

practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eight named sources.

### 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 December 31, 2001. 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 approving VOC and/or NO<sub>x</sub> RACT for eight sources located in the Philadelphia area 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, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(174) to read as follows:

#### § 52.2020 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(174) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and/or NO<sub>x</sub> RACT for sources located in the Philadelphia area submitted by the Pennsylvania Department of Environmental Protection on May 2, 1996, June 10, 1996, January 21, 1997, April 9, 1999, August 9, 2000, and two submittals on March 23, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of

Environmental Protection transmitting source-specific VOC and/or NO<sub>x</sub> RACT determinations, in the form of plan approvals and operating permits, on May 2, 1996, June 10, 1996, January 21, 1997, April 9, 1999, August 9, 2000, and two letters on March 23, 2001.

(B) Plan approvals (PA), Operating permits (OP) issued to the following sources:

(1) Cardone Industries, PA-51-3887, for PLID 3887, effective May 29, 1995.

(2) Cardone Industries, PA-51-2237, for PLID 2237, effective May 29, 1995.

(3) Naval Surface Warfare Center—Carderock Division, PA-51-9724, for PLID 9724, effective December 27, 1997.

(4) Wheelabrator Falls, Inc., OP-09-0013, effective January 11, 1996 (as amended May 17, 1996).

(5) U.S. Steel Group/USX Corporation, OP-09-0006, effective April 8, 1999, except for the expiration date.

(6) Brown Printing Company, OP-46-0018A, effective May 17, 2000, except for the expiration date and condition 12.

(7) SUN CHEMICAL—General Printing Ink Division, PA-51-2052, for PLID 2052, effective July 14, 2000.

(8) Sunoco Chemicals, Frankford Plant, PA-51-1551, for PLID 1551, effective July 27, 1999, except for conditions 1.A.(2)–(4), 1.A.(6), 1.A.(8); conditions 1.B.(1), 1.B.(3)–(6); the last sentence of condition 2.A.; conditions 2.B.–D.; 2.G., the last sentence of 2.H., 2.I.; and condition 7.

(ii) Additional materials. Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(174) (i)(B) of this section.

[FR Doc. 01-26764 Filed 10-29-01; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[Region II Docket No. PR6-233a, FRL-7093-9]

### Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Commonwealth of Puerto Rico. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG)

for existing small municipal waste combustion (MWC) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing small MWC units in the state and if it submits a negative declaration letter in place of the State Plan.

**DATES:** This direct final rule is effective on December 31, 2001 without further notice, unless EPA receives adverse comment by November 29, 2001.

If an adverse comment is received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866.

A copy of the Commonwealth submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637-4249. Alternatively, appointments may be arranged via e-mail by sending a message to Ted Gardella at [Gardella.Anthony@epa.gov](mailto:Gardella.Anthony@epa.gov). The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007-1866.

A copy of the Commonwealth submittal is also available for inspection at the respective offices:

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico 00917.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:** The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

#### Table of Contents

- A. What action Is EPA taking today?
- B. Why Is EPA approving Puerto Rico's negative declaration?
- C. What if an existing small MWC unit is discovered after today's action becomes effective?
- D. What is the background for Emission Guidelines and State Plans?
- E. Where can you find the EG requirements for small MWC units?

F. Who must comply with the EG requirements?

G. What are EPA's conclusions?

H. Administrative Requirements

#### A. What Action Is EPA Taking Today?

The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Commonwealth of Puerto Rico dated August 2, 2001. This negative declaration concerns existing small municipal waste combustors throughout the Commonwealth of Puerto Rico. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled "Emission Guidelines for Existing Small Municipal Waste Combustion Units" (65 FR 76378, December 6, 2000). The negative declaration officially certifies to EPA that, to the best of the Commonwealth's knowledge, there are no small MWC units in operation in the Commonwealth of Puerto Rico.

#### B. Why Is EPA Approving Puerto Rico's Negative Declaration?

EPA has evaluated the negative declaration submitted by Puerto Rico for consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that Puerto Rico's negative declaration meets all the requirements and, therefore, EPA is approving the Commonwealth's certification that there are no existing small MWC units in operation throughout the Commonwealth. Puerto Rico has certified in its negative declaration that it searched island wide all the facilities that operate solid waste combustors. Puerto Rico's search included permits and EPA's Aerometric Information Retrieval System (AIRS).

EPA's approval of Puerto Rico's negative declaration is based on the following:

(1) Puerto Rico has met the requirements of § 60.23(b) in Title 40, part 60, subpart B of the *Code of Federal Regulations* (40 CFR part 60) for submittal of a letter of negative declaration that certifies there are no existing facilities in the Commonwealth. Such certification exempts Puerto Rico from the requirements to submit a plan.

(2) EPA's own source inventory indicates there are no existing small MWC units operating in the Commonwealth of Puerto Rico. During July 1998, EPA compiled an inventory of small MWC units as a required element of the small MWC EG.

#### C. What if an Existing Small MWC Unit Is Discovered After Today's Action Becomes Effective?

Section 60.1530 of 40 CFR part 60, subpart BBBB (page 76386, 65 FR 76378, December 6, 2000) requires that if, after the effective date of today's action, an existing small MWC unit is found in the State, the Federal Plan implementing the EG would automatically apply to that small MWC unit until a State Plan is approved by EPA.

The Federal Plan was proposed on June 14, 2001 (66 FR 32484) and is expected to be promulgated in early 2002. The Federal Plan will apply to small MWCs in states, commonwealths, and territories (1) where the EPA inventory identifies small MWCs and a plan is required and has not been submitted and approved by EPA and (2) where the EPA inventory did not identify any small MWC and a negative declaration has been received and approved by EPA (such as Puerto Rico) and a small MWC is subsequently identified in the State or territory. If and when a State Plan (or in this case a Commonwealth Plan) is submitted and approved that applies to the small MWC, the Federal Plan would no longer apply.

#### D. What Is the Background for Emission Guidelines and State Plans?

Section 111(d) of the Act requires that pollutants controlled under New Source Performance Standards (NSPS) must also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations.

Under section 129 of the Act, the EG is not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become federally enforceable upon EPA approval. The procedures for adopting and submitting State Plans, as well as state requirements for a negative declaration, are in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission

limitations, and the compliance schedules (60 FR 65414).

#### E. Where Can You Find the EG Requirements for Small MWC Units?

On December 6, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new MWC units and the EG applicable to existing small MWC units. The NSPS and EG are codified at 40 CFR part 60, subparts AAAA (65 FR 76350) and BBBB (65 FR 76378), respectively.

#### F. Who Must Comply With the EG Requirements?

A small MWC unit having 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 or refuse derived fuel that commenced construction on or before August 30, 1999 ("existing small MWC unit") must comply with these requirements. See § 60.1555 of 40 CFR part 60, subpart BBBB for a list of small MWC units exempt from the federal requirements.

#### G. What Are EPA's Conclusions?

EPA has determined that Puerto Rico's negative declaration meets all the requirements and, therefore, EPA is approving Puerto Rico's certification that no small MWC units are in operation in the Commonwealth of Puerto Rico. If any existing small MWC units are discovered in the future, the Federal Plan implementing the EG would automatically apply to that small MWC unit until the State Plan is approved by EPA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declaration should relevant adverse comments be filed. This rule will be effective December 31, 2001 without further notice unless the Agency receives significant, material adverse comments by November 29, 2001.

If EPA receives significant, material adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any

parties interested in commenting on this action should do so at this time.

## H. Administrative Requirements

### *Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### *Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### *Executive Order 13132*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with

state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this rule may have federalism implications. The only reason why this rule may have federalism implications is if in the future a small MWC unit is found in the Commonwealth of Puerto Rico the unit will become subject to the Federal Plan until a State Plan is approved by EPA. However, it will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

### *Executive Order 13175*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

### *Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because as a negative declaration it is not subject to the small MWC EG requirements. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a

significant economic impact on a substantial number of small entities.

### *Unfunded Mandates*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, commonwealth, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, commonwealth, local, or tribal governments, or to the private sector, result from this action.

### *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 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). This rule will be effective December 31, 2001 unless EPA receives material adverse written comments by November 29, 2001.

### *National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

### *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 December 31, 2001. 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, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: October 19, 2001.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

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:** 62 U.S.C. 7401–7671q.

### **Subpart BBB—Puerto Rico**

2. Part 62 is amended by adding new § 62.13105 and an undesignated heading to subpart BBB to read as follows:

Air Emissions From Existing Small Municipal Waste Combustion Units With The Capacity To Combust At Least 35 Tons Per Day But No More Than 250 Tons Per Day Of Municipal Solid Waste

Or Refuse Derived Fuel and Constructed on or Before August 30, 1999.

### **§ 62.13105 Identification of plan—negative declaration.**

Letter from the Puerto Rico Environmental Quality Board, submitted August 2, 2001, certifying that there are no existing small municipal waste combustion units in the Commonwealth of Puerto Rico subject to part 60, subpart BBBB of this chapter.

[FR Doc. 01–27283 Filed 10–29–01; 8:45 am]

**BILLING CODE 6560–50–P**

## **FEDERAL EMERGENCY MANAGEMENT AGENCY**

### **44 CFR Part 64**

**[Docket No. FEMA–7771]**

### **Suspension of Community Eligibility**

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management

aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to