



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[EPA-R01-OAR-2012-0260; A-1-FRL-9915-71-Region 1]**

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants:  
New Hampshire; Revised State Plan for Large and Small Municipal Waste Combustors**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the Clean Air Act section 111(d)/129 State Plan revisions for Large and Small Municipal Waste Combustors (MWCs) submitted by the New Hampshire Department of Environmental Services (DES) on January 29, 2009 with amendments submitted on February 13, 2009. The revised State Plan is in response to amended emission guidelines (EGs) and new source performance standards (NSPS) for Large MWCs promulgated by EPA on May 10, 2006 and the strengthening of emission limits on Small MWCs as enacted by the New Hampshire General Court in 2005. New Hampshire DES's State Plan is for implementing and enforcing provisions at least as protective as the EPA EGs applicable to existing Large and Small MWC units.

**DATES:** This direct final rule will be effective **[Insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days after 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-2012-0260 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-2012-0260," Ida E. McDonnell  
U.S. Environmental Protection Agency, EPA New England Regional Office, Office of  
Ecosystem Protection, Air Permits, Toxics, and 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, EPA New  
England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and  
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-2012-0260. 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 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

**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.

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

- I. What Is a State Plan?
- II. Why Does EPA Need To Approve State Plans?
- III. Why Does EPA Regulate Air Emissions From MWCs?
- IV. What History Does New Hampshire DES Have With MWC State Plans?
- V. Why Did New Hampshire DES Submit a Revised MWC State Plan?
- VI. What Revisions Have Been Made to the State Plan?
- VII. Why Is EPA Approving New Hampshire DES’s Revised State Plan?
- VIII. Final Action
- IX. Statutory and Executive Order Reviews

**I. What Is a State Plan?**

Clean Air Act (CAA) section 111, which Congress enacted as part of the 1970 CAA Amendments, establishes mechanisms for controlling emissions of air pollutants from stationary sources. This provision requires EPA to promulgate a list of categories of stationary sources that

the Administrator, in his or her judgment, finds “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” Once EPA lists a source category, EPA must, under CAA section 111(b)(1)(B), establish “standards of performance” for emissions of air pollutants from new sources in the source category. These standards are known as new source performance standards (NSPS), and they are national requirements that apply directly to the sources subject to them.

When the EPA establishes NSPS for new sources in a particular source category, the EPA is also required, under CAA section 111(d)(1), to prescribe regulations for states to submit plans regulating existing sources in that source category for any air pollutant that, in general, is not regulated under the CAA section 109 requirements for the national ambient air quality standards (NAAQS) or regulated under the CAA section 112 requirements for hazardous air pollutants (HAP). In contrast with CAA section 111(b), which provides for direct federal regulation of new sources, section 111(d)’s mechanism for regulating existing sources provides that states will submit plans that establish “standards of performance” for the affected existing sources and that contain other measures to implement and enforce those standards.

## **II. Why Does EPA Need to Approve State Plans?**

Under section 129 of the CAA, EGs are not federally enforceable. Section 129(b)(2) of the CAA requires states to submit state plans to EPA for approval. Each state must show that its state plan will carry out and enforce the EGs. State plans must be at least as protective as the EGs and will become federally enforceable upon EPA’s approval. The procedures for adopting and submitting state plans are in 40 CFR Part 60, Subpart B.

### III. Why Does EPA Regulate Air Emissions From MWCs?

When burned, municipal solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious human health effects, primarily to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.<sup>1</sup>

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death.<sup>2</sup> Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.<sup>3</sup>

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<sup>1</sup> U.S. Environmental Protection Agency. *Mercury Report to Congress, Volume V: Health Effects of Mercury and Mercury Compounds* (EPA-452/R-97-007) and *Volume VI: An Ecological Assessment for Anthropogenic Mercury Emissions in the United States* (EPA-452/R-97-008). U.S. EPA Office of Air Quality, Planning, and Standards and Office of Research and Development. Washington, D.C., 1997.

<sup>2</sup> U.S. Environmental Protection Agency. *Integrated Science Assessment for Particulate Matter* (EPA/600/R-08/139F). U.S. EPA Office of Air and Radiation. Washington, D.C., 2009.

