



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R02-OAR-2017-0132, FRL-9962-42-Region 2]

Approval and Promulgation of Plans for Designated Facilities; New Jersey; Delegation of Authority

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request from the New Jersey Department of Environmental Protection (NJDEP) for delegation of authority to implement and enforce the Federal plan for Sewage Sludge Incineration (SSI) units. On April 29, 2016 the EPA promulgated the Federal plan for SSI units to fulfill the requirements of sections 111(d)/129 of the Clean Air Act. The Federal plan addresses the implementation and enforcement of the emission guidelines applicable to existing SSI units located in areas not covered by an approved and currently effective state plan. The Federal plan imposes emission limits and other control requirements for existing affected SSI facilities which will reduce designated pollutants.

On January 24, 2017, the NJDEP signed a Memorandum of Agreement which is intended to be the mechanism for the transfer of authority between the EPA and the NJDEP and defines the policies, responsibilities and procedures pursuant to the Federal plan for existing SSI units.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R02-OAR-2017-0132** at <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:

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SUPPLEMENTARY INFORMATION:

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I. What action is the EPA proposing?

The EPA is proposing to approve the NJDEP's request for delegation of authority to implement and enforce a Federal plan and to adhere to the terms and conditions prescribed in the Memorandum of Agreement (MOA) signed between the EPA and the NJDEP, as further explained below. The NJDEP requested delegation of authority of the Federal plan for existing applicable Sewage Sludge Incineration (SSI) units constructed on or before October 14, 2010. See 40 CFR part 62, subpart LLL. The Federal plan was promulgated by the EPA to implement emission guidelines (see 40 CFR part 60, subpart MMMM) pursuant to sections 111(d) and 129 of the Clean Air Act (CAA). The purpose of this delegation is to acknowledge the NJDEP's ability to implement a program and to transfer primary implementation and enforcement responsibility from the EPA to the NJDEP for existing applicable sources of SSI units. While the NJDEP is delegated the authority to implement and enforce the SSI Federal plan, nothing in the delegation agreement shall prohibit the EPA from enforcing the SSI Federal plan.

II. Why is the EPA proposing this action?

The EPA is proposing this action to:

- Give the public the opportunity to submit comments on the EPA's proposed action, as discussed in the **ADDRESSES** section of this Notice;
- Fulfill a goal of the CAA to place state governments in positions of leadership for air pollution prevention and control; and
- Allow the NJDEP to implement and enforce a Federal plan promulgated by the EPA that implements emission guidelines pursuant to sections 111(d) and 129 of the CAA.

III. What was submitted by the NJDEP and how did the EPA respond?

On October 12, 2016, the NJDEP submitted to the EPA a request for delegation of authority from the EPA to implement and enforce the Federal plan for existing SSI units. The EPA prepared the MOA that defines the policies, responsibilities, and procedures by which the Federal plan will be administered by both the NJDEP and the EPA, pursuant to 40 CFR part 62, subpart LLL for SSI units. The MOA is the mechanism for the transfer of responsibility from the EPA to the NJDEP.

Both the EPA and the NJDEP signed the MOA in which the State agrees to the terms and conditions of the MOA and accepts responsibility to implement and enforce the policies, responsibilities and procedures of the SSI Federal plan. The transfer of authority to the NJDEP became effective upon signature by the NJDEP on January 24, 2017.

IV. What are the CAA requirements?

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities and municipal solid waste landfills (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type and the EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria has been issued or which is not included on a list published under section 108(a) (national ambient air quality standards) or section 112 (hazardous air pollutants) of the CAA, but emissions of which would be subject to a standard of performance for new stationary sources under section 111(b). In addition, section 129 of the CAA also requires the EPA to promulgate EG for solid waste incineration units that emit specific air pollutants or a mixture of air pollutants. These pollutants include organics (dioxins and dibenzofurans), carbon monoxide, metals (cadmium, lead and mercury), acid gases (hydrogen chloride, sulfur dioxide and oxides of nitrogen), particulate matter and opacity (as appropriate).

