

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 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 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. 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 January 29, 2002. 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 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 8, 2001.

Norman Niedergang,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(146) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(146) On October 21, 1999, Indiana submitted revised state opacity regulations. The submittal amends 326 IAC 5-1-1, 5-1-2, 5-1-3, 5-1-4(b), and 5-1-5(b). The revisions address provisions concerning the startup and shutdown of operations, averaging period terminology, temporary exemptions, alternative opacity limits, and conflicts between continuous opacity monitor and visual readings.

(i) Incorporation by reference.

Opacity limits for Indiana contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 5: Opacity Regulations. Filed with the Secretary of State on October 9, 1998 and effective on November 8, 1998. Published in 22 Indiana Register 426 on November 1, 1998.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IL210-1a; FRL-7111-1]

Approval and Promulgation of State Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a negative declaration submitted by the State of Illinois which indicates there is no need for regulations covering existing Small Municipal Waste Combustors (MWC) in the State of Illinois. The State's negative declaration regarding this category of sources was submitted in a letter dated June 25, 2001, and was based on a systematic search of records and permits. This search resulted in the determination that there are no affected small MWC units in Illinois.

DATES: This rule is effective on January 29, 2002, unless EPA receives adverse written comments by December 31, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the negative declaration is available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone John Paskevicz at (312) 886-6084 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886-6084.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we", "us", or "our" is used we mean EPA.

Table of Contents

- I. What is the background for this action?
- II. Negative declarations and their justification.
- III. EPA review of Illinois' negative declaration.
- IV. Administrative Requirements.

I. What is the Background for This Action?

In December 2000, the EPA finalized two rules for new and existing commercial and industrial solid waste incinerator (CISWI) units and small MWC units. These rules were promulgated based on section 111(d) and section 129 of the Clean Air Act (Act) Amendments of 1990. The Federal rules include emission guidelines for existing units and standards of performance for new, modified or reconstructed sources. The rules for small MWC units were published in the **Federal Register** on December 6, 2000, (65 FR 76378) under 40 CFR part 60, subpart BBBB (Emission Guidelines for Small Municipal Waste Combustion Units.) Rules for new sources of small MWC were published in the **Federal Register** on December 6, 2000, (65 FR 76350) under 40 CFR part 60, subpart AAAA (New Source Performance Standards for New Small Municipal Waste Combustion Units). The regulatory text and other background information for these final rulemakings can be accessed electronically from the EPA Technology Transfer Network website. For small MWC the web site address is: <http://www.epa.gov/ttn/atw/129/mwc/rmwmc2.html>.

Provisions of sections 111(d) and 129 require States to either develop plans to control emissions from small MWC or to report that there are no facilities in the State as described in the federal rule. States in which a designated existing facility is operating a small MWC shall submit to EPA a plan to implement and enforce the emission guidelines or submit a negative declaration letter. Section 129 requires that the State plan be at least as protective as the emission guidelines and must provide for compliance by the affected facilities no later than 3 years after EPA approves the State plan, but no later than 5 years after EPA promulgates the emission guidelines. Sections 111(d) and 129 also require EPA to develop, implement and enforce a Federal Implementation Plan if a State fails to submit an approvable State plan. The small MWC plan must address regulatory applicability, increments of progress for retrofit, operator training and certification, operating practices, emission limits, continuous emission monitoring, stack testing, record keeping, and reporting, and requirements for air curtain combustors. States are required to follow the requirements of 40 CFR part 60, subpart B regarding the adoption and submittal of State plans for designated facilities.

In addition to the publication of the emission guidelines document, EPA notified each of the States of the requirements listed in the rule. On February 23, 2001, EPA, Region 5 asked Illinois to provide information so EPA could determine if the State was required to develop and submit the required plan. Prompted by this letter, the State began a detailed review of its permit system and other databases to ascertain the status of small MWC facilities.

II. Negative Declarations and Their Justification

The EPA does not require States to develop plans or regulations to control emissions from sources for which there are none present in the State (40 CFR 62.06). If it is thought that this might be the case, the State carefully examines its emissions inventory and operating permits before initiating the planning and regulation development process. If a careful examination of the emissions inventory finds no sources for a particular source category, then the State prepares and submits to EPA a negative declaration stating there are no sources in the State for that source category. This is done in lieu of submitting a control strategy.