<sup>3</sup> U.S. Environmental Protection Agency. *Integrated Risk Information System (IRIS) on Hydrogen Chloride*. U.S. EPA National Center for Environmental Assessment and Office of Research and Development. Washington, D.C., 1999.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis.<sup>4</sup>

#### **IV. What History Does New Hampshire DES Have With MWC State Plans?**

On August 16, 2002, New Hampshire Department of Environmental Services (DES) submitted a CAA section 111(d)/129 State Plan for implementing and enforcing EGs for existing large and small municipal waste combustors (MWCs) pursuant to 40 CFR Part 60, Subpart Cb and BBBB, respectively. New Hampshire DES combined the requirements of 40 CFR Part 60, Subpart Cb and BBBB into a single plan and enforceable mechanism, New Hampshire Code of Administrative Rules Env-A 3300 *Municipal Waste Combustion* (Env-A 3300), which included the differing emissions limits for large and small MWCs.

New Hampshire DES's State Plan was analyzed by EPA. The Plan included all necessary elements of an approvable CAA section 111(d)/129 state plan, including: identification of legal authority; identification of enforceable state mechanisms for implementing plan; inventory of affected sources; inventory of emissions from affected sources; emissions limitations for affected sources; compliance schedule; and testing, monitoring, recordkeeping, and reporting requirements. EPA approved the New Hampshire DES State Plan on February 10, 2003 (68 FR 6630).

#### **V. Why Did New Hampshire DES Submit a Revised MWC State Plan?**

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<sup>4</sup> U.S. Environmental Protection Agency. *Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-P-Dioxin (TCDD) and Related Compounds* (EPA/600/BP-92/001a). U.S. EPA Office of Research and Development. Washington, D.C., 1994.

Section 129(a)(5) of the CAA requires EPA to conduct a 5-year review of NSPS and EGs for solid waste incinerators and amend standards and requirements as appropriate. Accordingly, EPA promulgated amended standards and requirements for Large MWCs on May 10, 2006 (71 FR 27324). This rulemaking included revised limits for dioxin/furan (only for units equipped with electrostatic precipitators), mercury, cadmium, lead, particulate matter, and nitrogen oxides (for some types of units). It also contained revisions to the compliance testing provisions to require increased data availability from continuous emissions monitoring systems (CEMS). CEMS are required to generate at least ninety-five percent (95%) data availability on a calendar year basis and at least ninety percent (90%) data availability on a calendar quarter basis. The compliance testing provisions have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury. Other revisions include:

- Operator stand-in provisions to clarify how long a shift supervisor is allowed to be off site when a provisionally certified control room operator is standing in;
- An eight-hour block average for measuring activated carbon injection rate;
- A provision for waiver of operating parameter limits during the mercury performance test and for two weeks preceding the test, as is already allowed for dioxin testing;
- A revision to relative accuracy criteria for sulfur dioxide and carbon monoxide CEMS;
- Flexibility to the annual compliance testing schedule so that a facility tests once per calendar year, but no less than nine months and no more than 15 months since the previous test;
- Allowing use of parametric monitoring limits from an exceptionally well-operated MWC unit to be applied to all identical units at the same plant site without retesting for dioxin;

- The option of monitoring the activated carbon injection pressure or equivalent parameter;  
and
- Clarifying the exclusion of monitoring data from compliance calculations.

In addition to EPA's amended standards and requirements for Large MWCs, the New Hampshire General Court enacted more stringent emission limits for Small MWCs, codified at New Hampshire Revised Statutes Annotated 125-C:10-a, in 2005. The limits took effect January 1, 2006.

In response to the actions described above, New Hampshire DES submitted a revised State Plan to EPA on January 29, 2009. The formal submittal was accompanied by minor technical amendments submitted to EPA on February 13, 2009. EPA is taking action on the January 29, 2009 State Plan revision and the February 13, 2009 amendments in today's [Federal Register](#).

