

of the revision to rule 62–212.400 was to correct discrepancies between State and Federal rule language on exemptions from Prevention of Significant Deterioration and to include additional provisions. EPA stated in the direct final rule that if EPA received adverse comment by February 26, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comment in a subsequent final action based upon the proposed action published on January 27, 2003 (see 68 FR 3847). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of March 13, 2003.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone number: 404/562–9035; E-mail: lesane.heidi@epa.gov.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 6, 2003.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 03–6111 Filed 3–12–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. NY58–253a, FRL–7464–8]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the State plan submitted by New York State to implement and enforce the Emission Guidelines (EG) for existing small Municipal Waste Combustion (MWC) Units. New York's plan establishes emission limits and other requirements for the purpose of reducing toxic air emissions from small MWC units throughout the State. New York submitted its plan to fulfill the

requirements of sections 111(d) and 129 of the Clean Air Act.

DATES: This direct final rule is effective on May 12, 2003 without further notice, unless EPA receives adverse comment by April 14, 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 II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the state submittal is available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.
New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

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I. EPA Action

A. What Action Is EPA Taking Today?

EPA is approving New York's State plan, submitted on October 22, 2002, for the control of air emissions from existing small Municipal Waste Combustion (MWC) units throughout

the State, except for those small MWCs located on Indian Nation land. New York submitted its plan to fulfill the requirements of section 111(d) and 129 of the Clean Air Act (CAA). The State plan adopts and implements the Emission Guidelines (EG) applicable to existing small MWCs, and establishes emission limits and other requirements for units constructed on or before August 30, 1999. This approval, once effective, will make the New York small MWC rules included in the State plan federally enforceable.

B. Why Is EPA Taking This Action?

EPA has evaluated New York's small MWC State plan for consistency with the CAA, EPA guidelines and policy. EPA has determined that New York's State plan meets all requirements and therefore, EPA is approving New York's State plan to implement and enforce the EG applicable to existing small MWCs.

C. Who Is Affected by New York's State Plan?

New York's State plan regulates all the units designated by the EG for existing small MWCs which commenced construction on or before August 30, 1999 and which have the capacity to combust at least 35 tons per day of municipal solid waste or refuse-derived fuel but no more than 250 tons per day of municipal solid waste or refuse-derived fuel. If the owner or operator of a small MWC made changes after June 6, 2001, that meet the definition of modification or reconstruction for subpart AAAA (New Source Performance Standards for New Small Municipal Waste Combustion Units) of 40 CFR part 60, the small MWC unit becomes subject to subpart AAAA and the State plan no longer applies to that unit.

D. How Does This Approval Affect Sources Located in Indian Nation Land?

New York's State plan does not cover units located in Indian Nation Land. Therefore, any units located in Indian Nation Land will be subject to the Federal plan, subpart JJJ of 40 CFR part 62, promulgated on January 31, 2003 (see 68 FR 5144).

E. How Does This Approval Relate to the Federal Plan?

The Federal plan is applicable to small MWC units located in Indian Nation Land and units throughout New York for which there is no approved State plan. Therefore, until this approval action becomes effective, small MWC units within New York State's jurisdiction are subject to the Federal plan. Upon approval of New York's

State plan, small MWC units within the State of New York's jurisdiction will be subject to New York's State plan as of the effective date of this action and the Federal plan will no longer apply.

II. Background

A. What Is a State Plan?

Section 111 of the CAA, "Standards of Performance for New Stationary Sources," authorizes EPA to set air emissions standards for certain categories of sources. These standards are called New Source Performance Standards (NSPS). When a NSPS is promulgated for new sources, section 111(d) also requires that EPA publish an EG applicable to the control of the same pollutant from existing (or designated) facilities. States with designated facilities must then develop a State plan to adopt the EG into the State's body of regulations. States must also include in their State plan other requirements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State plans.

B. What Is a Small MWC State Plan?

A small MWC State plan is a State plan, as described above, that controls air pollutant emissions from existing small incinerators with a combustion design capacity of 35 to 250 tons per day of municipal solid waste or refuse derived fuel that commenced construction on or before August 30, 1999.

C. Why Is EPA Requiring New York To Submit a Small MWC State Plan?

When EPA developed the NSPS for small MWCs, we simultaneously developed the EG to control air emissions from existing small MWCs (see 62 FR 76378, December 6, 2000). Under section 129 of the CAA, the EG is not federally enforceable; therefore, section 129 of the CAA also requires states to submit to EPA for approval State plans that implement and enforce the EG. These State plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA.

The procedures for adopting and submitting State plans are located in 40 CFR part 60, subpart B. If a state fails to have an approvable plan in place by December 6, 2001, the EPA is required to promulgate a Federal plan to establish requirements for those sources not under an EPA-approved State plan. Even though EPA promulgated the Federal plan on January 31, 2003, New York's State plan is approvable since it was deemed at least as protective as the

standards set in the EG. New York has developed and submitted a State plan, as required by section 111(d) of the CAA, to gain Federal approval to implement and enforce the small MWC EG.

D. What Are the Requirements for a Small MWC State Plan?

A section 111(d) State plan submittal must meet the requirements of 40 CFR part 60, subpart B, §§ 60.23 through 60.26, and 40 CFR part 60, subpart BBBB (see 62 FR 76378, December 6, 2000). Subpart B contains the procedures for the adoption and submittal of State plans. This subpart addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements.