On March 21, 2011 (76 FR 15372), the EPA promulgated NSPS and EG for SSI units, 40 CFR part 60, subparts LLLL and MMMM, respectively. The designated facility to which the EG applies is existing SSI units, as stipulated in subpart MMMM, that commenced construction on or before October 14, 2010. See 40 CFR section 60.5060 for details.

Pursuant to section 129 of the CAA, state plan requirements must be “at least as protective” as the EG and become federally enforceable upon approval by the EPA. The procedures for

adoption and submittal of state plans are codified in 40 CFR part 60, subpart B. For states that fail to submit a plan, the EPA is required to develop and implement a Federal plan within two years following promulgation of the EG. The EPA implementation and enforcement of the Federal plan is viewed as an interim measure until states assume their role as the preferred implementers of the EG requirements stipulated in the Federal plan. Accordingly, the EPA encourages states to develop their own plan, or request delegation of the Federal plan, as the NJDEP has done.

V. What guidance did the EPA use to evaluate the NJDEP's delegation request?

The EPA evaluated the NJDEP's request for delegation of the SSI Federal plan pursuant to the provisions of the SSI Federal plan and the EPA's Delegation Manual¹. Section 62.15865 of the SSI Federal plan establishes that a state may meet its CAA section 111(d)/129 obligations by submitting an acceptable written request for delegation of the Federal plan that includes the following requirements: (1) a demonstration of adequate resources and legal authority to administer and enforce the Federal plan; (2) an inventory of affected SSI units, an inventory of emissions from affected SSI units, and provisions for state progress reports (see items under § 60.5015(a)(1), (2) and (7) from the SSI EG); (3) certification that the hearing on the state delegation request, similar to the hearing for a state plan submittal, was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary

¹ Section 7-139 of the EPA's Delegation Manual is entitled "Implementation and Enforcement of 111(d)(2) and 111(d)/129(b)(3) Federal Plans" and the reader may refer to it in the docket for this proposed rule at www.regulations.gov (see Docket ID Number EPA-R02-OAR-2017-0132).

of each presentation or written submission; and (4) a commitment to enter into a MOA with the Regional Administrator that sets forth the terms, conditions and effective date of the delegation and that serves as the mechanism for the transfer of authority. Under the EPA's Delegation Manual, item 7-139, the Regional Administrator is authorized to delegate implementation and enforcement of sections 111(d)/129 Federal plans to state environmental agencies. The requirements and limitations of a delegation agreement are defined in item 7-139. The Regional Administrator may consider delegating authority to implement and enforce Federal plans to a state provided the following conditions are met: (1) the state does not already have an EPA approved State plan; and (2) items (1) and (4) as described above from section 62.15865 of the SSI Federal plan.

NJDEP has met all of the EPA's delegation requirements as described above. The reader may view the NJDEP's letter to the EPA requesting delegation and the MOA signed by both parties at www.regulations.gov, identified by Docket ID Number **EPA-R02-OAR-2017-0132**.

VI. What is the EPA's conclusion?

The EPA has evaluated the NJDEP's submittal for consistency with the CAA, EPA regulations, and EPA policy. The NJDEP has met all the requirements of the EPA's guidance for obtaining delegation of authority to implement and enforce the SSI Federal plan. The NJDEP entered into a MOA with the EPA and it became effective on January 24, 2017. Accordingly, the EPA proposes to approve the NJDEP's request dated October 12, 2016 for delegation of authority of the Federal plan for existing SSI units. The EPA will continue to retain certain specific

authorities reserved to the EPA in the SSI Federal plan and as indicated in the MOA (e.g., authority to approve major alternatives to test methods or monitoring, etc.).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a State plan submission that complies with the provisions of CAA sections 111(d) and 129(b)(2) and applicable Federal regulations. 42 U.S.C. 7411(d) and 7429(b)(2); 40 CFR 62.02(a). Thus, in reviewing State plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA.

Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 CAA; and
- does not provide the 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 proposed rulemaking action, pertaining to the NJDEP's section 111(d)/(129) request for delegation of authority to implement and enforce the Federal plan for existing SSI units, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the NJDEP's section 111(d)/129 delegation request is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, waste treatment and disposal.

Authority: 42 U.S.C. 7401 et seq.

Dated: April 28, 2017.

Walter Mugdan,
Acting Regional Administrator,
Region 2.

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