that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Submission to Congress and the Comptroller General*

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 rule 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*F. Petitions for Judicial Review*

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 September 25, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 25, 1998.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

## Subpart S—Kentucky

2. Section 52.938 is added to read as follows:

**§ 52.938 General conformity.**

The General Conformity regulations were submitted on November 10, 1995, and adopted into the Kentucky State Implementation Plan (SIP). The Commonwealth of Kentucky incorporated by reference regulations 40 CFR part 51, subpart W—determining conformity of General Federal Actions to State or Federal Implementation Plans.

[FR Doc. 98–20007 Filed 7–24–98; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

**[SC–34–1–9816a: FRL–6129–9]**

## Approval and Promulgation of State Plans for Designated Facilities and Pollutants: South Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the Sections 111(d)/129 State Plan submitted by the State of South Carolina through the South Carolina Department of Health and Environmental Control (DHEC) on January 14, 1998. The plan provides for implementation and enforcement of the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons per day of municipal solid waste (MSW). (*See* 40 CFR Part 60, Subpart Cb.)

**DATES:** This direct final rule is effective on September 25, 1998 without further notice, unless EPA receives adverse comment by August 26, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be addressed to: Gregory Crawford, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file SC–34–9816. The Region 4 office may have additional background documents not available at the other locations.

Air Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303, Gregory O. Crawford, 404/562–9046.

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201, 803/734–4750.

**FOR FURTHER INFORMATION CONTACT:** Gregory O. Crawford, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia, 30303.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (the Act), EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR Part 60, Subparts Eb and Cb, respectively. (*See* 60 FR 65387.) Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb

and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons per day of MSW (large MWC units).

Under section 129 of the Act, EG are not Federally enforceable. Section 129(b)(2) of the Act requires states to submit to EPA for approval, plans that implement and enforce the EG. State plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of state plans are codified in 40 CFR Part 60, Subpart B. EPA originally promulgated the Subpart B provisions on November 17, 1975. EPA amended Subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in Subpart B regarding the schedule for submittal of state plans, the stringency of the emission limitations, and the compliance schedules. (*See* 60 FR 65414.)

This action approves the plan submitted by South Carolina to implement and enforce Subpart Cb, as it applies to large MWC units.

## II. Discussion

South Carolina submitted to EPA on January 14, 1998, February 5, 1998, and March 6, 1998, the following in their 111(d)/129 plan for implementation and enforcement of the EG for existing MWCs under their direct jurisdiction in the State of South Carolina: Legal Authority; Enforceable Mechanism; Inventory of MWC Plants/Units; MWC Emissions Inventory; Emission Limits; Compliance Schedule; Testing, Monitoring, Recordkeeping and Reporting Requirements; Demonstration that the Public had Adequate Notice and Opportunity to Submit Written Comments; Submittal of Progress Reports to EPA; and applicable State of South Carolina statutes and rules of the South Carolina DHEC. South Carolina submitted its plan after the Court of Appeals vacated Subpart Cb as it applies to small MWC units. Thus, the South Carolina plan covers only large MWC units. As a result of the *Davis* decision and subsequent vacatur order, there are no EG promulgated under sections 111 and 129 that apply to small MWC units. Accordingly, EPA's review and approval of the South Carolina State plan for MWCs addresses only those parts of the plan which affect large MWC units. Until EPA again promulgates EG for small MWC units, EPA has no authority under section 129(b)(2) of the Act to review and approve state plans applying state rules to small MWC units.

The approval of the South Carolina State plan is based on finding that: (1) the South Carolina DHEC provided adequate public notice of public hearings for the proposed rulemaking and plan which allow the South Carolina DHEC to implement and enforce the EG for large MWCs, and (2) the South Carolina DHEC also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facility; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In the plan submittal, and as enclosed in supplemental information, the South Carolina DHEC cites the following references for the legal authority: State of South Carolina Attorney General's Opinion Regarding State Authority to Operate the Title V Operating Permit Program; the South Carolina Pollution Control Act (South Carolina Code Sections 48–1–10 through 48–1–350); and Regulation 61–62.5, Standard 3 (Waste Combustion and Reduction), of the South Carolina DHEC Air Pollution Control Regulations and Standards. On the basis of the Attorney General's Opinion, the statutes, and rules of the State of South Carolina, the State plan is approved as being at least as protective as the Federal requirements for existing large MWC units.

In the State plan, the South Carolina DHEC cites all emission standards and limitations for the major pollutant categories related to the only designated facility in the State of South Carolina subject to these standards and limitations, the Foster Wheeler Charleston Resource Recovery Facility (RRF). These standards and limitations in the State plan are approved as being at least as protective as the Federal requirements contained in Subpart Cb for existing large MWC units.

