

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation
*	*	*	*
1-Hour Ozone Maintenance plan revision for the Greensboro/Winston-Salem/High Point area (Davidson, Forsyth, and Guilford counties and a portion of Davie County).	February 4, 2008	April 8, 2008	[Insert first page of publication].

[FR Doc. E8-7186 Filed 4-7-08; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2008-MD-0209; FRL-8552-5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; State of Maryland; Control of Large Municipal Waste Combustor (LMWC) Emissions From Existing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the Maryland Department of the Environment (MDE) large municipal waste combustor plan (the plan) revision for implementing emission guideline (EG) amendments promulgated on May 10, 2006 by EPA under the Clean Air Act (the Act). The plan revision establishes revised emission limits, monitoring, and recordkeeping requirements for existing LMWC units with a unit capacity greater than 250 tons per day (TPD). An existing LMWC unit is one for which construction commenced on or before September 20, 1994.

DATES: This rule is effective June 9, 2008 without further notice, unless EPA receives adverse written comment by May 8, 2008. If EPA receives such comments, it 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: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0209 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail:* <http://wilkie.walter@epa.gov>.

C. *Mail:* EPA—R03 OAR—2008 MD—0209, Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2008-MD-0209. EPA’s policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *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 *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

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

SUPPLEMENTARY INFORMATION:

I. Background

Section 129(a)(5) of the Clean Air Act (the Act) requires EPA to conduct a 5-year review of the solid waste incinerator new source performance standards (NSPS) and emission guidelines (EG) and revise both, as appropriate. Accordingly, in the May 10, 2006 edition of the **Federal Register**, EPA promulgated revised LMWC rules under sections 111 and 129 of the Act. EG for existing affected facilities are not federally enforceable. However, section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans and revisions that implement and enforce the amended EG, in this case, 40 CFR part 60, subpart Cb. State Plans and revisions must be at least as protective as the EG, and become federally enforceable as a section 111(d)/129 plan revision upon approval by EPA. The procedures for adoption and submittal of State Plans and revisions are codified in 40 CFR Part 60, subpart B.

II. Review of Maryland's MWC Plan Revision

The required Maryland 111(d)/129 plan revision (#07-15) was submitted to EPA on October 24, 2007. EPA has reviewed the plan revision for existing LMWC units in the context of the requirements of 40 CFR part 60, and subparts B and Cb, as amended. State plans must include the following essential elements: (1) Identification of legal authority, (2) identification of mechanism for implementation, (3) inventory of affected facilities, (4) emissions inventory, (5) emissions limits, (6) compliance schedules, (7) testing, monitoring, recordkeeping, and reporting, (8) public hearing records, and (9) annual state progress reports on facility compliance.

A. Identification of Legal Authority

Title 40 CFR 60.26 requires the plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules. The initial LMWC plan submittal demonstrates that the MDE has the legal authority to adopt and implement a plan.

B. Identification of Enforceable State Mechanisms for Implementing the Plan

The subpart B provision at 40 CFR 60.24(a) requires that state plans include emissions standards, defined in 40 CFR 60.21(f) as “* * * a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions.” The MDE Code of Maryland Regulations (COMAR) for LMWC units has been amended to incorporate revisions to subpart Cb. These amendments to Regulations .01, .02 and .08 under COMAR 26.11.08, Control of Incinerators, were adopted September 12, 2007 and became effective on October 8, 2007. Other applicable and effective supporting air program rules were identified in EPA's initial plan approval. (64 FR 19919). These rules collectively met the requirement of 40 CFR 60.24(a) to have a legally enforceable emission standard.

C. Inventory of Affected MWC Units

Title 40 CFR 60.25(a) requires the plan to include a complete source inventory of all LMWC units. The MDE has identified two (2) affected facilities—Wheeler Baltimore, L.P., and Montgomery County Resource Recovery Facility. An unknown affected facility is not exempt from applicable 111(d)/129 requirements because it is not listed in the source inventory.

D. Inventory of Emissions From Affected MWC Units

Title 40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG. Emissions from MWC units contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). For each affected MWC facility, the MDE plan revision contains MWC unit emissions rates for each regulated pollutant based on 2006 and 2007 stack test and continuous emission monitoring data. This meets the emission inventory requirements of 40 CFR 60.25(a).

