

*Cleaner Burning Gasoline Program in the Maricopa County Ozone Nonattainment Area*, submitted on March 29, 2001, and *Arizona Cleaner Burning Gasoline Rule to Revise the State Implementation Plan for the Maricopa County Carbon Monoxide, Ozone, and PM10 Nonattainment Areas*, submitted August 15, 2001.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(1) ARS sections 49–541(1)(a), (b), and (c), 41–2124, 41–2123, 41–2113(B)(4), 41–2115, and 41–2066(A)(2) (as codified on March 31, 2001).

[FR Doc. 04–4814 Filed 3–3–04; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[PA190–7008a; FRL–7631–7]

#### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Commonwealth of Pennsylvania; Control of Emissions from Existing Small Municipal Waste Combustion Units

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a section 111(d)/129 negative declaration submitted by the Pennsylvania Department of Environmental Protection (PADEP). The negative declaration certifies that small municipal waste combustion (MWC) units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (the Act), do not exist within its air pollution control jurisdiction, excluding the jurisdictions of the Health Departments (air pollution control agencies) in Allegheny and Philadelphia counties.

**DATES:** This rule is effective on May 3, 2004 without further notice, unless EPA receives adverse written comment by April 5, 2004. If EPA receives such comments, it 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:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania

19103. Electronic comments should be sent either to [wilkie.walter@epa.gov](mailto:wilkie.walter@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in part II of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:**

James B. Topsale, P.E., at (215) 814–2190, or by e-mail at [topsale.jim@epa.gov](mailto:topsale.jim@epa.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Sections 111(d) and 129 of the Act requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the Act, also requires EPA to promulgate EG for MWC units that emit a mixture of air pollutants. These pollutants include organics (*i.e.*, dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 6, 2000 (65 FR 76350 and 76378), EPA promulgated small municipal waste combustion unit new source performance standards, 40 CFR part 60, subpart AAAA, and emission guidelines (EG), subpart BBBB, respectively. The designated facility to which the EG apply is each existing small MWC unit that has a design combustion capacity of 35 to 250 tons per day of municipal solid waste (MSW) and commenced construction on or before August 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62

provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

The Harrisburg Materials, Energy, Recycling and Resource Recovery Facility was the only known designated facility (based on the derated capacity of its two combustion units) subject to the EG. However, on June 18, 2003, the City of Harrisburg permanently ceased operation of its two small MWC units. Permanent closure of the units was confirmed by PADEP staff during inspections of the facility on August 4 and 11, 2003.

#### II. Final EPA Action

The PADEP has determined that there are no designated facilities, subject to the small MWC unit EG requirements, in its air pollution control jurisdiction. Accordingly, the PADEP Bureau of Air Quality Director has submitted to EPA a negative declaration letter certifying this fact. The submittal date of the letter is October 30, 2003.

Therefore, EPA is amending part 62 to reflect the receipt of the negative declaration letter from the PADEP. Amendments are being made to 40 CFR part 62, subpart NN (Pennsylvania). These amendments exclude the local Pennsylvania air pollution control jurisdictions that submitted their own approvable negative declarations—Allegheny and Philadelphia (City) counties.

After publication of this **Federal Register** notice, if a small MWC unit is later found within jurisdiction of the PADEP, then that unit will become subject to the requirements of the Federal small MWC 111(d)/129 plan, as promulgated on January 31, 2003 (68 FR 5144).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the section 111(d)/129 negative declaration if adverse comments are filed. This rule will be effective on May 3, 2004 without further

notice unless EPA receives adverse comment by April 5, 2004. If EPA receives adverse comment, 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. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA190-7008 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to [wilkie.walter@epa.gov](mailto:wilkie.walter@epa.gov), attention PA190-7008. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [Regulations.gov](http://Regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are

included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of [Regulations.gov](http://www.regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### *Submittal of CBI Comments*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any

information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### *Considerations when Preparing Comments to EPA*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

### **III. Statutory and Executive Order Reviews**

#### *A. General Requirements*

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 Clean Air 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 section 111(d)/129 negative declarations, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air 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 section 111(d)/129 negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 negative declaration, to use VCS in place of a section 111(d)/129 negative declaration submission that otherwise satisfies the provisions of the Clean Air 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.*).

#### *B. 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).

#### *C. 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 3, 2004. 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 approving the Pennsylvania negative declaration for small MWC units 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, Administration practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Carbon monoxide, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste Treatment and disposal.

Dated: February 25, 2004.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

■ 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 *et seq.*

#### **Subpart NN—Pennsylvania**

■ 2. Subpart NN is amended by adding § 62.9647 to read as follows:

#### **Emissions from Existing Small Municipal Waste Combustion Units**

##### **§ 62.9647 Identification of plan—negative declaration.**

October 30, 2003 letter from the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, certifying that there are no existing small municipal waste combustion units within Pennsylvania, excluding Allegheny and Philadelphia counties, that are subject to 40 CFR part 60, subpart BBBB.

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 70**

[W118-1; FRL-7632-2]

##### **Notice of Deficiency for Clean Air Act Operating Permit Program in Wisconsin**

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

**ACTION:** Notice of deficiency.

**SUMMARY:** Pursuant to its authority under section 502(i) of the Clean Air Act and 40 CFR 70.10(b), EPA is publishing this Notice of Deficiency (NOD) for the State of Wisconsin's Clean Air Act title V operating permit program. EPA has examined the facts and circumstances associated with the State's title V operating permit program and based on the totality of those facts and circumstances before the Agency, hereby issues this NOD. As explained more fully below, EPA has determined that the State's title V program does not comply with the requirements of the Clean Air Act (Act) or with the implementing regulations at 40 CFR part 70, in the following respects: (1) Wisconsin has failed to demonstrate that its title V program requires owners or operators of part 70 sources to pay fees that are sufficient to cover the costs of the State's title V program in contravention of the requirements of 40 CFR part 70 and the Act; (2) Wisconsin is not adequately ensuring that its title V program funds are used solely for title V permit program costs and, thus, is not conducting its title V program in accordance with the requirements of 40 CFR 70.9 and the Act; (3) Wisconsin has not issued initial title V permits to all of its part 70 sources within the time allowed by the Act and 40 CFR 70.4; and (4) Wisconsin has failed to implement properly its title V program in several respects, including its