



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R05-OAR-2018-0113; FRL-9976-13-Region 5]

**Air Plan Approval; Ohio; Hospital/Medical/Infectious Waste
Incinerator Withdrawal for Designated Facilities and Pollutants**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Ohio's request for withdrawal of the previously approved Hospital/Medical/Infectious Waste Incinerator (HMIWI) State Plan. The Ohio Environmental Protection Agency (OEPA) submitted its HMIWI withdrawal on January 24, 2018, certifying that there is only one HMIWI unit currently operating in the state of Ohio and requesting that the Federal Plan apply to the single source in the State.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0113, at <http://www.regulations.gov> or via email to cain.alexis@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, 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. 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, please contact the person identified in the "For Further Information Contact" section. For 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>.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. Proposed EPA Action

III. Statutory and Executive Order Reviews

I. Background

Section 111(d) of the Clean Air Act (Act) requires that EPA develop regulations providing that states must submit to EPA plans establishing standards of performance for certain existing sources of pollutants. A standard of performance would apply to the existing source if it were an existing source, and if the pollutants are noncriteria pollutants (i.e., pollutants for which there is no national ambient air quality standard) and are not on a list published under section 108 of the Act or emitted from a source category regulated under section 112 of the Act. Section 129 of the Act, and 40 CFR part 60, subpart B, apply the section 111(d) requirements to existing solid waste combustors, including HMIWIs, and provide that EPA should include, as part of the performance standards, emissions guidelines (EGs) that include the plan elements required by section 129.

The regulation at 40 CFR part 60, subpart B contains general provisions applicable to the adoption and submittal of state plans for subject facilities under sections 111(d) and 129 (111(d)/129 plan). 40 CFR part 62, subpart A provides the procedural framework for the submission of the plans.

EPA promulgated new source performance standards and EGs for HMIWIs on September 15, 1997 (62 FR 48382), and amended them most recently on October 6, 2009 (74 FR 51367) and April 4, 2011

(76 FR 18407). The standards and EGs are codified at 40 CFR part 60, subparts Ce and Ec, respectively.

States were required to revise plans for existing HMIWIs, pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. OEPA submitted a HMIWI State Plan on October 18, 2005. EPA approved the State Plan under 40 CFR 62.8880, and the State Plan became effective on August 6, 2007 (72 FR 36605). On May 13, 2013, EPA finalized the Federal Plan under 40 CFR part 62, subpart HHH (78 FR 28052).

A HMIWI unit as defined in 40 CFR 60.31e, means any device that combusts any amount of hospital waste and/or medical/infectious waste. The designated facilities to which the original EG's applied were existing HMIWI units that: (1) For which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998; or (2) For which construction was commenced after June 20, 1996, but no later than December 1, 2008, or for which modification is commenced after March 16, 1998, but no later than April 6, 2010.

On January 21, 2018, OEPA submitted its HMIWI withdrawal, in which it certifies that there is only one HMIWI unit currently operating in Ohio. On January 18, 2013, OEPA confirmed that two of the four HMIWI units had shut down. Since that time an additional HMIWI unit has shut down. The only

remaining HMIWI unit is at Stericycle, Inc, located in Warren, OH. Because there is only one source, OEPA is requesting that the previously approved State Plan be withdrawn and that the Federal Plan apply to the source.

Although Section 111(d) requires States to submit State Plans, EPA understands that the extensive amendments that would be required by OEPA to revise Ohio's previously approved State Plan to make it consistent with the revisions would be disproportionate to the single affected source in Ohio. EPA's Federal Plan implementing the EG's would apply to the remaining source in Ohio (as well as to any existing affected sources if found at a later date). Ohio would be implementing and enforcing the Federal Plan through its Title V permitting process. This action should not be construed as an approval of a State Plan or delegation of the Federal Plan and that Ohio's Section 111(d)/129 obligations are separate from Ohio's obligations under Title V of the Act. Ohio understands and accepts this limitation.

II. Proposed EPA Action

EPA is proposing to approve Ohio's request for withdrawal of a previously approved State Plan and amending 40 CFR part 62 to reflect OEPA's withdrawal. OEPA submitted its HMIWI withdrawal on January 21, 2018 certifying that there is only one HMIWI unit, as defined under 40 CFR 60.31e, currently operating

in the state of Ohio and requested that the Federal Plan apply to the single source in the State. EPA understands that the extensive amendments that would be required by OEPA to revise Ohio's previously approved State Plan to make it consistent with the revisions would be disproportionate to the single affected source in Ohio, and is proposing to approve the withdrawal and have the Federal Plan apply to the known affected source.

III. Statutory and Executive Order Reviews

General Requirements

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). 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 is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under E.O. 12866. This action merely approves state law as meeting Federal requirements and merely notifies the public of EPA' approval for a withdrawal of a previously approved HMIWI State Plan. This action imposes no requirements beyond those imposed by the state. Accordingly, the Administrator certifies that

this proposed 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 rulemaking approves pre-existing requirements under state law and 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 proposed rule 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 country, the rulemaking 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). 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 withdrawal, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rulemaking also is not subject to Executive Order

13045 (62 FR 19885, April 23, 1997), because it approves a withdrawal.

In reviewing section 111(d)/129 plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. With regard to withdrawals for designated facilities received by EPA from states, EPA's role is to notify the public of the approval of the State's withdrawal 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 section 111(d)/129 withdrawal for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 withdrawal, to use VCS in place of a section 111(d)/129 withdrawal submission that otherwise satisfies the provisions of the Act. 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 rulemaking does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incinerators, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 20, 2018.

Edward H. Chu,

Acting Regional Administrator, Region 5.

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