



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R02-OAR-2015-0509; FRL-9936-09-Region 2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving a request from the State of New York that EPA withdraw its approval of a provision of the New York State plan that implements and enforces the Emission Guidelines for existing sewage sludge incineration units. This action withdraws the EPA's approval of a provision of the State sewage sludge incineration plan allowing for affirmative defenses of Clean Air Act violations in the case of malfunctions. No other provision in the State plan is affected by this action.

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-2015-0509. 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, will be publicly available only in hard copy form.

Publicly available docket materials are available either at www.regulations.gov or at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. The EPA requests, if at all possible, that you contact the individual in the **FOR FURTHER INFORMATION CONTACT** section to view the docket. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4 p.m., excluding legal holidays.

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

SUPPLEMENTARY INFORMATION:

I. What action is the EPA taking?

The EPA is approving a request from the State of New York that EPA withdraw its approval of an affirmative defense provision in New York State's sewage sludge incineration (SSI) plan, based on a letter submitted by New York on January 27, 2015. New York State submitted the State SSI plan for EPA approval on July 1, 2013 to fulfill the requirements of sections 111(d) and 129 of the Clean Air Act (CAA). The EPA approved the proposed State SSI plan on June 11, 2014 (79 FR 33456). The State SSI plan adopts and implements the emission guidelines (EG) set forth at Title 40 part 60 subpart Mmmm of the Code of Federal Regulations (CFR) and is applicable to existing SSI units and establishes air emission limits and other

requirements. Existing SSI units are units constructed on or before October 14, 2010.

II. Which provision of the State SSI plan is EPA withdrawing approval of?

New York State requested that the EPA withdraw its approval of a provision in the State SSI plan that allows for an affirmative defense by an owner/operator of an affected SSI unit for violations of air emissions or other requirements of the State's plan in the event of malfunction(s) of the SSI unit. The EPA's withdrawal of its prior approval, once finalized and effective, results in the removal of the affirmative defense provision from the federally-enforceable State SSI plan while maintaining the federal enforceability of the remainder of the State SSI plan for covered SSI units located in New York State.

New York's State SSI plan adopted by reference all the applicable requirements of the EPA's SSI EG, including the affirmative defense provisions at §60.5181, into its State plan at Part 200 of Title 6 of the New York Code of Rules and Regulations (6NYCRR) of the State of New York, entitled "General Provisions."

For further details concerning today's action, the reader is referred to the EPA's proposed rule published in the Federal Register on August 24, 2015 (80 FR 51170).

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

There were no comments received on EPA's proposed rulemaking (80 FR 51170, August 24, 2015) regarding the EPA's withdrawal of its prior approval of the affirmative defense provision in New York State's SSI plan. The 30-day public comment period on EPA's proposed approval ended on September 23, 2015.

IV. What is the EPA's Conclusion?

The EPA has evaluated New York's January 27, 2015 request for consistency with the CAA, as well as the EPA's regulations and policy. Therefore, the EPA is approving to withdraw its approval of the affirmative defense provision of New York's State SSI plan, which the EPA approved on June 11, 2014 (79 FR 33456) as part of New York's sections 111(d) and 129 State SSI plan for existing sewage sludge incineration units. No other provisions in the New York State SSI plan is affected by this approval.

The EPA has determined that New York State's SSI plan will continue to meet all the applicable approval criteria if EPA withdraws its approval of the affirmative defense provision. First, the removal of the affirmative defense provision is consistent with the D.C. Circuit's decision in Natural Resources Defense Council v. Environmental Protection Agency, 749 F3d 1055 (D.C. Cir. April 18, 2014), as described in the EPA's proposed rulemaking (80 FR 51170, August 24, 2015). Second, a state plan must be at least as protective as the emissions guidelines promulgated by

the EPA, and the removal of the affirmative defense provision from the approved state plan does not render the plan less protective, as it removes a potential defense to a violation resulting from a malfunction.

V. 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 Act 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).

The 111(d)/129 plan is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian Nation Land, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65FR67249, November 9, 2000).

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. 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, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and

recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: October 14, 2015.

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. Section 62.8108 is amended by adding paragraphs (d) and (e) to read as follows:

§62.8108 Identification of plan.

* * * * *

(d) On January 27, 2015, the New York State Department of Environmental Conservation (NYSDEC) submitted to the Environmental Protection Agency (EPA) a request to revise its section 111(d)/129 plan for implementation and enforcement of 40 CFR part 60, subpart M—Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration (SSI) Units submitted on July 1, 2013 and approved by the EPA on June 11, 2014 (79 FR 33456). NYSDEC's January 27, 2015 revision consisted of a request that EPA withdraw its June 11, 2013 approval of the affirmative defense provision

as part of its State SSI plan, submitted to EPA for approval on July 1, 2013.

(e) The effective date of EPA's approval of NYSDEC's revised plan for existing sewage sludge incineration units is [insert date 30 days after date of publication in the Federal Register].

[FR Doc. 2015-27166 Filed: 10/23/2015 08:45 am; Publication Date: 10/26/2015]