E. Emissions Limitations for MWC Units

Title 40 CFR 60.24(c) specifies that the State plan or revision must include emission standards that are no less stringent than the EG, except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met. This exception clause is superseded by section 129(b)(2) of the Act which requires that state plans be “at least as protective” as the EG. A review of COMAR 26.11.08.08 emissions limitations shows that all are “at least as protective” as those in the EG, subpart Cb, as amended.

F. Compliance Schedules

Under 40 CFR 60.24(c) and (e), a state plan must include an expeditious compliance schedule that owners and operators of affected MWC units must meet in order to comply with the requirements of the plan. The plan revision and related COMAR 26.11.08.08 rule amendments contain a compliance schedule, consistent with subpart Cb requirements, with specific increments of progress for meeting the revised and more stringent emission limitations. § 60.24(e)(1) requires that compliance schedules extending more than 12 months from the date required for submittal of the plan must include legally enforceable increments of progress. The required state plan revision was due at EPA on May 10, 2007. Accordingly, the submitted plan revision contains increments of progress which require full facility compliance by a date no later than April 28, 2009, assuming an extensive emission control system upgrade is not required. This requirement does not preclude an affected facility from demonstrating full compliance prior to April 28, 2009. In the case where an extensive emission

control system upgrade is required, the facility's first increment of progress is to complete a control system and cost analysis by April 1, 2008; if that is the case, full compliance is then required by March 10, 2011. The state plan revision meets applicable Federal requirements.

G. Testing, Monitoring, Recordkeeping, and Reporting Requirements

The provisions of subpart B, 40 CFR 60.24(b) and 60.25(b), stipulate facility testing, monitoring recordkeeping and reporting requirements for state plans. COMAR 26.11.08.08 has also been amended to be consistent with EPA's May 10, 2006 EG amendments, subpart Cb, relating to source testing, monitoring, recordkeeping and reporting requirements.

H. A Record of Public Hearing on the State Plan Revision

A public hearing on the plan revision was held August 8, 2007. Applicable portions of COMAR 26.11.08.01, .02, and .08 amendments became effective on October 8, 2007. The state provided evidence of complying with public notice and other hearing requirements, including a record of public comments received. The MDE has met the requirement of 40 CFR 60.23 for a public hearing.

I. Annual State Progress Reports to EPA

The MDE will submit to EPA on an annual basis a report which details the progress in the enforcement of the plan in accordance with 40 CFR 60.25. Accordingly, the MDE will submit annual reports on progress in plan enforcement to EPA on an annual (calendar) basis, commencing with the first full report period after plan revision approval.

III. Final Action

Based upon the rationale discussed above and in further detail in the technical support document (TSD) associated with this action, EPA is approving the Maryland plan revision and related COMAR 26.11.08 Regulation, Control of Incinerators, amendments to .01, .02, and .08, as adopted September 12, 2007. This approval excludes certain authorities retained by EPA, and as stated in 40 CFR 60.30b(b) and 60.50b(n). As required by 40 CFR 60.28(c), any revisions to the Maryland plan or supporting regulations will not be considered part of the applicable plan until submitted by the MDE in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, Subpart B, requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies and existing LMWC units that are subject to the provisions of 40 CFR part 60, subpart Cb and related subpart Eb. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the section 111(d)/129 plan revision should relevant adverse or critical comments be filed. This rule will be effective June 9, 2008 without further notice unless EPA receives adverse comments by May 8, 2008. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the 111(d)/129 plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 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**. 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 *June 9, 2008*. Filing a petition for reconsideration by the Administrator of this final rule 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 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, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: March 31, 2008.

Donald S. Welsh,

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 V—Maryland

■ 2. Section 62.5110 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 62.5110 Identification of plan.

* * * * *

■ (b) On October 24, 2007, Maryland submitted a revised State plan (Phase II) and related COMAR 26.11.08.01, .02, and .08 amendments as required by 40 CFR part 60, subpart Cb, amended May 10, 2006.

■ 3. Section 62.5112 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 62.5112 Effective date.

* * * * *

■ (b) The plan revision (Phase II) is effective June 9, 2008.

[FR Doc. E8-7347 Filed 4-7-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 264 and 266

[EPA-HQ-OAR-2004-0022; FRL-8549-4]

RIN 2050-AG35

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing amendments to the national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combustors, which