



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R08-OAR-2017-0552; FRL-9975-39-Region 8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado; Control of Emissions from Existing Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a new state plan (the “plan”) submitted by the Colorado Department of Public Health and Environment (CDPHE) for the regulation of existing commercial and industrial solid waste incineration (CISWI) units within the jurisdiction of the State of Colorado. The plan has been submitted to the EPA for approval following the promulgation of federal new source performance standards (NSPS) and emission guidelines (EG) for CISWI units on March 21, 2011, and the subsequent, limited revisions to that final rule on February 7, 2013, and June 23, 2016. This plan approval final rulemaking action is being taken in accordance with sections 111(d) and 129 of the Clean Air Act (CAA, or the “Act”).

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2017-0552. All documents in the docket are listed on the <http://www.regulations.gov> website. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gregory Lohrke, Air Program, U.S.

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SUPPLEMENTARY INFORMATION:

I. Background Information

Sections 111 and 129 of the CAA outline the EPA’s statutory authority for regulating new and existing solid waste incineration units. Section 111(b) directs the EPA Administrator (the “Administrator”) to publish and periodically revise a list of source categories which significantly cause or contribute to air pollution. This subsection also directs the Administrator to establish federal standards of performance for new sources within these categories. Section 111(d) grants the EPA statutory authority to require states to submit to the agency implementation plans for establishing performance standards applicable to existing sources belonging to those categories established in section 111(b). Section 129 specifically addresses solid waste combustion and requires that the EPA regulate new and existing waste incineration units pursuant to section 111 of the Act, including the requirement that a state in which existing designated facilities operate, submit for approval, a state plan for each category of regulated waste incineration units. Section 129(b)(3) requires the EPA to promulgate a federal plan for existing waste incineration units of any designated category located in any state which has not submitted an approvable 111(d)/129 state plan for said category of waste incineration units. Such

federal plans remain in effect until the state in question submits a new or revised state plan and subsequently receives approval and promulgation of the plan under 40 CFR part 62.

State plan submittals under CAA sections 111(d) and 129 must be consistent with the relevant new or revised EG. Section 129(a)(1)(D) of the Act requires the EPA to develop and periodically revise operating standards for new and existing CISWI units. The NSPS and EG for CISWI units were promulgated on December 1, 2000, at 40 CFR part 60, subparts CCCC and DDDD, respectively. Revisions to the CISWI NSPS and EG were subsequently promulgated by the EPA on March 21, 2011 (76 FR 15704), with final actions on reconsideration of the rule published on February 7, 2013 (78 FR 9112), and June 23, 2016 (81 FR 40956). State plan requirements specific to CISWI units, along with a model rule to ease adoption of the EG, are found in subpart DDDD, while more general state plan requirements are found in 40 CFR part 60, subpart B, and part 62, subpart A. The guidelines found in subpart DDDD require that states impose emission limits on designated facilities for those pollutants regulated under section 129, including: dioxins/furans, carbon monoxide, metals (cadmium, lead and mercury), hydrogen chloride, sulfur dioxide, oxides of nitrogen, opacity and particulate matter. The EG also requires that state plans include essential elements pursuant to section 129 requirements, including monitoring, operator training and facility permitting requirements.

On July 14, 2017, the CDPHE submitted to the EPA a new section 111(d)/129 state plan for existing CISWI units in the State of Colorado. The current “state plan” is a negative declaration letter certifying the absence of any known designated facilities regulated under the CISWI rule. The current negative declaration was approved and promulgated by the EPA on September 17, 2003 (68 FR 54373), at 40 CFR part 62, subpart G. Since the revision of the CISWI rule, the State of Colorado has identified at least one operational designated facility

which would be regulated under the revised rule, and has submitted a new state plan, summarized in the following section, to comply with CAA section 111/129 requirements.

II. Summary of Colorado’s Section 111(d)/129 Plan for Existing CISWI Units

The EPA has completed a review of the new Colorado section 111(d)/129 plan for existing CISWI units. The EPA has determined that the plan submittal meets the requirements found in 40 CFR part 60, subparts B and DDDD, and part 62, subpart A. Accordingly, the EPA is approving the submitted state plan as proposed. *See* 83 FR 768 (Jan. 8, 2018). The EPA’s final approval action is limited to the new CISWI state plan and the subpart DDDD “Model Rule” addressing CISWI units as they are incorporated by the State of Colorado in the Code of Colorado Regulations (CCR) at 5 CCR 1001-8, part A, subpart DDDD. A detailed summary of the submittal’s compliance with the requirements found in the CFR is available in the technical support document (TSD) associated with this rulemaking action. The TSD has been available in the docket for this rulemaking action during the public comment period and may be found at the www.regulations.gov website.

III. Response to Public Comments

This rule will be finalized as proposed without revisions. The EPA received a total of three anonymous public comments on the proposed approval and promulgation of the Colorado CISWI State plan. After reviewing the comments, the EPA has determined that the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response. All public comments received on this rulemaking action are available for review by the public and may be viewed by following the instructions for access to docket materials as outlined in the **ADDRESSES** section of this preamble.

IV. Final Action

The EPA is approving Colorado's section 111(d)/129 state plan for existing CISWI units because the state plan requirements are at least as stringent as the requirements for existing CISWI units found in 40 CFR part 60, subpart DDDD. Therefore, the EPA is amending 40 CFR part 62, subpart G, to reflect the withdrawal of Colorado's negative declaration for existing CISWI units, and the approval of this plan. The scope of the plan approval is limited to the provisions of 40 CFR parts 60 and 62 for existing CISWI units, as found in the emission guidelines at 40 CFR part 60, subpart DDDD. The Administrator retains the authorities listed under 40 CFR 60.2542 and 60.2030(c).

V. 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. 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 and are not specifically disapproved. Accordingly, this action merely finalizes approval of 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 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 USC 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 (Pub. L. 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 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

In addition, this final rule is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, 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 (65 FR 67249, 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. 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 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 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Commercial and industrial solid waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 22, 2018.

Douglas H. Benevento,
Regional Administrator,
Region 8.

For the reasons stated in the preamble, the 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 G—Colorado

2. Subpart G is amended by revising § 62.1380 and adding §§ 62.1381 and 62.1382 to read as follows:

§ 62.1380 Identification of plan.

111(d) Plan for Commercial and Industrial Solid Waste Incineration Units and the associated State regulation as it is incorporated in the Code of Colorado Regulations (CCR) under the Colorado Air Quality Control Commission's Standards of Performance for New Stationary Sources, 5 CCR 1001-8, part A, subpart DDDD. The plan and associated regulation were submitted by the State on July 14, 2017.

§ 62.1381 Identification of sources.

The plan applies to each existing commercial and industrial solid waste incinerator unit and air curtain incinerator in the State of Colorado that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010, but no later than August 7, 2013, as such incinerator units are defined in §60.2875 of 40 CFR part 60. The plan applies only to units not exempt under the conditions of §60.2555 of that part.

§ 62.1382 Effective date.

The federally enforceable effective date of the plan for commercial and industrial solid waste incinerators is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].