

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[EPA-R05-OAR-2007-0952; FRL-8722-8]

**Approval of Revised Municipal Waste Combustor State Plan for Designated Facilities and Pollutants: Indiana**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to Indiana's State plan to control air pollutants from large Municipal Waste Combustors (MWCs). The Indiana Department of Environmental Management (IDEM) submitted the State plan on August 24, 2007. The revisions are consistent with Emission Guideline (EG) amendments promulgated by EPA on May 10, 2006. This approval means that EPA finds that the State plan amendments meet applicable Clean Air Act (CAA) requirements for large MWCs for which construction commenced on or before September 20, 1994. Once effective, this approval also makes the amended State plan Federally-enforceable. On July 8, 2008, EPA also published a proposed rule (73 FR 38954) and a direct final rule (73 FR 38925) on this revision. The direct final rule stated that if EPA received an adverse comment, it would withdraw the direct final rule and address all public comments received in a subsequent final rule based on the proposed rule. EPA received an adverse comment and removed the direct final rule on August 21, 2008 (73 FR 49349). This rule responds to the comments

received and announces EPA's final action.

**DATES:** This final rule is effective on October 31, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2007-0952. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353-1151 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604, (312) 353-1151, [sieffert.margaret@epa.gov](mailto:sieffert.margaret@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What Public Comments Were Received on the Proposed Approval and What is EPA's Response?
- II. What Action is EPA Taking?
- III. Statutory and Executive Order Reviews

**I. What Public Comments Were Received on the Proposed Approval and What is EPA's Response?**

EPA received two comments on its July 8, 2008, proposal from the Indiana Department of Environmental Management (IDEM), as follows:

*Comment 1.* IDEM stated that in the table for particulate matter published in the **Federal Register** on July 8, 2008 (73 FR 38927), there is a typographical error in identifying the appropriate footnotes for the emission limitation. The first entry in the second column of the table reads "25 milligrams per dry standard cubic meter (mg/dscm)<sup>1,4</sup>" when the appropriate footnote designation should be "25 milligrams per dry standard cubic meter (mg/dscm).<sup>1</sup>" The final rule for amending 326 IAC 11-7-3 (LSA #06-434(F)) included in the State plan submitted on August 24, 2007 shows a strikeout over the number 4.

*Comment 2.* IDEM submitted an agency correction to their August 24, 2007, submittal to amend 326 IAC 11-7-3 to correct footnotes for mercury and sulfur dioxide in the emissions limitations table. The agency correction was published on July 23, 2008 in the *Indiana Register* and is effective September 6, 2008. IDEM is requesting that these corrections be a part of the final Federal approval.

*EPA response 1 and 2.* EPA is correcting the table to address both comments from IDEM as follows:

Pollutant	Emission limits
Particulate matter .....	25 milligrams per dry standard cubic meter (mg/dscm) <sup>1</sup>
Opacity .....	10% based on a 6-minute average
Cadmium .....	0.035 mg/dscm <sup>1</sup>
Lead .....	0.400 mg/dscm <sup>1</sup>
Mercury .....	0.050 mg/dscm; or 15% of the potential mercury emissions concentration <sup>1,3</sup>
Sulfur dioxide .....	29 parts per million by volume (ppmv); or 20% of the potential sulfur dioxide emission concentration <sup>3,4</sup>
Hydrogen chloride .....	29 ppmv; or 5% of the potential hydrogen chloride emissions concentration <sup>2,3</sup>
Organic emission (expressed as total mass dioxins/furans).	30 nanograms per dry standard cubic meter (ng/dscm) total mass <sup>1</sup>
Nitrogen oxides .....	205 ppmv <sup>2</sup>
Carbon monoxide <sup>5</sup> .....	100 ppmv <sup>5</sup> (based on a 4-hour block averaging time)

<sup>1</sup> Corrected to seven percent (7%) oxygen.

<sup>2</sup> Corrected to seven percent (7%) oxygen, dry basis.

<sup>3</sup> Whichever concentration is less stringent.

<sup>4</sup> Corrected to seven percent (7%) oxygen, dry basis, calculated as a 24 hour daily geometric mean.

<sup>5</sup> Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to seven percent (7%) oxygen, dry basis, calculated as an arithmetic mean.

**II. What Action Is EPA Taking?**

We are approving Indiana's revised State plan for large MWCs, submitted to EPA on August 24, 2007, with

corrections submitted on July 29, 2008. This plan revision approval excludes certain authorities retained by EPA, as

stated in 40 CFR 60.30b(b) and 60.50b(n).

### III. Statutory and Executive Order Reviews

#### *Executive Order 12866: Regulatory Planning and Review*

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.

#### *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a “significant regulatory action” under Executive Order 12866 or a “significant energy action,” 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).

#### *Regulatory Flexibility Act*

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.*).

#### *Unfunded Mandates Reform Act*

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).

#### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

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 (59 FR 22951, November 9, 2000).

#### *Executive Order 13132: Federalism*

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 (CAA).

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

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 approves a state rule implementing a Federal Standard.

#### *National Technology Transfer Advancement Act*

In reviewing state submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. 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 submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. 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.

#### *Paperwork Reduction Act*

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.*).