## **VI. What Revisions Have Been Made to the State Plan?**

New Hampshire DES amended the emission limits for Large MWCs in Env-A 3300 to be consistent with EPA's amended EGs. Amendments to operating practices, training and certification, testing and monitoring, and reporting and recordkeeping were incorporated into Env-A 3300 by reference, as Env-A 3300 references specific citations in EPA's Large MWC EGs.

Sections of Env-A 3300 were revised to reflect name/numbering changes made to other New Hampshire DES rules cross-referenced in Env-A 3300. Instances where reference was made to Env-Wm 2705.07 and Env-Wm 3300 were changed to Env-Sw 1005.07 and Env-Sw 1600,

respectively. These changes account for the name/numbering changes in the cross-referenced sections.

Env-A 3306.01 was revised to make reference to Env-A 808, *Continuous Emission Monitoring*, which has the effect of increasing the minutes of data for a valid hourly average beyond what is required in EPA's Large MWC EGs. This revision strengthens the requirements of the Plan's enforceable mechanism.

New Hampshire DES also submitted revised emission limits for Small MWCs, which are more stringent than the federal limits pursuant to 40 CFR 60, Subpart BBBB. The New Hampshire General Court enacted the more stringent emission limits, codified at New Hampshire Revised Statutes Annotated 125-C:10-a, in 2005. The emission limits took effect January 1, 2006. New Hampshire DES submitted the more stringent emission limits as part of its revised State Plan.

New Hampshire DES's January 29, 2009 submittal did not change the NO<sub>x</sub> emission standard for mass burn rotary waterwall MWCs in Env-A 3300 as there is no such facility within the jurisdiction of New Hampshire DES that operates with this specified technology. As such, on February 13, 2009, New Hampshire DES submitted an amendment to the State Plan for MWCs, which redacted the NO<sub>x</sub> standards for mass burn rotary waterwall units in Env-A 3300.

New Hampshire DES's final revised State Plan for MWCs includes all revisions submitted on January 29, 2009 and the amendment submitted on February 13, 2009.

## **VII. Why Is EPA Approving New Hampshire DES's Revised State Plan?**

EPA has evaluated the revised State Plan for MWCs submitted by New Hampshire DES for consistency with the CAA and EPA guidelines and policies. EPA has determined that New Hampshire DES's State Plan for Large and Small MWCs meets or exceeds all requirements and, therefore, EPA is approving New Hampshire DES's State Plan to implement and enforce the EGs, as they apply to existing Large and Small MWCs within the jurisdiction of New Hampshire DES.

EPA's approval of New Hampshire's State Plan is based on our findings that:

1. New Hampshire DES provided adequate public notice of public hearings for the proposed rulemaking that allows New Hampshire to carry out and enforce provisions that are at least as protective as the EGs for Large and Small MWCs, and;

2. New Hampshire DES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

## **VIII. Final Action**

EPA is approving New Hampshire's revised State Plan for existing Large and Small MWCs. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment 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 State Plan should relevant adverse comments be filed.

This rule will be effective **[Insert date 60 days after date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice 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 after 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.

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

Under the CAA, the Administrator is required to approve 111(d)/129 plan submissions that comply with the provisions of the CAA and applicable Federal regulations. 40 CFR 62.02(a). 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 the State Plan 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 **[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. 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**

#### **40 CFR Part 62**

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal

Dated: July 11, 2014.

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

Part 62 of chapter I, title 40 of the Code of Federal Regulations 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. 7401-7671q.

**Subpart EE - New Hampshire**

2. Section 62.7325 is amended by adding paragraph (b)(4)(i) and (ii) to read as follows:

**§62.7325 Identification of Plan.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) Revised State Plan for Large and Small Municipal Waste Combustors was submitted on January 29, 2009, with a technical amendment submitted on February 13, 2009. Revisions included amendments to New Hampshire Code of Administrative Rules Env-A 3300 *Municipal Waste Combustion* in response to amended emission guidelines for Large MWCs (40 CFR Part 60, Subpart Cb) published on May 10, 2006 and emission limits for Small MWCs enacted by the New Hampshire General Court in 2005 and codified at New Hampshire Revised Statutes Annotated 125-C:10-a.

(ii) [Reserved]

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