EPA promulgated the EG as 40 CFR part 60, subpart BBBB on December 6, 2000. Subpart BBBB contains the technical requirements for existing small MWCs and applies to units that commenced construction on or before August 30, 1999. A state will generally address the small MWC technical requirements by adopting by reference subpart BBBB. The section 111(d) state plan is required to be submitted within one year of the EG promulgation date, *i.e.* by December 6, 2001. Prior to submittal to EPA, the State must make available to the public the State plan and provide opportunity for public comment.

III. New York's State Plan

A. What Is Contained in the New York State Plan?

On October 22, 2002, the New York State Department of Environmental Conservation (NYSDEC) submitted its section 111(d) State plan for implementing EPA's EG for existing small MWC units located in New York State.

New York has adopted by reference the requirements of the EG in Part 200 of Title 6 of the New York Code of Rules and Regulations (6NYCRR) of the State of New York, entitled "General Provisions" and in Subpart 219-1 of 6NYCRR entitled "Incineration-General Provisions" and Subpart 219-8 of 6NYCRR entitled "Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or before August 30, 1999." These amended regulations became effective on October 18, 2002. By incorporating the EG by reference into Part 200, NYSDEC has the authority to include them as applicable within

Subpart 219-8, which addresses the applicability of the various Part 219 (New York's incineration rules) requirements. Part 219 now includes the new requirements incorporated from the EG, as well as the necessary compliance schedules and necessary definition changes required for the transformation of emission guidelines into a State plan. As a result, the Part 219 requirements are enforceable by New York and become federally enforceable once the State plan is approved by EPA.

New York's State plan contains the following:

- (1) A demonstration of the State's legal authority to implement the section 111(d) State plan;
- (2) State rules adopted into 6NYCRR Parts 200 and 219 as the mechanism for implementing and enforcing the State plan;
- (3) An inventory of three known small MWC facilities, including eight small MWC units, along with an inventory of their air pollutant emissions;
- (4) Emission limits that are as protective as the EG;
- (5) Enforceable compliance schedules incorporated into Part 219, New York's incineration rule. For Class I Units, compliance dates vary from three years from the effective date of EPA's approval of New York's State plan to not later than December 6, 2005, whichever is earlier. For Class II Units, compliance dates vary from one year from the effective date of EPA's approval of New York's State plan to not later than December 6, 2005, whichever is earlier.
- (6) Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
- (7) Records of the public hearing on the State plan; and,
- (8) Provisions for annual state progress reports to EPA on implementation of the State plan.

B. What Approval Criteria Did We Use To Evaluate New York's State Plan?

EPA reviewed New York's State plan for approval against the following criteria: 40 CFR 60.23 through 60.26, "Subpart B—Adoption and Submittal of State Plans for Designated Facilities;" and 40 CFR 60.1600 through 60.1940, "Subpart BBBB—Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999."

IV. EPA's Rulemaking Action

The EPA has determined that New York's State plan meets all the applicable approval criteria and, therefore, EPA is approving, through direct final rulemaking action, New

York State's sections 111(d) and 129 State plan for small 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 SIP revision should adverse comments be filed. This rule will be effective May 12, 2003 without further notice unless the Agency receives adverse comments by April 14, 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.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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 rule will not have a significant impact on a substantial number of small entities. Therefore, because the Federal 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.

Unfunded Mandates Reform Act

Under sections 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, commonwealth, 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, commonwealth, local, or tribal governments, or to the private sector, result from this action.

Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

New York's State plan applies to all affected sources regardless of whether it has been identified in its plan. Therefore, EPA has concluded that this rulemaking action does not have federalism implications. It will not

impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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 Executive Order 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

National Technology Transfer Advancement Act

Section 12 of the National Technology Transfer Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective May 12, 2003 unless EPA receives material adverse written comments by April 14, 2003.

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 May 12, 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, Lead, Reporting and recordkeeping requirements.

Dated: March 3, 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 HH—New York

2. Part 62 is amended by adding new § 62.8107 and an undesignated heading to subpart HH to read as follows:

Air Emissions From Existing Small Municipal Waste Combustion Units With The Capacity To Combust At Least 35 Tons Per Day But No More Than 250 Tons Per Day Of Municipal Solid Waste Or Refuse Derived Fuel and Constructed on or Before August 30, 1999.

§ 62.8107 Identification of plan.

(a) On October 22, 2002, the New York State Department of Environmental Conservation submitted to the Environmental Protection Agency "Section 111(d)/129 State Plan for Implementation of Municipal Waste Combustor Emission Guidelines [Title 40 CFR Part 60, Subparts B and BBBB]"

(b) Identification of sources: The plan applies to all existing Small Municipal Waste Combustion Units with the capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste or refuse derived fuel and constructed on or before August 30, 1999.

(c) The effective date for the portion of the plan applicable to existing municipal waste combustor units is May 12, 2003.

[FR Doc. 03-5908 Filed 3-12-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-7465-8]

Virginia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Virginia has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery

Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing Virginia's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Virginia's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes. **DATES:** This final authorization will become effective on May 12, 2003, unless EPA receives adverse written comment by April 14, 2003. If EPA receives any such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect as scheduled.

ADDRESSES: Send written comments to Joanne Cassidy, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814-3381. You may inspect and copy Virginia's application from 8:15 a.m. to 4:30 p.m., at the following addresses: Virginia Department of Environmental Quality, Division of Waste Program Coordination, 629 East Main Street, Richmond, VA 23219, Phone number: (804) 698-4213, attn: Robert Wickline, and Virginia Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24015, Phone number: (540) 562-6872, attn: Aziz Farahmand, and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814-5254.

FOR FURTHER INFORMATION CONTACT: Joanne Cassidy, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814-3381.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program