



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R02-OAR-2016-0161; FRL-9954-60-Region 2]

**Approval and Promulgation of State Plans for Designated
Facilities and Pollutants; State of New York, State of New
Jersey and Commonwealth of Puerto Rico; Other Solid Waste
Incineration Units**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the Clean Air Act (CAA) section 111(d)/129 negative declarations for the States of New York and New Jersey and the Commonwealth of Puerto Rico, for other solid waste incineration (OSWI) units. Other solid waste incineration (OSWI) unit means either a very small municipal waste combustion unit or an institutional waste incineration unit within our regulations. This negative declaration certifies that OSWI units subject to sections 111(d) and 129 of the CAA do not exist within the jurisdiction of the States of New York and New Jersey and the Commonwealth of Puerto Rico.

The EPA is accepting the negative declaration in accordance with the requirements of the CAA.

DATES: This direct final rule will be effective [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], without further notice, unless the EPA receives adverse comment by [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. If EPA receives adverse comment, we 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 No. EPA-R02-OAR-2016-0161, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system).

For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Edward J. Linky, Environmental Protection Agency, Air Programs Branch, 290 Broadway, New York, New York 10007-1866 at 212-637-3764 or by email at linky.edward@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” refer to the EPA. This section provides additional information by addressing the following:

- I. Background
- II. Analysis of State Submittal
- III. Statutory and Executive Order Reviews

I. Background

The Clean Air Act (CAA) requires that state¹ regulatory agencies implement the emission guidelines and compliance times using a state plan developed under sections 111(d) and 129 of the CAA.

¹ Section 302(d) of the CAA includes the Commonwealth of Puerto Rico in the definition of the term “State.”

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. section 111(d) establishes general requirements and procedures on state plan submittals for the control of designated pollutants.

Section 129 requires emission guidelines to be promulgated for all categories of solid waste incineration units, including OSWI units. Section 129 mandates that all plan requirements be at least as protective and restrictive as the promulgated emission guidelines. This includes fixed final compliance dates, fixed compliance schedules, and Title V permitting requirements for all affected sources. Section 129 also requires that state plans be submitted to EPA within one year after EPA's promulgation of the emission guidelines and compliance times.

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 OSWI units for the relevant emission guidelines, a letter can 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), the EPA established emission guidelines and compliance times for existing OSWI units. The emission guidelines and compliance times are codified at 40 CFR 60, subpart FFFF.

In order to fulfill obligations under CAA sections 111(d) and 129, the State of New York submitted a negative declaration letter to the EPA on November 13, 2006, the State of New Jersey submitted a negative declaration letter to the EPA on April 5, 2006 and the Commonwealth of Puerto Rico submitted a negative declaration letter to the EPA on September 25, 2006.

The submittal of these declarations exempts the State of New York, State of New Jersey and Commonwealth of Puerto Rico from the requirement to submit a state plan for existing OSWI units.

II. Analysis of State Submittal

In this Direct Final action, the EPA is amending part 62 to reflect receipt of the negative declaration letters from the State of New York, State of New Jersey and Commonwealth of Puerto Rico, certifying that there are no existing OSWI units

subject to 40 CFR part 60, subpart FFFF, in accordance with section 111(d) of the CAA.

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment.

However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the negative declaration if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a section 111(d)/129 plan submission that complies with the provisions of the Act and applicable Federal regulations. 40 CFR 62.04.

Thus, in reviewing section 111(d)/129 plan submissions, the 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 action does not have tribal implications as specified by Executive Order 13175 because the section 111(d)/129 plan is not approved to apply in Indian country located in the state, and EPA notes will not impose substantial

direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this section.

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. The 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, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Sewage sludge incinerators.

Dated: October 3, 2016.

Judith A. Enck,
Regional Administrator,
Region 2.

For the reasons stated in the preamble, EPA amends 40 CFR part 62 as set forth below:

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 FF-New Jersey

2. Subpart FF is amended by adding an undesignated center heading and §62.7606 to read as follows:

Air Emissions from Other Solid Waste Incineration (OSWI) units constructed on or before December 16,2005

§62.7606 Identification of plan-negative declaration.

Letter from New Jersey Department of Environmental Protection submitted April 5, 2006 to Alan J. Steinberg Regional Administrator EPA Region 2 certifying there are no existing OSWI units in the State of New Jersey subject to 40 CFR part 60, subpart FFFF.

Subpart HH-New York

3. Subpart HH is amended by adding an undesignated center heading and §62.8109 to read as follows:

Air Emissions from Other Solid Waste Incineration (OSWI) units constructed on or before December 16, 2005

§62.8109 Identification of plan-negative declaration.

Letter from New York State Department of Environmental Conservation submitted November 13, 2006 to Alan J. Steinberg Regional Administrator EPA Region 2 certifying that there are no existing OSWI units in the State of New York subject to 40 CFR part 60, subpart FFFF.

Subpart BBB-Puerto Rico

4. Subpart BBB is amended by adding an undesignated center heading and §62.13110 to read as follows:

Air Emissions from Other Solid Waste Incineration (OSWI) Units Constructed on or before December 16, 2005

§62.13110 Identifcation of plan-negative declaration.

Letter from Commonwealth of Puerto Rico, Office of Environmental Quality Board, September 25, 2006 to Alan Steinberg Regional

Administrator EPA Region 2 certifying that there are no existing OSWI units in the Commonwealth of Puerto Rico subject to 40 CFR part 60, subpart FFFF.

[FR Doc. 2016-26171 Filed: 10/31/2016 8:45 am; Publication Date: 11/1/2016]