On June 25, 2001, the State of Illinois submitted to EPA a negative declaration regarding the need for a regulation covering small MWC. The Illinois Environmental Protection Agency (IEPA) evaluated the applicability criteria in the final emission guidelines (subpart BBBB 60.1550 through 60.1565) and searched the standard industrial classification codes (SIC) 4953 and 9511. These source types were used as typical examples of potentially affected sources as we reported in 65 FR 76378. The State also included, in its search, other unspecified types of potentially affected sources which are not classified with SICs. These are referenced by their source classification codes as solid waste disposal by incineration.

The search resulted in a preliminary list of 437 sources of potentially affected incinerator units in the State. IEPA then examined the permit information for each of the incinerator or combustor units for type of waste, maximum operating rate and capabilities. None of the units exceeded the 35 tons per day cut off capacity for municipal solid waste. The IEPA concluded that there were no affected small MWC units in Illinois.

This conclusion is consistent with the conclusion drawn by EPA in its nationwide inventory of small MWC. In its

review, EPA did not find any small MWC sources in Illinois. (65 FR 76382)

III. EPA Review of Illinois' Negative Declaration

EPA has examined the State's negative declaration regarding the lack of need for a regulation controlling emissions from small MWCs. EPA agrees there are no unregulated small incinerators in Illinois which would require the adoption of rules to control this source category. If a new source chooses to locate in this area, it would be required to comply with new source review requirements published for small MWC on December 6, 2000 (65 FR 76350). If, at a later date, an existing small MWC unit is identified in the State, a Federal Implementation Plan implementing the emission guidelines contained in Subpart BBBB will automatically apply to that MWC unit until the State's plan is approved.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State negative declaration should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by December 31, 2001. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on January 29, 2002.

IV. Administrative 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. 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 Illinois' declaration that there are no small MWC's located in Illinois which would be subject to an MWC regulation if one were adopted. Therefore, the State does not need to adopt a MWC regulation. Any new MWC's built in Illinois will be subject to New Source Performance Standards. Because this

rule approves state negative declarations and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This 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 approves a state declaration that a rule implementing a federal standard, is unnecessary 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 (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 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 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. section 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. section 804(2). This rule will be effective January 29, 2002 unless EPA receives adverse written comments by December 31, 2001.

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 January 29, 2002. 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, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 14, 2001.

Norman Niedergang,

*Acting Deputy Regional Administrator,
Region 5.*

For the reasons stated in the preamble, part 62, chapter I, title 40 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 *et seq.*

Subpart O—Illinois

2. A new center heading and § 62.3335 are added to read as follows:

EMISSIONS FROM SMALL MUNICIPAL WASTE COMBUSTION UNITS WITH THE CAPACITY TO COMBUST AT LEAST 35 TONS PER DAY OF MUNICIPAL SOLID WASTE BUT NO MORE THAN 250 TONS PER DAY OF MUNICIPAL SOLID WASTE AND COMMENCED CONSTRUCTION ON OR BEFORE AUGUST 30, 1999

§ 62.3335 Identification of plan—negative declaration.

On June 25, 2001, the State of Illinois certified to the satisfaction of the United States Environmental Protection Agency that no major sources categorized as small Municipal Waste Combustors are located in the State of Illinois.

[FR Doc. 01-29774 Filed 11-29-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL-7110-8]

Minnesota; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on the State of Minnesota's application for final approval.

SUMMARY: The State of Minnesota has applied for approval of its Underground Storage Tank Program for petroleum and hazardous substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Minnesota's application and has reached a final determination that Minnesota's Underground Storage Tank Program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. Thus, the EPA is granting final approval to the State of Minnesota to operate its Underground Storage Tank Program for petroleum and hazardous substances.

EFFECTIVE DATE: Final approval for the State of Minnesota's Underground Storage Tanks Program shall be effective on December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Tschampa, Chief, Underground Storage Tank Section, U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois, Telephone: (312) 886-6136.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA)