking today?

EPA is approving New York's plan, and the elements therein, as submitted on July 1, 2013, for the control of air emissions from existing sewage sludge incineration (SSI) units throughout the State, except for any existing SSI units located in Indian Nation Land¹. When EPA developed the New Source Performance Standards (NSPS) (subpart LLLL) for SSI units on March 21, 2011, it concurrently promulgated Emission Guidelines (subpart MMMM) to control air emissions from existing SSI units.

The New York State Department of Environmental Conservation (NYSDEC) developed a plan, as required by sections 111(d) and 129 of the Clean Air Act (CAA), to adopt the Emission Guidelines (EG) into its body of regulations, and EPA is acting today to approve New York's plan.

II. What are the details of EPA's action?

On March 21, 2011, in accordance with sections 111(d) and 129 of the CAA, EPA promulgated the SSI EG and compliance times for the control of emissions from existing SSI units. See 76 FR 15371. EPA codified these guidelines at 40 CFR part 60, subpart MMMM.

¹ If there are any existing SSI units located in Indian Nation Land these existing SSI units will be subject to the Federal plan.

They include a model rule at 40 CFR 60.5085 through 62.5250 that States may use to develop their own plans. Under that rule, EPA has defined an "SSI unit," in part, as any device that combusts sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter. 40 CFR 60.5250.

On July 1, 2013², New York submitted a plan for implementing and enforcing EPA's EG for existing SSI units. Section 60.5015 of the EG describes all of the required elements that must be included in a state's plan for existing SSI units. New York's State plan includes all of the required elements described in section 60.5015 of the EG. For further details, the reader is referred to EPA's proposal located in EPA's electronic docket at www.regulations.gov.

III. What comments were received on the proposed approval and how has EPA responded to them?

There were no comments received on EPA's proposed rulemaking (79 FR 16271, March 25, 2014) regarding New York's State plan for existing SSI units. The 30-day public comment period on EPA's proposed approval ended on April 24, 2014.

² On February 28, 2014, New York provided clarifying information concerning its State plan. To view this information see EPA's electronic docket at www.regulations.gov.

IV. What is EPA's conclusion?

For the reasons described in this rulemaking and in EPA's proposal, EPA is approving New York's sections 111(d) and 129 plan for existing SSI units.

V. Statutory and Executive Order Reviews

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 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 approves 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 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 New York'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 New York submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a New York submission, to use VCS in

place of a New York 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 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 rule for the approval of New York'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.).

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 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).

C. Petitions for 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 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. This action approving New York's Section 111(d)/129 plan for existing sewage sludge incineration units 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, Air pollution control, Incorporation by reference, Administrative practice and procedure, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: May 30, 2014.

Judith A. Enck,
Regional Administrator,
Region 2.

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 HH—New York

2. Part 62 is amended by adding § 62.8108 and an undesignated heading to subpart HH to read as follows:

Air Emissions From Existing Sewage Sludge Incineration Units

§ 62.8108 Identification of plan.

(a) On July 1, 2013, the New York State Department of Environmental Conservation (NYSDEC) submitted to the Environmental Protection Agency a section 111(d)/129 plan for implementation and enforcement of 40 CFR part 60, subpart MMMM, Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units. On February 28, 2014, the NYSDEC submitted clarifying information concerning the State's plan.

(b) Identification of sources. The plan applies to existing sewage sludge incineration (SSI) units that:

(1) Commenced construction on or before October 14, 2010, or

(2) Commenced a modification on or before September 21, 2011 primarily to comply with New York's plan, and

(3) Meets the definition of a SSI unit defined in New York's plan.

(c) The effective date of the plan for existing sewage sludge incineration units is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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