

**§ 552.11 Searches of inmates.**

(a) *Electronic devices.* Inspection of an inmate using electronic devices (for example, metal detector, or ion spectrometry device) does not require the inmate to remove clothing. The inspection includes a search of the inmate's clothing and personal effects. Staff may conduct an electronic device search of an inmate on a routine or random basis to control contraband.

(b) *Pat Search.* Inspection of an inmate using the hands does not require the inmate to remove clothing. The inspection includes a search of the inmate's clothing and personal effects. Staff may conduct a pat search of an inmate on a routine or random basis to control contraband.

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**ENVIRONMENTAL PROTECTION AGENCY**
**40 CFR Part 62**

[EPA-RO3-OAR-2007-0354 ; FRL-8338-7 ]

**Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, and West Virginia; Control of Emissions From Existing Other Solid Waste Incinerator Units**

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

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

**SUMMARY:** EPA is notifying the public that it has received negative declarations for other solid waste incinerator (OSWI) units from the States of Delaware, and West Virginia. These negative declarations certify that OSWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist within the jurisdictional boundaries of these air pollution control agencies.

**DATES:** The effective date is July 11, 2007.

**ADDRESSES:** Docket: All documents are located in the Regional Material Edocket, identified by Docket ID Number EPA-RO3-OAR-2007-0354. The RME index can be found at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information may not be 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 in RME or in hard copy at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. EPA requests that if all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. Copies of the State agency submittals are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903; and the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, WV 25304.

**FOR FURTHER INFORMATION CONTACT:** James B. Topsale, P.E. at (215) 814-2190, or by e-mail at [topsale.jim@epa.gov](mailto:topsale.jim@epa.gov).

**SUPPLEMENTARY INFORMATION:**
**I. Background**

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor 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 (EG) 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. However, section 129 of the CAA, also requires EPA to promulgate EG for other solid waste incineration (OSWI) units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 16, 2005 (70 FR 74870, and 74907), EPA promulgated OSWI unit new source performance standards, 40 CFR part 60, subparts EEEE, and emission guidelines (EG), subpart FFFF, respectively.

The designated facilities to which the EG apply are existing very small municipal solid waste combustion (MWC) units that have a design combustion capacity of less than 35 tons per day and institutional waste incineration units that commenced

construction on or before December 9, 2004.

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. Also, 40 CFR parts 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (i.e., negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan. Under subpart FFFF, State are required to submit by December 18, 2006 a negative declaration or approvable section 111(d)/129 plan.

**II. Final EPA Action**

The States of Delaware and West Virginia have determined that there are no designated facilities, subject to subpart FFFF requirements, in their respective air pollution control jurisdiction. Accordingly, each air pollution control agency has submitted to EPA a negative declaration letter certifying that fact. The submittal dates of these letters are June 26, and June 2, 2006, respectively.

Accordingly, EPA is amending part 62 to reflect the receipt of these negative declaration letters from the noted air pollution control agencies. Amendments are being made to the following 40 CFR part 62 subparts: I—Delaware, and XX—West Virginia.

**III. Statutory and Executive Order Reviews**
**A. General 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 notifies the public of EPA receipt of negative declarations from state air pollution control agencies without any existing OSWI units in their jurisdiction. This action imposes no requirements. 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 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 existing OSWI units from state 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 approves a state rule implementing a Federal Standard.

With regard to negative declarations for OSWI units received by EPA for states, 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 plan negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a CAA section 111(d)/129 negative declaration, to use VCS in place of a 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.*).

#### *B. Submission to Congress and the Comptroller General*

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 rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *C. Petitions for Judicial Review*

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 September 10, 2007. Filing a petition for reconsideration by the Administrator of this action does not affect the finality of this action 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 action.

This action approving the section 111(d)/129 negative declarations submitted by the States of Delaware, and West Virginia 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, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: June 28, 2007.

**William C. Early,**  
*Acting Regional Administrator, Region III.*

■ 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 I—Delaware**

■ 2. Subpart I is amended by adding an undesignated center heading and § 62.1990 to read as follows:

##### **Emissions From Existing Other Solid Waste Combustion Units**

##### **§ 62.1990 Identification of plan—negative declaration.**

Letter from the Delaware Department of Natural Resources and Environmental Control submitted June 26, 2006, certifying that there are no existing other solid waste incinerator units within the State of Delaware that are subject to 40 CFR part 60, subpart FFFF.

#### **Subpart XX—West Virginia**

■ 3. Subpart XX is amended by adding an undesignated center heading and § 62.12165 to read as follows:

##### **Emissions From Other Solid Waste Incinerator Units**

##### **§ 62.12165 Identification of plan—negative declaration.**

Letter from the West Virginia Department of Environmental Protection submitted June 2, 2006, certifying that there are no existing other solid waste incinerator units within the State of West Virginia that are subject to 40 CFR part 60, subpart FFFF.

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 180**

[EPA-HQ-OPP-2005-0149; FRL-8137-8]

#### **Indoxacarb; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of indoxacarb and its R-enantiomer in or on cranberry; fruit, pome, except pear, group 11; fruit, stone, group 12; grape; grape, raisin; okra; pea, southern, seed; pear, oriental; peppermint, tops; spearmint, tops; turnip greens; vegetable, *Brassica*, leafy, group 5; vegetable, cucurbit, group 9; vegetable, leafy, except *Brassica*, group 4; and vegetable, tuberous and corm, subgroup 1-C. E.I. du Pont de Nemours and Company and the Interregional Research Project No. 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also removes existing