

center heading to subpart EE to read as follows:

### **Air Emissions From Existing Large and Small Municipal Waste Combustors**

#### **§ 62.7460 Identification of sources.**

(a) The plan applies to the following existing large municipal waste combustor:

(1) The Wheelabrator Concord Co., L.P. in Penacook.

(2) [Reserved]

(b) The plan applies to the following existing small municipal waste combustor:

(1) The Wheelabrator Claremont Co., L.P. in Claremont.

(2) [Reserved]

[FR Doc. 03-2540 Filed 2-7-03; 8:45 am]

BILLING CODE 6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 62**

[NH-50-7174a; FRL-7447-6]

### **Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling Emissions From Existing Commercial and Industrial Solid Waste Incinerators**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) approves the sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (NH DES) on August 12, 2002. This State Plan is for implementing and enforcing provisions at least as protective as the federal Emission Guidelines (EGs) applicable to existing Commercial and Solid Waste Incineration units (CISWIs).

**DATES:** This rule is effective on April 11, 2003 without further notice unless EPA receives significant adverse comment by March 12, 2003. If EPA receives such comments, we 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 must be submitted to Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CPA), Boston, Massachusetts 02114-2023. You may examine copies of materials relevant to this action during normal business hours, by appointment at the following locations:

Environmental Protection Agency-New England, Region 1, Air Permits, Toxics & Indoor Programs, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114-2023.  
New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095.

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

**FOR FURTHER INFORMATION CONTACT:** John Courcier at (617) 918-1659.

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. What Action Is EPA Taking Today?**

EPA is approving the above referenced State Plan which New Hampshire submitted on August 12, 2002 for the control of air emissions from existing CISWIs throughout the State.

EPA is publishing this approval 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 the State Plan should relevant adverse comments be filed. If EPA receives no significant, material, and adverse comments by March 12, 2003, this action will be effective April 11, 2003.

If EPA receives significant, material, and adverse comments by the above date, the Agency will withdraw this

action before the effective date by publishing a subsequent document in the **Federal Register**. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

#### **II. Why Does EPA Want To Regulate Air Emissions From CISWIs?**

When burned, commercial and industrial solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

#### **III. When Did EPA First Publish These Requirements?**

The EPA proposed the EGs in the **Federal Register** on November 30, 1999. On December 1, 2000, according to sections 111 and 129 of the Clean Air Act (Act), the EPA published the final

form of the EGs applicable to existing CISWIs. The EGs are at 40 CFR part 60, subpart DDDD. See 65 FR 75362 and the **Background** section.

#### **IV. Who Must Comply With the Requirements?**

All CISWIs that commenced construction on or before November 30, 1999 must comply with these requirements.

#### **V. Are Any Sources Exempt From the Requirements?**

The following incinerator source categories are exempt from the federal requirements for CISWIs:

- (1) Pathological waste incineration units.
  - (2) Agricultural waste incineration.
  - (3) Municipal Waste Combustors.
  - (4) Hospital/medical/infectious waste incineration units.
  - (5) Small power production facilities.
  - (6) Cogeneration facilities.
  - (7) Hazardous waste combustion.
  - (8) Materials recovery units.
  - (9) Air curtain incinerators.
  - (10) Cyclonic barrel burners.
  - (11) Rack, part, and drum reclamation.
  - (12) Cement kilns.
  - (13) Sewage sludge incinerators.
  - (14) Chemical recovery units.
  - (15) Laboratory analysis units.
- Please refer to 40 CFR 60.2555 for specific definitions of these incinerator source categories, and any recordkeeping or other requirements that still may need to be met.

#### **VI. By What Date Must CISWIs in New Hampshire Achieve Compliance?**

All existing CISWI units in the State of New Hampshire must comply with these requirements by December 1, 2005.

#### **VII. What Happens if a CISWI Does Not/Cannot Meet the Requirements by the Final Compliance Date?**

Any existing CISWI that fails to meet the requirements by December 1, 2005 must shut down. The unit will not be allowed to start up until the owner/operator installs the controls necessary to meet the requirements.

#### **VIII. What Options Are Available to Operators if They Cannot Achieve Compliance Within One Year of the Effective Date of the State Plan?**

If a CISWI cannot achieve compliance within one year of the effective date of EPA approval of the State Plan, the operator must agree to meet certain increments of progress until it achieves compliance. The State Rule details the increments of progress for the affected CISWI.