#### *Congressional Review Act*

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 December 1, 2008. 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, Administrative practice and procedure, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: September 19, 2008.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

■ 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 P—Indiana**

■ 2. Sections 62.3650, 62.3651, and 62.3652 to Subpart P are revised to read as follows:

##### **§ 62.3650 Identification of plan.**

(a) On September 30, 1999, Indiana submitted the State plan for implementing the Federal Large Municipal Waste Combustor (MWC) Emission Guidelines to control emissions from existing MWCs with the capacity to combust greater than 250 tons per day of municipal solid waste. The enforceable mechanism for this plan is a State rule codified in 326 Indiana Administrative Code (IAC) 11-7. The rule was adopted on September 2, 1998, filed with the Secretary of State on January 18, 1999, and became effective on February 17, 1999. The rule was published in the *Indiana Register* on March 1, 1999 (22 IR 1967).

(b) On August 24, 2007 (with corrections submitted on July 29, 2008), Indiana submitted a revised State plan as required by Sections 129(a)(5) and 129(b)(2) of the Act. The revised (Phase II) State plan implements amendments to 40 CFR Part 60, Subpart Cb published in the **Federal Register** on May 10, 2006. The Phase II State plan includes

an amendment to State Rule 326 IAC 11-7 that was adopted by Indiana on February 7, 2007.

#### § 62.3651 Identification of sources.

The plan applies to all existing MWCs with the capacity to combust greater than 250 tons per day of municipal solid waste, and for which construction, reconstruction, or modification was commenced on or before September 20, 1994, as consistent with 40 CFR Part 60, subpart Cb.

#### § 62.3652 Effective Date.

The effective date of Phase I of the approval of the Indiana State plan for MWCs with the capacity to combust greater than 250 tons per day of municipal solid waste was January 18, 2000.

Phase II of the State plan revision is effective December 1, 2008.

[FR Doc. E8-22952 Filed 9-30-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R06-OAR-2007-0554; FRL-8721-8]

### Clean Air Act Reclassification of the Houston/Galveston/Brazoria Ozone Nonattainment Area; Texas; Final Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is granting a request by the Governor of the State of Texas to voluntarily reclassify the Houston/Galveston/Brazoria (HGB) ozone nonattainment area from a moderate 8-hour ozone nonattainment area to a severe 8-hour ozone nonattainment area. EPA is also setting April 15, 2010, as the date for the State to submit a revised State Implementation Plan (SIP) addressing the severe ozone nonattainment area requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on October 31, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R06-OAR-2007-0554. All documents in the docket are listed at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 through <http://www.regulations.gov> 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 Freedom of Information Act (FOIA) Review Room between the hours of 8:30 a.m. and 4:30 p.m. 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.

**FOR FURTHER INFORMATION CONTACT:** Carl Young, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6645; fax number 214-665-7263; e-mail address [young.carl@epa.gov](mailto:young.carl@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we”, “us”, and “our” are used, we mean the EPA.

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

The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. On April 30, 2004, we classified the area as a moderate nonattainment area for the 1997 8-hour ozone standard, with an attainment date no later than June 15, 2010 (69 FR 23858). On June 15, 2007, we received a request from the Governor of Texas seeking voluntary reclassification of the HGB area from a moderate nonattainment area to a severe nonattainment area under the 1997 standard. On December 31, 2007, we proposed to reclassify the HGB area to a severe nonattainment area for the 1997 8-hour ozone standard (72 FR 74252). In our proposal we discussed the consequences of reclassification. We

also proposed and solicited comment on a range of dates, from December 15, 2008 to April 15, 2010, for the State to submit a revised SIP addressing the severe ozone nonattainment requirements. In this final rulemaking, for the reasons set forth below in Section II and in the responses to comments, we are (1) reclassifying the HGB area as a severe nonattainment area for the 1997 8-hour ozone standard and (2) selecting April 15, 2010 as the deadline by which the State must submit a revised SIP addressing the applicable severe area requirements.<sup>1</sup>

## II. What Action Is EPA Taking?

### A. Reclassification of the HGB Area

After fully considering all comments received on the proposed rule and pursuant to CAA section 181(b)(3), the HGB area is reclassified as a severe nonattainment area for the 1997 8-hour ozone standard. The new severe area attainment date for the HGB area is as expeditiously as practicable, but no later than June 15, 2010. The plain language of CAA section 181(b)(3) mandates that we approve the request to reclassify the area to severe, as requested by the Governor of Texas, and that we have no discretion to deny the request. Section 181(b)(3) provides in relevant part that “[t]he Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) of this section to a higher classification.”

A revised SIP for the HGB area must include all the requirements for serious ozone nonattainment area plans, such as: (1) Enhanced ambient monitoring (CAA section 182(c)(1)); (2) an enhanced vehicle inspection and maintenance program (CAA section 182(c)(3)); (3) a clean fuel vehicle program or an approved substitute (CAA section 182(c)(4)), and (4) gasoline vapor recovery for motor vehicle refueling emissions (CAA section 182(b)(3)<sup>2</sup>). The revised SIP must also meet the severe area requirements, including: (1) An attainment demonstration (40 CFR 51.908); (2) provisions for reasonably available control technology (RACT) and reasonably available control

<sup>1</sup> In our December 31, 2007 proposal we stated that a revised 8-hour SIP submittal must contain fees on major sources if the area fails to attain the standard (CAA 182(d)(3) and 185). Currently EPA is developing regulations and guidance to address section 185 fees. The regulations and guidance will supersede any conflicting requirements in this final action.

<sup>2</sup> Under CAA section 202(a)(6) gasoline vapor recovery remains a requirement for serious and above nonattainment areas but is no longer a requirement for moderate nonattainment areas. Please see 59 FR 16262, April 6, 1994.