DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–048]

Drawbridge Operating Regulation; Ouachita River, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulation.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad vertical lift bridge across the Ouachita River, mile 114.3, near Riverton, Caldwell Parish, Louisiana. This deviation allows the Union Pacific Railroad to close the bridge to navigation from 7 a.m. until 5 p.m. on Tuesday, August 25, 1998. This temporary deviation is issued to allow for the replacement of rail expansion joints on the vertical life span.

DATES: This deviation is effective from 7 a.m. until 5 p.m. on Tuesday, August 25, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad vertical lift span bridge across the Ouachita River near Riverton, Caldwell Parish, Louisiana has a vertical clearance of 7 feet above mean high water, elevation 71 feet Mean Sea Level, in the closed-to-navigation position and 57 feet in the open to navigation position. Navigation on the waterway consists primarily of tugs with tows and occasional recreational craft. Presently, the draw opens on signal for the passage of vessels.

The Union Pacific Railroad requested a temporary deviation from the normal operation of the bridge in order to do maintenance work on the bridge. The work consists of replacing the rail expansion joints on the bridge. These joints are on the opposite end of the bridge from those that were replaced in June of this year. This work is essential for the continued safe operation of the vertical lift span.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the Union Pacific Railroad vertical lift span bridge across the Ouachita River, Louisiana to remain in the closed-to-navigation position from 7 a.m. until 5 p.m. on Tuesday, August 25, 1998.

Dated: August 4, 1998.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 98–21597 Filed 8–11–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MN59–01–7284a; FRL–6139–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Minnesota; Municipal Waste Combustor State Plan Submittal

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Minnesota State Plan submittal for implementing the Municipal Waste Combustor (MWC) Emission Guidelines. The State's plan was submitted to EPA on April 28, 1998. This submittal was made to satisfy the requirement of the 1990 Clean Air Act (CAA) that all MWCs with the capacity to combust greater than 250 tons per day (tpd) of Municipal Solid Waste (MSW) adopt the emission standards as published in the **Federal Register** on December 19, 1995 and in a subsequent **Federal Register** on August 27, 1997. The State's submittal was made in accordance with the requirements for adoption and submittal of State Plans for designated facilities in 40 CFR part 60, subpart B. The EPA finds that Minnesota's Plan for existing MWCs 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 the State's plan federally enforceable.

DATES: The ''direct final'' is effective on October 13, 1998, unless EPA receives adverse or critical comments by September 11, 1998. If adverse comment is received, EPA will publish a timely withdrawal and 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 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

On December 19, 1995 (60 FR 65382), the EPA adopted Emission Guidelines (EG) for existing MWC sources and New Source Performance Standards for new sources. The EG was amended on August 25, 1997 to address the vacature of the portion of the EG that applied to MWCs that combust between 40 and 250 tons of MSW per day. The Clean Air Act requires that State regulatory agencies implement the EG according to a State Plan developed under sections 111(d) and 129 of the CAA.

On April 28, 1998, the State of Minnesota, through the Minnesota Pollution Control Agency (MPCA), submitted its ''Section 111(d) Plan for Implementing the Large Municipal Waste Combustor Emission Guidelines'' to satisfy the section 111(d) and section 129 requirements for MWCs. The following provides a brief discussion of the requirements for an approvable State Plan for existing large MWCs, as well as 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 notice, which is available upon request.

II. Evaluation of Minnesota's Large MWC Plan

The following is EPA's review of Minnesota's § 111(d)/129 plan for existing large MWCs against the requirements of 40 CFR part 60, subpart B and subpart Cb:

A. Demonstration of Legal Authority

The State must submit a demonstration of the State's legal authority to carry out the § 111(d)/129 plan as submitted.

The MPCA submitted, as Attachment A to the § 111(d)/129 plan, a letter from Assistant Attorney General, Kathleen Winters, which describes Minnesota's authority to carry out and enforce the plan. The statutes cited in the letter were included as Attachment E to the § 111(d)/129 plan.

