

CFR part 60, subpart Ce in their jurisdictions.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-RO4-OAR-2008-0161; FRL-8912-3]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Davidson, Knox, and Memphis-Shelby Counties, TN

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

**ACTION:** Final rule; notice of administrative changes.

**SUMMARY:** EPA is notifying the public that it has received negative declarations for large Municipal Waste Combustion (MWC) units from the Nashville/Davidson County Metropolitan Health Department, Knox County Department Air Quality Management, and Memphis-Shelby County Health Department in Tennessee. These negative declarations certify that large MWC units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in areas covered by the local air pollution control programs of Nashville/Davidson County, Knox County, and Memphis-Shelby County, Tennessee.

**DATES:** This final action is effective July 13, 2009 without further notice.

**ADDRESSES:** *Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. 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 <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 3030-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Egede Louis, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9240. Dr. Louis can also be reached via electronic mail at [louis.egide@epa.gov](mailto:louis.egide@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Sections 111(d) of the CAA requires submittal of plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(d) for new sources of the same type, and EPA has established emission guidelines 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.

Standards of performance for large MWC units have been established by EPA and the emission guidelines for large MWC units were promulgated on December 19, 1995. The emission guidelines are codified at 40 CFR part 60, subpart Cb (*see* 60 FR 65387). On August 25, 1997, EPA amended subpart Cb to apply only to MWC units with an individual capacity to combust more than 250 tons per day of municipal solid waste (*see* 62 FR 45116). 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. Subpart A, of 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located under the jurisdiction of a State or local agency, the State or local agency must then develop and submit a plan for the control of the designated pollutants. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutants within the State or local agency's jurisdiction, the State or local agency may submit a letter of certification to that effect or negative declaration in lieu of a plan. The negative declaration exempts the state or local agency from the requirements to submit a plan for that designated pollutant.

#### Final Action

The Nashville/Davidson County Metropolitan Health Department, Knox County Department of Air Quality

Department, and Memphis-Shelby County Health Department in Tennessee have determined that there are no designated facilities subject to the large MWC emission guidelines in their respective jurisdictions. Consequently, Nashville/Davidson County, Knox County, and Memphis-Shelby County, Tennessee have submitted letters of negative declaration certifying this fact. Pursuant to 40 CFR part 60, subpart Cb EPA is providing the public with notice of these negative declarations. Notice of these negative declarations will appear at 40 CFR part 62.

#### 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 notifies the public of negative declarations for large MWC units received by EPA from state or local agencies. This action imposes no requirements. Accordingly, the Administrator certifies that this action 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 action is only a notice 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 action 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 notifies the public of EPA's receipt of negative declarations for large MWC units from state and local agencies and

does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action 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.

With regard to negative declarations for large MWC units received by EPA from States or local agencies, EPA’s role is only to notify the public of the receipt of such negative declarations. 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 approve or disapprove a CAA section 111(d)/129 negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it receives a CAA section 111(d)/129 negative declaration, to use VCS in place of a CAA section 111(d)/129 negative declaration 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 action 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. This action is not a rulemaking, however, EPA will submit a report containing this action 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 action 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).

#### List of Subjects in 40 CFR Part 62

Environmental protection; Administrative practice and procedure; Air pollution control; Intergovernmental relations; Reporting and recordkeeping requirements.

Dated: April 10, 2009.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

■ 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 RR—(Tennessee)**

■ 2. Part 62 is amended by adding a new undesignated center heading to subpart RR and a new § 62.10634 to read as follows:

#### **Air Emissions From Existing Large Municipal Waste Combustors (MWC)—SECTION 111(d)/129 Plan**

#### **§ 62.10634 Identification of plan—negative declarations.**

Letters from Nashville/Davidson County Metropolitan Health Department, Knox County Department Air Quality Management, and Memphis-Shelby County Health Department, Tennessee submitted on August 16, 2004, March 25, 2008, and February 20, 2008, certifying that there are no large MWC units subject to 40 CFR part 60, subpart Cb in their respective jurisdictions.

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