

conditional approval granted by EPA will convert to a disapproval. EPA is soliciting public comments on proposed action and issues discussed in this document. These comments will be considered before taking final action.

#### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 Fed. Reg. 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule also does 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), nor will it 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 proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule to grant conditional approval of West Virginia Emergency Rule 45CSR1 to meet Phase II of the NO<sub>x</sub> SIP Call does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: October 13, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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**BILLING CODE 6560-50-M**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 62

[R01-OAR-2005-MA-0003; FRL-7986-5]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Massachusetts; Negative Declaration

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the Sections 111(d) and 129 negative

declaration submitted by the Massachusetts Department of Environmental Protection (MADEP) on August 23, 2005. This negative declaration adequately certifies that there are no existing commercial and industrial solid waste incineration units (CISWIs) located within the boundaries of the Commonwealth of Massachusetts.

**DATES:** EPA must receive comments in writing by November 21, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01-OAR-2005-MA-0003 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [brown.dan@epa.gov](mailto:brown.dan@epa.gov)

4. Fax: (617) 918-0048

5. Mail: "RME ID Number R01-OAR-2005-MA-0003", Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114-2023.

6. Hand Delivery or Courier. Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays. Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. 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.

Environmental Protection Agency, Air Permits, Toxics & Indoor Programs Unit,

Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114-2023.

Massachusetts Department of Environmental Protection, Business Compliance Division, One Winter Street, Boston, Massachusetts 04333-0017. (617) 292-5500.

**FOR FURTHER INFORMATION CONTACT:** John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918-1659, fax number (617) 918-0659, e-mail [courcier.john@epa.gov](mailto:courcier.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving the Massachusetts Negative Declaration submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should 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. For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: October 13, 2005.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 194

[FRL-7985-8]

#### Notification of Completeness of the Department of Energy's Compliance Recertification Application for the Waste Isolation Pilot Plant

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

**ACTION:** Notice of completeness of the Department of Energy's Waste Isolation Pilot Plant Compliance Recertification Application and announcement of end of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA, "we" or "the Agency") has determined that the Department of Energy's (DOE) Compliance Recertification Application (CRA, or "application") for the Waste Isolation Pilot Plant (WIPP) is complete. EPA provided written notice of the completeness decision to the Secretary of Energy on September 29, 2005. The text of the letter is contained in the **SUPPLEMENTARY INFORMATION**. The Agency has determined that the Compliance Recertification Application is complete, in accordance with 40 CFR Part 194, "Criteria for the Certification and Recertification of the WIPP's Compliance with the 40 CFR part 191 Disposal Regulations" (Compliance Certification Criteria). The completeness determination is an administrative step that is required by regulation, and it does not imply in any way that the Compliance Recertification Application demonstrates compliance with the Compliance Criteria and/or the disposal regulations. EPA is now engaged in the full technical review that will determine if WIPP remains in compliance with the disposal regulations. As required by the 1992 WIPP Land Withdrawal Act and our implementing regulations, EPA will make a final recertification decision within six months of issuing the completeness letter to the Secretary of Energy.

**DATES:** EPA opened the public comment period upon receipt of the Compliance Recertification Application (69 FR 29646-49, May 24, 2004). Comments must be received by EPA's official Air Docket on or before December 5, 2005.

**ADDRESSES:** Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR-2004-0025. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Lisa Sharp, telephone number: 202-343-9265 or Ray Lee, telephone number: (202) 343-9601, address: Radiation Protection Division, U.S. Environmental Protection Agency, 1200 Pennsylvania

Avenue, NW., Mail Code 6608J, Washington, DC 20460. You can also call EPA's toll-free WIPP Information Line, 1-800-331-WIPP or visit our Web site at <http://www.epa.gov/radiation/wipp>.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General**

##### *A. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR-2004-0025. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A-98-49, Category II-A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10 a.m.-9 p.m., Friday-Saturday, 10 a.m.-6 p.m., and Sunday, 1 p.m.-5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday-Friday, 9 a.m.-5 p.m. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment