

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 62**

[CT067-7224a; A-1-FRL-7106-4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Revisions to State Plan for Municipal Waste Combustors and Incorporation of Regulation Into State Implementation Plan for Ozone**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The EPA is approving revisions to Connecticut's State Plan for Municipal Waste Combustors (MWC) submitted by the Connecticut Department of Environmental Protection (DEP) on November 28, 2000 and October 15, 2001. The MWC State Plan implements and enforces provisions at least as protective as the EPA's Emission Guidelines (EGs) applicable to existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste. Further, the EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut on October 15, 2001. This is a SIP-strengthening revision that incorporates the nitrogen oxide limits and related regulatory provisions of Connecticut's adopted Regulation Section 22a-174-38, Municipal Waste Combustors, into the SIP to further reduce emissions of nitrogen oxides (NO_x) from MWC units. The EPA proposed approval of these revisions on August 24, 2001, and received no comments during the public comment period which ended September 24, 2001. These actions are being taken under the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on January 7, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M-1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

FOR FURTHER INFORMATION CONTACT: Daniel Brown, (617) 918-1532 or brown.dan@epa.gov.

SUPPLEMENTARY INFORMATION: In the following text the terms "we," "us," or "our" mean the EPA. This notice is organized according to the following Table of Contents.

- I. What was our Proposed Rulemaking on the Connecticut DEP's Revisions to the MWC Plan and SIP?
- II. What was Connecticut DEP's final MWC Plan and SIP Revision?
- III. What Action is the EPA Taking Today?
- IV. What are the Administrative Requirements?

I. What Was Our Proposed Rulemaking on the Connecticut DEP's Revisions to the MWC Plan and SIP?

On August 24, 2001 we published a Notice of Proposed Rulemaking (NPR) for the Connecticut DEP's November 28, 2000 revision to its Municipal Waste Combustor (MWC) Plan and its June 4, 2001 proposed revision to its State Implementation Plan (SIP) for ozone. Please refer to our proposed rule published in the **Federal Register** on August 24, 2001 (66 FR 44582) for more information on the Connecticut DEP's submittals. Briefly, the November 28, 2000 submittal consisted of the revised Connecticut regulation 22a-174-38, Municipal Waste Combustors, which Connecticut DEP adopted and which became effective on October 26, 2000. The June 4, 2001 submittal consisted of the revised regulation 22a-174-38 and a request that the nitrogen oxide (NO_x) limits and related regulatory provisions be incorporated into the SIP to further reduce NO_x emissions from MWC units.

In our August 24, 2001 action, we proposed approval of the SIP revision through parallel processing. Under the parallel processing procedure, we work closely with the Connecticut DEP while it is developing its revision to its SIP. The State submitted its proposed SIP revision to us concurrent with its public hearing. We reviewed this proposed state action, and published our notice of proposed rulemaking and request for comments in the **Federal Register** on August 24, 2001.

We did not receive any comments on our proposed approval and the Connecticut DEP addressed all comments it received during its public comment period as described below.

II. What Was Connecticut DEP's Final MWC Plan and SIP Revision?

On October 15, 2001, Connecticut DEP submitted its final MWC Plan revision and SIP revision to the EPA for approval. The submittal includes the final regulation 22a-174-38 (state MWC rule), a certification of public hearing and a hearing report which responds to all public comments raised during the

Connecticut DEP's public hearing on July 10, 2001.

Connecticut DEP's final MWC Plan revision and SIP revision submitted on October 15, 2001 is substantially the same as the June 4, 2001 proposed SIP revision which we proposed to approve on August 24, 2001. Therefore, in this action we are fully approving the MWC Plan and SIP revision. The rationale for our action is explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. What Action Is the EPA Taking Today?

EPA is approving Connecticut DEP's revisions to its MWC Plan and approving the provisions of the MWC regulation pertaining to NO_x controls into the ozone SIP.

IV. What Are the 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. 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 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 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 (Public Law 104-4).

This rule 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), because it 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. 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).

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 February 4, 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

40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 62

Administrative practice and Procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

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

Dated: November 9, 2001.

Robert W. Varney,
Regional Administrator, EPA New England.

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 H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(90) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(90) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on October 15, 2001, to incorporate the nitrogen oxide limits and related regulatory provisions of regulation 22a-174-38, Municipal Waste Combustors.

(i) Incorporation by reference.

