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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R03-OAR-2017-0570; FRL-9976-31—Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Control of Emissions From Existing Commercial and Industrial Solid Waste Incinerator Units

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a negative declaration for existing commercial and industrial solid waste incineration (CISWI) units within the State of Maryland. This negative declaration certifies that CISWI 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 the State of Maryland. EPA is accepting the negative declaration in accordance with the requirements of the CAA.

**DATES:** This rule is effective on May 2, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R03-OAR-2017-0570. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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 through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Mike Gordon, (215) 814-2039, or by email at [gordon.mike@epa.gov](mailto:gordon.mike@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. CAA section 129 directs EPA to establish standards of performance for new sources and emissions guidelines for existing sources for each category of solid waste incineration unit. CAA section 129(a) and (b). According to section 129(a)(4) of the CAA, EPA also must specify numerical emissions limitations for particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

If a state fails to submit a satisfactory plan, the CAA provides EPA the authority to prescribe a plan for regulating the designated pollutants at the designated facilities. EPA prescribed plan, also known as a federal plan, is often delegated to states with designated facilities but no EPA approved state-specific plan. If no such designated facilities exist within a state's jurisdiction, a state may submit to the EPA a letter of certification to that effect (referred to as a negative declaration) in lieu of a state plan to satisfy the state's obligation. 40 CFR 60.23(b) and 62.06. A negative declaration exempts the state from the requirement to submit a CAA section 111(d)/section 129 plan for that designated pollutant and source category. 40 CFR 60.23(b).

##### II. State Submittal and EPA Analysis

The Maryland Department of the Environment (MDE) has determined that there are no existing CISWI units subject to the requirements of sections 111(d) and 129 of the CAA in its respective air pollution control jurisdiction. Accordingly, MDE submitted a negative declaration letter to EPA certifying this fact on January 20, 2017. A notice of proposed rulemaking was published in the **Federal Register** on February 1, 2018 (83 FR 4621). EPA received three comments during the public comment that were not specific nor related to this action and thus are not addressed here. The negative declaration letter and EPA's notice of proposed rulemaking are available in the docket for this rulemaking and online at [www.regulations.gov](http://www.regulations.gov).

##### III. Final Action

In this final action, EPA is approving the negative declaration for CISWI units submitted by MDE on January 20, 2017 and amending part 62 to reflect receipt of the negative declaration and

subsequent approval by EPA. EPA is accepting the negative declaration in accordance with the requirements of the CAA and 40 CFR 60.23(b) and 62.06.

#### IV. 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 a negative declaration from an air pollution control agency without any existing CISWI units in their jurisdiction. This action imposes no requirements. Accordingly, EPA 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 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 approves the negative declaration for existing CISWI units from the MDE 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 designated facilities received by EPA from states, EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. 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. 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).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 2018. 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 approving the negative declaration for existing CISWI units within the State of Maryland 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, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: March 22, 2018.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

40 CFR part 62 is amended as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS**

■ 1. The authority citation for part 62 continues to read as follows:

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

**Subpart V—Maryland**

■ 2. Revise § 62.5127 to read as follows:

**§ 62.5127 Identification of plan—negative declaration.**

(a) May 12, 2005 Maryland Department of the Environment letter certifying that existing CISWI units, subject to 40 CFR part 60, subpart DDDD, have been permanently shut down and have been dismantled in the state.

(b) Letter from the State of Maryland, Department of the Environment, submitted January 20, 2017, certifying that there are no existing commercial/ industrial solid waste incineration units within the State of Maryland that are subject to 40 CFR part 60, subpart DDDD.

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