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**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[EPA-R06-OAR-2013-0763; FRL-9927-00-Region 6]**

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Texas, Oklahoma, Arkansas, New Mexico, and the City of Albuquerque, New Mexico; Control of Emissions from Existing Sewage Sludge Incinerator Units**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve Clean Air Act (CAA) section 111(d)/129 negative declarations for the States of Texas, Oklahoma, Arkansas, New Mexico, and the City of Albuquerque, New Mexico, for existing sewage sludge incinerator (SSI) units. These negative declarations certify that existing SSI units subject to the requirements of sections 111(d) and 129 of the CAA do not exist within the jurisdictions of Texas, Oklahoma, Arkansas, and New Mexico (including the City of Albuquerque). EPA is accepting the negative declarations in accordance with the requirements of the CAA.

**DATES:** This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2013-0763, by one of the following methods:

- *www.regulations.gov*. Follow the online instructions.
  - E-mail: Mr. Kenneth W. Boyce at [boyce.kenneth@epa.gov](mailto:boyce.kenneth@epa.gov).
  - Mail or delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- Instructions:* Direct your comments to Docket No. EPA-R06-OAR-2013-0763. 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* web site 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.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Boyce, (214) 665-7259, e-mail address [boyce.kenneth@epa.gov](mailto:boyce.kenneth@epa.gov). To inspect the hard copy materials please contact Mr. Boyce or Mr. Bill Deese at (214) 665-6645.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we” “us” and “our” means the EPA.

**OUTLINE:**

- I. Background
- II. Final Action
- III. Statutory and Executive Order Reviews

## **I. Background**

EPA's statutory authority for the regulation of new and existing solid waste incineration units is outlined in CAA sections 129 and 111. Section 129 of the CAA is specific to solid waste combustion and requires EPA to establish performance standards for each category of solid waste incineration units. These standards include new source performance standards (NSPS), applicable to new units, and emissions guidelines and other requirements applicable to existing units. Under CAA section 129, an NSPS or emissions guideline must contain numerical emissions limitations for particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. While the NSPS is directly applicable to affected facilities, the emissions guidelines for existing units are intended for states to use in order to develop a state plan to submit to EPA. Once approved by EPA, the state plan becomes federally enforceable. If a State does not submit an approvable state plan to EPA, EPA is responsible for developing, implementing, and enforcing a federal plan.

While section 129 of the CAA is specific to the combustion of solid waste, it also relies on CAA section 111 in promulgating the NSPS and emissions guidelines. Section 111 of the CAA gives EPA the statutory authority to promulgate an NSPS and/or emissions guideline for certain categories of stationary sources, and describes the procedural requirements for the development and implementation of these standards. More specifically, CAA section 111(d) requires EPA to establish procedures for States to submit a state plan to EPA for the regulation of existing sources whenever emissions guidelines are promulgated. The general provisions for the submittal and approval of state plans are codified in 40 CFR part 60, subpart B and 40 CFR part 62, subpart A. States have options other than submitting a state plan in order to fulfill their

obligations under CAA sections 111(d) and 129. If a State does not have any existing solid waste incineration units for the relevant emissions guidelines, 40 CFR 60.23(b) and 62.06 provide that a letter may be submitted certifying that no such units exist within the State (i.e., negative declaration) in lieu of a state plan. The negative declaration exempts the State from the requirements of subpart B that would otherwise require the submittal of a CAA section 111(d)/129 plan.

On March 21, 2011 (76 FR 15372), EPA promulgated new source performance standards (40 CFR part 60, subpart LLLL) for new SSI units, and emission guidelines (40 CFR part 60, subpart MMMM), for existing SSI units. Existing SSI units are units that commenced construction on or before October 14, 2010. The Texas Commission on Environmental Quality (TCEQ), Oklahoma Department of Environmental Quality (ODEQ), Arkansas Department of Environmental Quality (ADEQ), New Mexico Environment Department (NMED) and the City of Albuquerque, New Mexico have each determined that there are no existing SSI units subject to CAA sections 111(d) and 129 requirements in their individual air pollution control jurisdictions. In order to fulfill obligations under CAA sections 111(d) and 129, TCEQ, ODEQ, ADEQ, NMED and the City of Albuquerque, New Mexico submitted negative declaration letters to EPA on January 28, 2013, November 14, 2011, May 21, 2012, October 6, 2011 and September 12, 2011, respectively. The submittal of these declarations exempts TCEQ, ODEQ, ADEQ, NMED and the City of Albuquerque, New Mexico from the requirement to submit a state plan for existing SSI units.