The EPA has reviewed the State's demonstration and determined that the MPCA has the proper authority to adopt and implement the § 111(d)/129 plan in accordance with 40 CFR 60.26.

B. Criteria for an Adequate Enforceable Mechanism

In its submittal a State must identify the enforceable State mechanisms selected by the State for implementing the EG. The MPCA has chosen a combination of State rules, Title V permits, and Administrative Orders as the enforceable mechanisms to implement the MWC EG. The MPCA has adopted State rules as the cornerstone of their State plan. The State rules contain the standards that will apply to the large MWCs in the State. The State rules also contain the December 19, 2000 date by which all large MWCs must be in compliance with the standards in the rules. Outside of the State rules are the individual source compliance dates and increments of progress leading to final compliance with the standards.

The EPA's guidance for implementing the MWC EG states that if a mechanism different from a State rule is used to implement the EG, the State must provide documentation on how the selected mechanisms will ensure that the emission standards for the pollutants regulated by § 129, and attach a copy of the enforceable mechanism.

The MPCA has included, as Attachment B to its State Plan, a letter addressing Minnesota's legal authority to use permits issued by the MPCA (including Title V permits) as the legal enforceable mechanism to implement the EG. The EPA has reviewed this letter and found that Minnesota has the legal authority to use Title V permits and Administrative Orders to implement the EG.

C. Source Inventory and Emission Inventory

An inventory of MWC plants/units in the State affected by the EG, including MWC units that have ceased operation and are not partially or totally dismantled, must be submitted. An inventory of emissions from these MWC units in the State must also be submitted. Additionally, the EG requires States to submit dioxin test data for those units with compliance schedules that extend beyond one year later than approval of the State Plan. The dioxin test data for those sources with schedules longer than one year must be from tests conducted during or after 1990.

The MPCA has attached a list of the affected MWC facilities and units that are regulated by the EG (see § 111(d)/129 Plan Attachment F). This attachment also contains the units' emission inventory. Most data provided are actual emissions from the calendar year 1995. Where actual emission data were not available, AP–42 emission factors were used.

Of the four facilities that will be affected by the State Plan, three have compliance schedules that will extend beyond one year of the approval of the State Plan. The MPCA has included in the State Plan, as Attachment G, the dioxin test data for all of these sources. The test data submitted are from tests conducted after 1990.

D. Emission Limitations

The State Plan must include emission limitations for MWC units that are at least as protective as those found in the EG.

The emission limits for the nine MWC pollutants described in subpart Cb are found in Minn. R. 7011.1227 and 7011.1228. The emission limits are expressed in dimensions identical to those found in the Emission Guidelines except for particulate matter.

What the MPCA refers to as ''front half particulate matter'' is what EPA terms ''particulate matter.'' Minnesota's front half particulate matter standard is equivalent to EPA's particulate matter standard.

In addition to emission limits for the nine pollutants regulated by the EG, § 111(d)/129 State Plans must also include MWC operating practices (§ 60.34b(b)), operator training and certification requirements (§ 60.35b), fugitive ash visible emission standards (§ 60.36b), and air curtain incinerator opacity requirements (§ 60.37b).

The requirements of § 60.34(b) are fulfilled by Minn. R. 7011.1240, subp. 5; entitled ''Range of Operation'' and by Minn. R. 7011.1240, subp. 2, entitled, ''Particulate matter control device operating temperature.''

The requirements of § 60.35b allow a State to develop its own operator and training certification program. The MPCA has developed its own operator training and certification program and has submitted it as part of the State Plan. This program is found in Minnesota Rules:

7011.1275 Personnel Training
7011.1280 Operator Certification
7011.1281 Full Operator Certification
7011.1282 Certified Municipal Waste Combustor Examiner Certificate
7011.1283 Duties of a Certified Municipal Waste Combustor Examiner
7011.1284 Fully Certified Operator

The requirements of § 60.36b are fulfilled by Minn. R. 7011.1225, subp. 1(B).

