

address questions of SIP availability and SIP requirements. In response to the 110(h) requirement, the original notice of availability was published in the **Federal Register** on November 1, 1995 at 60 FR 55459.

Dated: November 10, 1998.

Carol M. Browner,

U.S. EPA Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL-048-1-9901a; FRL-6188-9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the sections 111(d)/129 State Plan submitted by the Alabama Department of Environmental Management (ADEM) for the State of Alabama on September 11, 1998, for implementing and enforcing 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 January 19, 1999 without further notice, unless EPA receives adverse comments by December 18, 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: All comments should be addressed to: Kimberly Bingham, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104; and at the Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562-9038 or Scott Davis at (404) 562-9127.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (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 Cb and Eb apply only to MWC units with individual capacity to combust more than 250 tons per day of MSW (large MWC units).

Section 129(b)(2) of the Act requires States to submit to EPA for approval State 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 State Plan submitted by ADEM for the State of Alabama to implement and enforce subpart Cb, as it applies to large MWC units only.

II. Discussion

ADEM submitted to EPA on September 11, 1998, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing MWCs under their direct jurisdiction in the State of Alabama: Public Participation Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend the Public

Hearing; Legal Authority; Emission Limits and Standards; Compliance Schedule; Inventory of MWC Plant/Units; MWC Emissions Inventory; Source Surveillance, Compliance Assurance, and Enforcement Procedures; Submittal of Progress Reports to EPA; Federally Enforceable State Operating Permit (FESOP) for the Solid Waste Disposal Authority of the City of Huntsville MWC facility; and applicable State of Alabama statutes and rules of the ADEM. ADEM submitted its Plan after the Court of Appeals vacated subpart Cb as it applies to small MWC units. Thus, the Alabama State 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 Alabama State Plan for MWCs addresses only those parts of the Alabama State Plan which affect large MWC units. Small units are not subject to the requirements of the Federal Rule and not part of this approval. 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 Alabama State Plan is based on finding that: (1) ADEM provided adequate public notice of public hearings for the proposed plan and FESOP which allow ADEM to implement and enforce the EG for large MWCs, and (2) ADEM 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 part F and attachment C of the Plan, ADEM cites the following references for the legal authority: Opinion of the Region 4 Administrator in response to the Governor of the State of Alabama; The Alabama Environmental Management Act, section 22-22A, *Code of Alabama* 1975, as amended; The Alabama Air Pollution Control Act, section 22-28, *Code of Alabama* 1975, as amended; The ADEM Administrative Code, Rule 335-3-1-.04. These statutes and regulations are contained in appendix C. On the basis of these statutes and rules of the State of Alabama, the State Plan and FESOP are approved as being at least as

protective as the Federal requirements for existing large MWC units.

ADEM cites all emission standards and limitations for the major pollutant categories as conditions in the FESOP for the City of Huntsville MWC, the only designated facility in the State of Alabama subject to these standards and limitations (in appendix B of the Plan). These standards and limitations in the FESOP have been approved as being at least as protective as the Federal requirements contained in subpart Cb for existing large MWC units.

ADEM submitted the compliance schedule for the City of Huntsville MWC, the only large MWC under their direct jurisdiction in the State of Alabama. Part G of the Plan and the FESOP contain conditions consistent with 40 CFR part 60, subparts B and Cb, specifications for compliance schedules. This portion of the Plan and FESOP have been reviewed and approved as being at least as protective as Federal requirements for existing large MWC units.

In part G of the Plan, ADEM submitted an emissions inventory of all designated pollutants for the City of Huntsville MWC, the only large MWC under their direct jurisdiction in the State of Alabama. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing large MWC units.

ADEM 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 facilities in part G of the State Plan and as conditions in the FESOP for the City of Huntsville MWC. In part G, the ADEM 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. Part G of the State Plan outlines the authority to meet the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These referenced State of Alabama rules are contained in appendix C of the Plan. This portion of the Plan and FESOP have been reviewed and approved as being at least as protective as the Federal requirements for existing large MWC units.

As stated in part G of the Plan, ADEM will provide progress reports of Plan implementation updates to the EPA on an annual basis. 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.

This action approves the State Plan submitted by ADEM for the State of Alabama to implement and enforce subpart Cb, as it applies to large MWC units only.

III. Final Action

This action approves the State Plan submitted by ADEM for the State of Alabama to implement and enforce Subpart Cb, as it applies to large MWC units only. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 SIP revision should adverse comments be filed. This rule will be effective January 19, 1999 without further notice unless the Agency receives adverse comments by December 18, 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 then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 19, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written

communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful

and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. 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. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP 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 Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act 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).

F. 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 annual 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 annual 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.

G. 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).

H. 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 January 19, 1999. 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: November 4, 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. 7401-7642.

Subpart B—Alabama

2. Part 62.100 is amended by adding paragraphs (b)(4) and (c)(4) to read as follows:

§ 62.100 Identification of plan.

* * * * *

(b) * * *

(4) State of Alabama Plan for Implementation of 40 CFR part 60, Subpart Cb, For Existing Municipal Waste Combustors, submitted on September 11, 1998, by the Alabama Department of Environmental Management.

(c) * * *

(4) Existing municipal waste combustors.

3. Subpart B is amended by adding a new § 62.104 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

§ 62.104 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) Solid Waste Disposal Authority of the City of Huntsville MWC, Huntsville, Alabama.

(b) [Reserved]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-6175-2]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to delegate the authority to implement and enforce specific national