## **II. Final Action**

In this Direct Final action, EPA is amending part 62 to reflect receipt of the negative

declaration letters from the TCEQ, ODEQ, ADEQ, NMED and the City of Albuquerque, New Mexico, certifying that there are no existing SSI units subject to 40 CFR part 60, subpart MMMM, in their respective jurisdictions, in accordance with 40 CFR 60.5010, 40 CFR 62.06, and Section 111(d) of the CAA. If a designated facility (i.e., existing SSI unit) is later found within any noted jurisdiction after publication of this **Federal Register** action, then the overlooked facility will become subject to the requirements of the Federal plan for that designated facility, including the compliance schedule. The Federal plan will no longer apply, if we subsequently receive and approve the 111(d) plan from the jurisdiction with the overlooked facility. EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the negative declarations if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

### **III. 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 notifies the public of EPA receipt of negative declarations from air pollution control agencies without any existing SSI units in their jurisdiction. This action imposes no requirements. Accordingly, EPA 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 action 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 (Pub. L. 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 negative declaration for SSI units, 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 is not economically significant.

With regard to negative declarations for SSI units received by EPA from states, EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. 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 negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan negative declaration submission, to use VCS in place of a 111(d)/129 plan 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. 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 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 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. 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 this 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 approving a negative declaration for SSI 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, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: April 16, 2015.

**Ron Curry,**

*Regional Administrator, Region 6.*

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 E ---- Arkansas**

2. Subpart E is amended by adding an undesignated center heading and § 62.856 to read as follows:

**Emissions from Existing Sewage Sludge Incinerator Units**

**§ 62.856 Identification of sources – negative declaration.**

Letter from the Arkansas Department of Environmental Quality, dated May 21, 2012, certifying that there are no known existing sewage sludge incineration (SSI) units subject to 40 CFR part 60, subpart MMMM, within its jurisdiction.

**Subpart GG ---- New Mexico**

3. Subpart GG is amended by adding an undesignated center heading and § 62.7892 to read as follows:

**Emissions from Existing Sewage Sludge Incinerator Units**

**§ 62.7892 Identification of sources.**

(a) *Negative declaration for the State of New Mexico excluding Bernalillo County.* Letter from the New Mexico Environment Department, dated October 6, 2011, certifying that there are no known existing sewage sludge incineration (SSI) units subject to 40 CFR part 60, subpart MMMM, within its jurisdiction, excluding Bernalillo County, New Mexico.

(b) *Negative declaration for Bernalillo County.* Letter from the City of Albuquerque Air

Pollution Control Division, dated September 12, 2011, certifying that there are no known existing sewage sludge incineration (SSI) units subject to 40 CFR part 60, subpart MMMM, within the jurisdiction of the City of Albuquerque and Bernalillo County, New Mexico.

**Subpart LL ---- Oklahoma**

4. Subpart LL is amended by adding an undesignated center heading and § 62.9121 to read as follows:

**Emissions from Existing Sewage Sludge Incinerator Units**

**§ 62.9121 Identification of sources – negative declaration.**

Letter from the Oklahoma Department of Environmental Quality, dated November 14, 2011, certifying that there are no known existing sewage sludge incineration (SSI) units subject to 40 CFR part 60, subpart MMMM, within its jurisdiction.

**Subpart SS ----Texas**

5. Subpart SS is amended by adding an undesignated center heading and § 62.10912 to read as follows:

**Emissions from Existing Sewage Sludge Incinerator Units**

**§ 62.10912 Identification of sources – negative declaration.**

Letter from the Texas Commission on Environmental Quality, dated January 28, 2013, certifying that there are no existing sewage sludge incineration (SSI) units subject to the requirements of 40 CFR part 60, subpart MMMM, within its jurisdiction.