The MPCA has made a negative declaration for air curtain incinerators. This negative declaration obviates the need for the State to set an opacity limit for these sources.

E. Testing, Monitoring, Recordkeeping and Reporting

The § 111(d)/129 State Plan must include requirements for the ongoing testing, monitoring, recordkeeping, and reporting provisions from the EG. These include, in particular:

- The performance testing methods listed in § 60.58b of Subpart Eb (40 CFR Part 60, Subpart Cb, § 60.38b), and
- The reporting and recordkeeping provisions listed in § 60.59b of Subpart Eb (40 CFR Part 60, Subpart Cb, § 60.39b).

The performance testing requirements listed in § 60.38b are met by the following in Minnesota Rules:

7011.1260 Continuous Monitoring
7011.1265 Required Performance Tests, Methods, and Procedures
7011.1270 Performance Test, Waste Composition Study and Ash Sampling Frequency

Recordkeeping and reporting requirements are found in Minn. R. 7011.1285: Operating Records and Reports.

F. Compliance Schedules

Units that will need to be retrofitted to meet the emission limits in a State Plan, must submit compliance schedules. Retrofit schedules can extend up to three years after the § 111(d)/129 State Plan approval, but no retrofit schedule can extend beyond December 19, 2000. Units that commenced construction after June 26, 1987 must comply with the dioxin/furan and mercury emission limits within one year of plan approval or permit modification.

The § 111(d)/129 State Plan must also specify legally enforceable increments of progress toward compliance for MWC units that have compliance or retrofit schedules that extend past one year beyond approval of the § 111(d)/129 State Plan.

All MWC units constructed after June 26, 1987 are currently equipped with scrubbing systems and are allowed up to one year to retrofit activated carbon injection for enhanced scrubber

performance in order to control mercury and dioxin. For other pollutants, such as NOx and CO, the retrofit schedule can extend up to three years after State Plan approval or December 19, 2000, whichever is earlier.

Compliance schedules for MWC units with compliance dates that extend more than one year beyond the date of State Plan approval must include legally enforceable increments of progress toward compliance. Each increment of progress must have an enforceable compliance date in the § 111(d)/129 State Plan.

The *minimum* five increments of progress required by Section 60.21(h) of Subpart B for each MWC unit within a state are as follows:

1. Submitting a final control plan.
2. Awarding contracts for control systems or process modifications or orders for purchase of components;
3. Initiating on-site construction or installation of the air pollution control device(s) or process changes;
4. Completing on-site construction or installation of control equipment or process changes;
5. Final compliance.

Minn. R. 7011.1215 subp. 5, requires sources to submit compliance plans that contain increments of progress. Minn. R. 7011.1215 subp. 5, also requires that compliance with the standards shall be no later than December 19, 2000. There are three facilities that will require compliance schedules beyond one year after State Plan approval. The enforceable increments of progress for these sources have been submitted as Attachment C of the State Plan. The requirement that sources constructed after June 26, 1987 are allowed up to one year to retrofit activated carbon injection for enhanced scrubber performance in order to control mercury and dioxin does not apply in Minnesota because all of the large MWC units in that State commenced construction prior to that date.

G. Public Hearings

As with State Implementation Plans for criteria pollutants, EPA regulations in 40 CFR Part 60, subpart B, make it clear that citizen input on § 111(d)/129 State Plans is encouraged in order to help define appropriate emission standards and retrofit schedules. Under Subpart B, the minimum public participation requirements are as follows:

1. Reasonable notice of opportunity for one or more public hearing(s) at least 30 days before the hearing.
2. One or more public hearing(s) on the § 111(d)/129 State Plan (or revision) conducted at location(s) within the State, if requested.
3. Date, time, and place of hearing(s) prominently advertised in each region affected.
4. Availability of draft Section 111(d)/129 State Plan for public inspection in at least one location in each region to which it will apply.
5. Notice of hearing provided to:

a. EPA Regional Administrator
b. Local affected agencies
c. Other states affected

6. Certification that the public hearing, if held, was conducted in accordance with Subpart B and State procedures.
7. Hearing records must be retained for a minimum of two years. These records must include the list of commentors, their affiliation, summary of each presentation and/or comments submitted, and the State's responses to those comments.