(A) The nitrogen oxide emission limits and related regulatory provisions of State of Connecticut Regulation of Department of Environmental Protection Section 22a-174-38, Municipal Waste Combustors effective October 26, 2000, included in sections 22a-174-38 (a), (b), (c), (d), (i), (j), (k), (l), and (m).

(ii) Additional material.

(A) Letter from the Connecticut Department of Environmental Protection dated October 15, 2001, submitting a revision to the Connecticut State Implementation Plan.

2. In § 52.385, Table 52.385 is amended by adding in numerical order a new entry for "22a-174-38" to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385.—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
* 22a-174-38	* Municipal Waste Combustors.	* 10/26/2000	* 12/6/01	* [Insert FR citation from published date].	* c(90)	* The nitrogen oxide emission limits and related regulatory provisions of 22a-174-38, Municipal Waste Combustors, included in sections 22a-174-38 (a), (b), (c), (d), (i), (j), (k), (l), and (m).
*	*	*	*	*	*	*

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart H—Connecticut

2. Section 62.1500 is amended by adding paragraph (b)(2) to read as follows:

§ 62.1500 Identification of plan.

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(b) * * *

(2) Revisions to Plan for Implementing the Municipal Waste Combustor Guidelines and New Source Performance Standards, submitted by the Connecticut Department of Environmental Protection on October 15, 2001 and including Connecticut DEP's revised regulation 22a–174–38. Certain provisions of the revised regulation 22a–174–38 submitted with the MWC Plan are stricken from the regulatory text. The stricken provisions include standards for MWC units constructed after September 20, 1994, more stringent mercury emission standards, and shutdown provisions for mass burn refractory MWC units.

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[FR Doc. 01–30098 Filed 12–5–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[FRL–7114–6]

RIN 2050–AE79

NESHAP: Emergency Extension of the Compliance Date for Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to extend for one year the compliance date for regulations for incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste, promulgated on September 30, 1999 (NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). We are taking this action in response to the Court's opinion in *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855, 872 (D.C. Cir. 2001) issued on July 24, 2001, where the Court vacated the emission standards known as the hazardous waste combustor “floors” and remanded for further proceedings.

255 F.3d at 871. The rules are still in effect, however, because the Court has issued an order (at the request of the parties to the proceeding) which stays issuance of the mandate and vacature does not occur until the Courts issue a mandate. These existing regulations require sources to take actions based on the current compliance date, September 30, 2002. Deadlines for some of these actions are imminent. Given that some delay in compliance will be necessitated as a result of the uncertainty created by the Court's opinion, and that action is needed now because of imminent deadlines which are keyed to the compliance date, it is not appropriate to require sources to comply with the current regulatory schedule. Consequently, EPA is extending the compliance date for one year.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 am to 4 pm, Eastern Standard Time. For more information, contact Rhonda Minnick at 703–308–8771, minnick.rhonda@epa.gov, or write her at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:**Part One: Overview and Background for This Final Rule***I. Regulatory Information*

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because a change in the compliance date is necessitated by the Court's opinion. There are imminent deadlines which are keyed to the existing compliance date, yet affected sources presently lack information to make necessary compliance decisions. Some immediate change of the compliance date is needed. Thus, notice and public procedure are impracticable. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). EPA

also finds that good cause exists under U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**.

II. What Is the Purpose of This Final Rule?

Today's action extends for one year the compliance date for the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). We are taking this action in response to the Court's opinion in *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855, 872 (D.C. Cir. 2001) issued on July 24, 2001, where the Court vacated the emission standards known as the hazardous waste combustor “floors” and remanded for further proceedings. 255 F.3d at 871. “Vacature”, however, only actually takes effect when the Court issues an order called a mandate. In this case, the Court has stayed issuance of the mandate (until February 14, 2002) in response to a joint motion from all parties to the case requesting such action. The rules thus are still in effect. These existing regulations require sources to take actions based on the current compliance date, September 30, 2002. Deadlines for some of these actions are imminent. Given that some delay in compliance will be necessitated as a result of the uncertainty created by the Court's opinion, and that action is needed now because of imminent deadlines which are keyed to the compliance date, it is not appropriate to require sources to comply with the current regulatory schedule. Consequently, EPA is extending the compliance date for one year.

III. What Is the Phase I Rule?

In the Phase I final rule, we adopted National Emissions Standards for Hazardous Air Pollutants, pursuant to section 112(d) of the Clean Air Act, to control toxic emissions from the burning of hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. 64 FR 52828 (September 30, 1999). These emission standards created a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA).

Section 112(d) of the Clean Air Act (CAA) requires emissions standards for hazardous air pollutants to be based on