The South Carolina DHEC submitted the compliance schedule and legally enforceable increments of progress for Foster Wheeler Charleston RRF. (This portion of the plan has been reviewed and approved as being at least as protective as Federal requirements for existing large MWC units.)

In the plan, South Carolina submitted an emissions inventory of all designated pollutants for Foster Wheeler Charleston RRF. (This portion of the plan has been reviewed and approved as meeting the Federal requirements for existing large MWC units.)

The South Carolina State plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to their agency the nature and amount of emissions and any other information that may be necessary to enable their agency to judge the compliance status of the facility in the State plan. The South Carolina DHEC also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with emission standards that apply, available to the general public. The South Carolina DHEC submitted the regulations to support the requirements of monitoring, recordkeeping, reporting, and compliance assurance in the plan submittal. (This portion of the plan has been reviewed and approved as being at least as protective as the Federal requirements for existing large MWC units.)

As stated in the plan, South Carolina will provide progress reports of plan implementation updates to the EPA on an annual basis in conjunction with reports required under § 51.321. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. (This portion of the plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting.)

## Final Action

EPA is approving the above referenced state plan because it meets the Agency requirements. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the revision should significant, material, and adverse comments be filed. This action will be effective September 25, 1998 without further notice unless the Agency receives adverse comments by August 26, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments

received will be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Only parties interested in commenting on the direct final rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 25, 1998 and no further action will be taken.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan (SIP). Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Nothing in this action should be construed as making any determination or expressing any position regarding South Carolina's audit privilege and penalty immunity law S.C. Code Ann. Sections 4857–57–10 et. seq. (Supp. 1996) or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of South Carolina's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

## I. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled Regulatory Planning and Review.

### *B. Executive Order 13045*

The final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an ''economically significant'' action under Executive Order 12866.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under Federal, State or local law, and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

### *D. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *E. Submission to Congress and the Comptroller General*

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 rule 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### *F. Petitions for Judicial Review*

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 September 25, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: July 7, 1998.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

## PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart PP—South Carolina

2. Section 62.10100 is amended by adding paragraphs (b)(3) and (c)(3) as follows:

### § 62.10100 Identification of plan.

* * * * *

(b) * * *

(3) South Carolina Implementation Plan for Existing Large Municipal Waste Combustors, submitted on January 14, 1998, by the South Carolina Department of Health and Environmental Control.

(c) * * *

(3) Existing municipal waste combustors.

3. Subpart PP is amended by adding a new § 62.10150 and a new undesignated center heading to read as follows: Metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors with the capacity to combust greater than 250 tons per day of municipal solid waste.

**§ 62.10150 Identification of sources.**

The plan applies to existing facilities with a municipal waste combustor (MWC) unit capacity greater than 250 tons per day of municipal solid waste (MSW) at the following MWC sites:

(a) Foster Wheeler Charleston Resource Recovery Facility, Charleston, South Carolina.

(b) [Reserved]

[FR Doc. 98–19934 Filed 7–24–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

**[MN51–01–7276a; FRL–6128–8]**

## Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Minnesota; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency (EPA) is approving the Minnesota State Plan submittal for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State's plan submittal was made pursuant to requirements found in the Clean Air Act (Act). The State's plan was submitted to EPA on March 4, 1997, in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. It establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. The EPA finds that Minnesota's Plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans. If adverse comments are received on this action, the EPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule, which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes federally enforceable the State's rule that has been incorporated by reference.

**DATES:** The ''direct final'' is effective on September 25, 1998, unless EPA receives adverse or critical comments by August 26, 1998. Should EPA receive adverse comments, a timely withdrawal of the Direct Final Rule will be published in the **Federal Register** to inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section , Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed State Plan submittal and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. EPA, Region 5, Chicago, Illinois 60604, (312) 353–6960.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under section 111(d) of the Act, EPA established procedures whereby States submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act (see 40 CFR 60.21(a)). As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes Emissions Guidelines (EG) in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from those existing facilities that, but for their construction prior to the proposal of the NSPS, would be affected by the standard (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published Emissions Guidelines for existing MSW landfills (EG) at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759) (see 61 FR 9905–9929). The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine if control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG (i.e., by December 12, 1996). If there were no designated facilities in the State, then the State was required to submit a negative declaration by December 12, 1996.

On March 4, 1997, the State of Minnesota submitted its ''Section 111(d) Plan for MSW Landfills'' for implementing EPA's MSW landfill EG. The following provides a brief discussion of the requirements for an approvable State plan for existing MSW landfills and EPA's review of Minnesota's submittal in regard to those requirements. More detailed information on the requirements for an approvable plan and Minnesota's submittal can be found in the Technical Support Document (TSD) accompanying this document, which is available upon request.