The amendments to incorporate the EG requirements into the State's existing combustor rules were placed on public notice in the *State Register* on November 17, 1997. A copy of the notice was mailed to 1380 people, and of those, 193 were additionally mailed a copy of the rule. A public hearing was held on January 21, 1998, at the MPCA offices in St. Paul, MN. The public hearing was presided over by Judge Allan Klein.

The Title V permit for UPA–Elk River facility was placed on public notice on February 12, 1998. The comment period ended on March 13, 1998.

The Administrative Order for the NSP facility was placed on public notice on February 23, 1998 and the comment period ended on March 25, 1998.

Each component of the State's submittal (the rules, Title V permit and Administrative Order) was public noticed at some time. Each of the public notices stated that it would be submitted to EPA as part of Minnesota's 111(d) plan. Each public notice also stated that not only would that specific document be submitted but the other components would be as well.

H. Submittal of State Progress Reports to EPA

States must commit in the § 111(d)/129 State Plan to submit annual reports on progress in the implementation of the EG to the EPA.

In its submittal, the MPCA has committed to submitting annual implementation progress reports to the EPA beginning one year after EPA approves the plan.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving Minnesota's April 28, 1998 submittal of its § 111(d)/129 plan for existing large MWCs. As provided by 40 CFR 60.28(c), any revisions to Minnesota's § 111(d)/129 plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28 (a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse or critical comments be filed. This action will be effective October 13, 1998 unless, by September 11, 1998, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a timely withdrawal in the **Federal Register**. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 13, 1998.

IV. Administrative

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Executive Order 13045

This 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

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. This direct final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under § 111(d) of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. This Federal action approves pre-existing requirements under State law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

E. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Minnesota's audit privilege and penalty immunity law Sections 114C.20 to 114C.31 of the Minnesota Statute or its impact upon any approved provision in the State Plan. 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 Act program resulting from the effect of Minnesota'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 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 CAA is likewise unaffected by a State audit privilege or immunity law.

F. Submission to Congress and the General Accounting Office

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 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 the publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. Petitions for Judicial Review

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 October 13, 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 solid waste, Reporting and recordkeeping requirements.

Dated: July 23, 1998.

Robert Springer,

Acting Regional Administrator, Region V.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

2. A new center heading and §§ 62.5870, 62.5871, and 62.5872 are added to read as follows:

Subpart Y—Minnesota

Existing Large Municipal Waste Combustors

§ 62.5870 Identification of plan.

''Section 111(d) Plan for Implementing the Large Municipal Waste Combustor Emission Guidelines,'' submitted by the State on April 28, 1998. The rules being approved as part of this plan are being approved for their applicability to large municipal waste combustors in Minnesota and should apply only to these sources.

§ 62.5871 Identification of sources.

The plan applies to all existing municipal waste combustor units with the design capacity of $93.75*10^6$ Btu/hr or more. This is the same as having an applicability threshold of the capacity to process 250 tons per day or more of municipal solid waste.

§ 62.5872 Effective date.

The effective date of the plan for existing large waste combustors is October 13, 1998.

[FR Doc. 98–21678 Filed 8–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300684; FRL–6017–6]

RIN 2070–78AB

Potassium Dihydrogen Phosphate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of potassium dihydrogen phosphate (KH_2PO_4) when used as a fungicide in or on all food commodities. EPA initiated this regulation under the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170). This regulation eliminates the need to establish a maximum permissible level for residues of potassium dihydrogen phosphate, when applied in accordance with good agricultural practices.

DATES: This regulation is effective August 12, 1998. Objections and requests for hearings must be received by EPA on or before October 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the