

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(62) to read as follows:

§ 52.2520 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(62) The SO2 Redesignation Request and Maintenance Plan for the City of Weirton, including the Clay and Butler Magisterial Districts in West Virginia, submitted by the West Virginia Department of Environmental Protection on July 27, 2004:

(i) Incorporation by reference.

(A) Letter of July 27, 2004 from the West Virginia Department of Environmental Protection, transmitting the redesignation request and maintenance plan for the City of Weirton, including the Clay and Butler Magisterial Districts in Hancock County, West Virginia.

(B) The City of Weirton, including the Clay and Butler Magisterial Districts, Sulfur Dioxide Maintenance Plan, dated July 27, 2004.

(ii) Additional Material. Remainder of the State submittal pertaining to the revision listed in paragraph (c)(62)(i) of this section.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 81.349, the table for “West Virginia—SO2” is amended by revising the entry for Hancock County to read as follows:

§ 81.349 West Virginia.

\* \* \* \* \*

WEST VIRGINIA—SO2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Hancock County (part): The city of Weirton, including Butler and Clay magisterial districts	.....	.....	.....	X
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[FR Doc. 05-418 Filed 1-7-05; 8:45 am]  
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R06-OAR-2004-NM-0001; FRL-7858-5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Bernalillo County, NM; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a negative declaration submitted by the City of Albuquerque (Bernalillo County), New Mexico, which certifies that there are no existing commercial and industrial solid waste incineration units in Bernalillo County subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA). This is a direct final rule action without prior notice and comment because this action is deemed noncontroversial.

**DATES:** This rule is effective on March 11, 2005 unless adverse comments are received by February 9, 2005.  
**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R06-OAR-2004-NM-0001. All documents in the docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>, once in the system, select “quick search,” then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed

in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza, Albuquerque, New Mexico 87103.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth W. Boyce, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665-7259, e-mail address [boyce.kenneth@epa.gov](mailto:boyce.kenneth@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” are used we mean the EPA.

## I. What Is the Background for This Action?

Section 129 of the CAA requires us to develop new source performance standards (NSPS) and emission guidelines (EG) for each category of solid waste incineration units which includes these categories addressed in today's notice: existing commercial and industrial solid waste incinerator units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines required by section 111(d) of the CAA.

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing 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 for such existing sources. A designated pollutant is "any air pollutant, emissions of which are subject to a standard of performance for new stationary sources but for which air quality criteria have not been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA." 40 CFR 60.21(a).

Section 129(b) of the CAA also requires us to develop an EG for each category of existing solid waste incineration units. Under section 129 of the CAA, the EG is not federally enforceable. Section 129(b)(2) requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become Federally enforceable upon EPA approval.

The emission guidelines and compliance times for existing commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999, were promulgated December 1, 2000 (65 FR 75338) at 40 CFR part 60, subparts CCCC and DDDD.

The status of our approvals of State plans for designated facilities (often referred to as "111(d) plans" or "111(d)/129 plans") is given in separate subparts in 40 CFR part 62, "Approval and Promulgation of State Plans for Designated Facilities and Pollutants." The Federal plan requirements for existing solid waste incineration units are also codified in separate subparts at the end of part 62.

Procedures and requirements for development and submission of state plans for controlling designated pollutants are given in 40 CFR part 60, "Standards of Performance for New Stationary Sources," subpart B,

"Adoption and Submittal of State Plans for Designated Facilities" and in 40 CFR part 62, subpart A, "General Provisions." If a State does not have any existing sources of a designated pollutant located within its boundaries, 40 CFR 62.06 provides that the State may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the State from the requirements of 40 CFR Part 60, subpart B, for that designated facility. In the event that a designated facility is located in a State after a negative declaration has been approved by EPA, 40 CFR 62.13 requires that the Federal plan for the designated facility, as required by section 129 of the CAA and 40 CFR 62.02(g), will automatically apply to the facility.

This **Federal Register** action approves a negative declaration for the following: existing commercial and industrial solid waste incineration units.

## II. State Submittal

The Albuquerque Environmental Health Department submitted a letter dated September 10, 2002, certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 62, subparts CCCC and DDDD, under its jurisdiction in the City of Albuquerque and Bernalillo County, New Mexico (excluding Tribal lands). This negative declaration meets the requirements of 40 CFR 62.06.

## III. Final Action

We are approving a negative declaration submitted by the City of Albuquerque Environmental Health Department certifying that there are no existing applicable commercial and industrial solid waste incineration units subject to 40 CFR part 60, subparts CCCC and DDDD, under its jurisdiction in the City of Albuquerque/Bernalillo County (excluding tribal lands).

If a designated facility is later found within any noted jurisdiction after publication of this **Federal Register** action, then the overlooked facility will become subject to the requirements of the Federal plan for that designated facility, including the compliance schedule. The Federal plan will no longer apply if we subsequently receive and approve the 111(d)/129 plan from the jurisdiction with the overlooked facility.

Since the City of Albuquerque has not submitted a demonstration of authority over "Indian Country," (as defined in 18 U.S.C. 1151) we are limiting our approval to those areas that do not constitute Indian Country. Under this definition, EPA treats as reservations,

trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Any existing designated facility that may exist on "Indian Country" is subject to the Federal plan for the designated facility. See 40 CFR 62.13.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action 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 these rules should relevant adverse comments be filed. This action will be effective March 11, 2005 unless EPA receives adverse written comments by February 9, 2005.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent direct 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 March 11, 2005 and no further action will be taken on the proposed rule.

## IV. 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 and local declarations that rules implementing certain federal standards are unnecessary. 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 state and local declarations that rules implementing certain federal standards are unnecessary, 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 state and local declarations that rules implementing certain federal standards are unnecessary, 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 State plan submissions, 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 State plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State plan submission, to use VCS in place of a State plan 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.*).

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**. 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. 804(2).

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 March 11, 2005. Filing a petition for reconsideration by the Administrator of this direct 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* 42 U.S.C. 7607(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.

Dated: December 21, 2004.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ 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 *et seq.*

#### Subpart GG—New Mexico

■ 2. Subpart GG is amended by adding a new undesignated center heading and a new § 62.7881 to read as follows:

#### Emissions From Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units

##### § 62.7881 Identification of sources—negative declaration.

Letter from the City of Albuquerque Air Pollution Control Division dated September 10, 2002, certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 60, subparts CCCC and DDDD under its jurisdiction in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board.

[FR Doc. 05-342 Filed 1-7-05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[OGC-2004-0004; FRL-7859-8]

RIN 2060-AM83

### National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

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

**ACTION:** Partial withdrawal of direct final rule.

**SUMMARY:** On October 13, 2004, the EPA issued direct final amendments to the national emission standards for hazardous air pollutants (NESHAP) for pushing, quenching, and battery stacks at new and existing coke oven batteries. The amendments were issued as a direct final rule, along with a parallel proposal to be used as the basis for final action in the event EPA received any significant adverse comments on the direct final amendments. Because a significant adverse comment was received on one provision, EPA is withdrawing the corresponding parts of the direct final rule. We will address the adverse comment in a subsequent final rule based on the parallel proposal published on October 13, 2004.

**DATES:** As of January 10, 2005, the EPA withdraws the direct final amendments to 40 CFR 63.7300(c)(1) published on October 13, 2004 (69 FR 60813). The remaining provisions published on October 13, 2004, will be effective on January 11, 2005.

**ADDRESSES:** *Docket:* The EPA has established a docket for this action under Docket ID No. OGC-2004-0004. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at Docket ID No. OGC-2004-0004, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)