#### **IX. What Is a State Plan?**

Section 111(d) of the Act requires that pollutants controlled under NSPS must also be controlled at older sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EGs into their body of regulations. States must also include in their State Plans other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

#### **X. What Did the State Submit as Part of Its State Plan?**

The State of New Hampshire submitted its sections 111(d)/129 State Plan to EPA for approval on August 12, 2002. The State adopted the EG requirements into the New Hampshire Code of Administrative Rules Env-A 3400, "Commercial and Industrial Solid Waste Incinerators" on May 2, 2002. The State Plan contains:

1. A demonstration of the State's legal authority to implement the State Plan.
2. New Hampshire Rule CHAPTER Env-A 3400, "Commercial and Industrial Solid Waste Incinerators" as the enforceable mechanism.
3. An inventory of the sources on page 6 of the State Plan.
4. An emissions inventory on page 6 of the State Plan.
5. Emission limits, at least as protective as the limits found under subpart DDDD, that are contained in Env-A-3403.
6. Provisions for compliance schedules that are contained in Env-A 3406.
7. Testing, monitoring, and inspection requirements that are contained in Env-A 3408 and 3409.
8. Reporting and Recordkeeping requirements that are contained in Env-A 3410.
9. Operator training and qualification requirements that are contained in Env-A 3405.
10. Requirements for the development of a Waste Management Plan that are contained in Env-A 3407.
11. A record of the public notice and hearing requirements that are contained in Appendices E and F of the State Plan.
12. Provisions for state progress reports to EPA that are contained on page 9 of the State Plan.
13. Title V permit application due date requirements that are contained in Env-A 3411 and are due on December 1, 2003.

14. A final compliance date of December 1, 2005.

#### **XI. Why Is EPA Approving New Hampshire's State Plan?**

EPA has evaluated the CISWI State Plan submitted by New Hampshire for consistency with the Act, EPA guidelines and policy. EPA has determined that New Hampshire's State Plan meets all requirements and, therefore, EPA is approving New Hampshire's Plan to implement and enforce the EGs, as it applies to existing CISWIs.

EPA's approval of New Hampshire's State Plan is based on our findings that:

- (1) NHDES provided adequate public notice of public hearings for the proposed rule-making that allows New Hampshire to carry out and enforce provisions that are at least as protective as the EGs for CISWIs, and
- (2) NHDES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

A detailed discussion of EPA's evaluation of the State Plan is included in the technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The State Plan meets all of the applicable approval criteria.

#### **XII. Why Does EPA Need To Approve State Plans?**

Under section 129 of the Act, EGs are not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. Each state must show that its State Plan will carry out and enforce the emission guidelines. State Plans must be at least as protective as the EGs, and they become federally enforceable upon EPA's approval.

The procedures for adopting and submitting State Plans are in 40 CFR part 60, subpart B. EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the

emission limitations, and the compliance schedules. See 60 FR 65414.

### XIII. Regulatory Assessment 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), because it 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 sections 111(d)/129 State Plans, 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 for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a 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 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 April 11, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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, Carbon monoxide, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal, Reporting and recordkeeping requirements.

Dated: January 23, 2003.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

40 CFR part 62 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 EE—New Hampshire

2. Section 62.7325 is amended by adding paragraphs (b)(3) and (c)(3) to read as follows:

#### Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

##### § 62.7325 Identification of plan.

\* \* \* \* \*

(b) \* \* \*

(3) Control of air emissions from existing commercial and industrial solid waste incineration units, submitted on August 12, 2002.

(c) \* \* \*

(3) Commercial and industrial solid waste incineration units.

3. Subpart EE is amended by adding a new § 62.7455 and a new undesignated center heading to read as follows:

#### Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

##### § 62.7455 Identification of sources.

(a) The plan applies to the following existing commercial and solid waste incineration unit:

(1) D.D. Bean and Sons, Inc. in Jaffrey.

(2) [Reserved]

(b) [Reserved]

[FR Doc. 03-2941 Filed 2-7-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

#### National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

##### CFR Correction

In Title 40 of the Code of Federal Regulations, Part 63 (§§ 63.600 to 63.1199), in § 63.1101, the definition of *Process wastewater* is added alphabetically to read as follows:

##### § 63.1101 Definitions.

\* \* \* \* \*