

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, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: February 20, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

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. 7401–7671q.

Subpart EE—New Hampshire

2. Subpart EE is amended by adding a new § 62.7405 and a new undesignated center heading to read as follows:

Emissions From Existing Municipal Solid Waste Landfills

§ 62.7405 Identification of plan-negative declaration.

On July 22, 1998, the New Hampshire Department of Environmental Services submitted a letter certifying that there are no existing municipal solid waste landfills in the state subject to the emission guidelines under part 60, subpart B of this chapter.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NJ57–251a, FRL–7459–4]

Approval and Promulgation of Plans for Designated Facilities; New Jersey; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the New Jersey Department of Environmental Protection's (NJDEP) request for delegation of authority to implement and enforce the Federal Plan for Large Municipal Waste Combustors (MWC). On November 12, 1998, EPA promulgated the Federal Plan to fulfill the requirements of sections 111(d)/129

of the Clean Air Act for MWCs. The Federal Plan addresses the implementation and enforcement of the emissions guidelines applicable to existing large MWC units located in areas not covered by an approved and currently effective state plan. The Federal Plan imposes emission limits and control requirements for existing MWC units with individual capacity to combust more than 250 tons per day of municipal solid waste which will reduce the designated pollutants: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. On January 24, 2001, EPA and NJDEP signed a Memoranda of Agreement which is intended to be the mechanism for the transfer of authority between the EPA and the NJDEP and defines the policies, responsibilities, and procedures pursuant to the Federal Plan for large MWCs.

DATES: This direct final rule is effective on May 5, 2003 without further notice, unless EPA receives adverse comment by April 7, 2003. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of New Jersey's request for delegation or the Memoranda of Agreement are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Bureau of Air Pollution Control, 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION:

What Are the Clean Air Act Requirements?

On December 19, 1995 (60 FR 65387), EPA adopted emission guidelines (40 CFR part 60, subpart Cb) for existing Municipal Waste Combustor (MWC) units. Section 129 of the Clean Air Act (Act) requires states with existing MWC

units subject to the guidelines, including New Jersey, to submit plans to EPA that implement and enforce the emission guidelines. The state plans were due on December 19, 1996. If a state with existing MWC units did not submit an approvable plan within 2 years after promulgation of the guidelines (*i.e.*, December 19, 1997), the Act requires EPA to develop, implement, and enforce a Federal Plan for MWC units in that state. This Federal Plan for large MWCs (40 CFR part 62, subpart FFF) was promulgated by EPA on November 12, 1998 (63 FR 63191). Because New Jersey does not have an approved State plan regulating existing large MWCs, they are subject to the Federal Plan requirements.

What Was Submitted by New Jersey and How Did EPA Respond?

On November 9, 1999, New Jersey Department of Environmental Protection (NJDEP) submitted to EPA a request for delegation of authority from EPA to implement and enforce the Federal Plan for existing large MWCs. On January 17, 2001, EPA prepared and signed a Memoranda of Agreement (MOA) between the EPA and the NJDEP that defines the policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart FFF and 40 CFR part 60, subpart Cb, by which the Federal Plan for large MWCs will be administered by both the NJDEP and EPA. The MOA is meant to be the mechanism for the transfer of authority between the EPA and the NJDEP. A copy of the MOA is available upon request.

On January 24, 2001, Robert C. Shinn, Commissioner NJDEP, signed the MOA, therefore agreeing to the terms and conditions of the MOA and accepting responsibility to implement and enforce the policies, responsibilities, and procedures of the Federal Plan for large MWCs.

What Action Is EPA Taking?

Pursuant to 40 CFR 62.14100, "Scope and Delegation of Authority," EPA is approving the NJDEP's request for delegation of authority to implement and enforce the MWC Federal Plan and to adhere to the terms and conditions prescribed in the MOA. The purpose of this delegation is to acknowledge NJDEP's ability to implement a program and to transfer primary implementation and enforcement responsibility from EPA to NJDEP for existing large MWCs. While NJDEP is delegated the authority to implement and enforce the MWC Federal Plan, nothing in the delegation agreement shall prohibit EPA from enforcing section 111(d) of the Act or the Federal Plan for large MWCs.

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 plan revision should adverse comments be filed. This rule will be effective May 5, 2003 without further notice unless the Agency receives adverse comments by April 7, 2003.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. 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 merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 rule 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 rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, 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 state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. 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 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a plan submission, to use VCS in place of a plan 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 2003. 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, Air pollution control, Intergovernmental

relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: February 21, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 62, chapter I, title 40 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 FF—New Jersey

2. Part 62 is amended by adding § 62.7603 and an undesignated heading to subpart FF to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Large Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.7603 Identification of plan—delegation of authority.

(a) On November 9, 1999, the New Jersey Department of Environmental Protection (NJDEP) submitted to the Environmental Protection Agency (EPA) a request for delegation of authority to implement and enforce the Federal Plan (40 CFR part 62, subpart FFF) for Large Municipal Waste Combustors (MWC).

(b) Identification of sources: The Federal Plan applies to existing facilities with a MWC unit capacity greater than 250 tons per day of municipal solid waste.

(c) On January 17, 2001, EPA prepared and signed a Memoranda of Agreement (MOA) between the EPA and the NJDEP that defines the policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart FFF and 40 CFR part 60, subpart Cb, by which the Federal Plan for large MWCs will be administered by both the NJDEP and EPA. On January 24, 2001, Robert C. Shinn, Commissioner NJDEP, signed the MOA, therefore agreeing to the terms and conditions of the MOA and accepting responsibility to enforce and implement the policies, responsibilities, and procedures of the Federal Plan for large MWCs.

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