

Dated: June 7, 2000.

A. Lee Fritschler,

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00-14823 Filed 6-12-00; 8:45 am]

BILLING CODE 4000-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[WV-6013a; FRL-6714-2]

#### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the West Virginia hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan (the "plan") submitted on August 18, 1999 by the West Virginia Division of Environmental Protection (WV DEP), and the subsequent plan amendment of April 19, 2000. The plan establishes emission limitations and other requirements for existing HMIWIs, and provides for the implementation and enforcement of those limitations and requirements.

**DATES:** This final rule is effective July 28, 2000 unless by July 13, 2000 adverse or critical comments are received. If adverse comment is received, EPA 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:** Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029; and the West Virginia Division of Environmental Protection, Office of Air Quality, 7012 MacCorkle Avenue, South East, Charleston, West Virginia 25304.

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

**SUPPLEMENTARY INFORMATION:** This document is divided into Sections I through V and answers the questions posed below.

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#### I. General Provisions

Q. What is EPA approving?

A. EPA is approving the WV 111(d)/129 plan (the "plan") for the control of air pollution emissions from hospital/medical/infectious waste incinerators (HMIWIs). The plan was developed by the WV DEP. On August 18, 1999 the WV DEP submitted its plan to EPA; and on April 19, 2000 submitted a plan amendment. EPA is publishing this approval action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments.

Q. What is a State/local 111(d)/129 plan?

A. Section 111(d) of the Clean Air Act (CAA) requires that "designated" pollutants, controlled under standards of performance for new stationary sources by Section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an emission guidelines (EG) document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as maximum achievable control technology (MACT). Section 129 requires EPA to promulgate a MACT-based EG document, and then requires

states to develop 111(d)/129 plans that implement and enforce the EG requirements. The HMIWI EG at 40 CFR part 60, subpart Ce, establish the MACT requirements under the authority of both Sections 111(d) and 129 of the CAA. These requirements must be incorporated into a State/local 111(d)/129 plan that is "at least as protective" as the EG, and is Federally enforceable upon approval by EPA.

The procedures for adoption and submittal of State 111(d)/129 plans are codified in 40 CFR part 60, subpart B. Additional information on the submittal of State plans is provided in the EPA document, "Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for Section 111(d)/129 State Plans, EPA-456/R-97-007, November, 1997."

Q. What pollutant(s) will this action control?

A. The September 15, 1997 promulgated EG, Subpart Ce, are applicable to all existing HMIWIs (*i.e.*, the designated facilities) that emit organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury, particulate matter), opacity, and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). This action establishes emission limitations for each of these pollutants.

Q. What are the expected environmental and public health benefits from controlling HMIWI emissions?

A. HMIWI emissions can have adverse effects on both public health and the environment. Dioxin, lead, and mercury can bioaccumulate in the environment. Exposure to dioxins/furans has been linked to reproductive and developmental effects, changes in hormone levels, and chloracne. Respiratory and other effects are associated with exposure to particulate matter, sulfur dioxide, cadmium, hydrogen chloride, and mercury. Health effects associated with exposure to cadmium, and lead include probable carcinogenic effects. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings.

#### II. Federal Requirements the West Virginia HMIWI 111(d)/129 Plan Must Meet for Approval

Q. What general requirements must the WV DEP meet to receive approval of its WV 111(d)/129 plan?

A. The plan must meet the requirements of both 40 CFR part 60, subparts B, and Ce. Subpart B specifies detailed procedures for the adoption and submittal of State plans for

designated pollutants and facilities. The EG, Subpart Ce, and the related new source performance (NSPS), Subpart Ec, contain the requirements for the control of designated pollutants, as listed above, in accordance with Sections 111(d) and 129 of the CAA. In general, the applicable provisions of Subpart Ec relate to compliance and performance testing, monitoring, reporting, and recordkeeping. More specifically, the WV plan must meet the requirements of (1) 40 CFR part 60, subpart Ce, Sections 60.30e through 60.39c, and the related Subpart Ec provisions; and (2) 40 CFR part 60, subpart B, sections 60.23 through 26.

Q. What does the WV plan contain?

A. Consistent with the requirements of Subparts B, Ce and Ec, the WV plan contains the following elements:

1. A demonstration of West Virginia's legal authority to implement the plan;
2. Identification of the West Virginia enforceable mechanism, rule 45CSR24 "To Prevent and Control Emissions from Hospital/Medical/Infectious Waste Incinerators";
3. Source and emission inventories, as required;
4. Emission limitation requirements that are no less stringent than those in Subpart Ce;
5. A source compliance schedule, including increments of progress, as required;
6. Source testing, monitoring, recordkeeping, and reporting requirements;
7. HMIWI operator training and qualification requirements;
8. Requirements for development of a Waste Management Plan;
9. Records of the public hearing on the WV plan;
10. Provision for the WV DEP submittal to EPA of annual reports on progress in plan enforcement; and
11. A Title V permit application due date.

On August 3, 1998, the WV DEP filed 45CSR24, "To Prevent and Control Emissions from Hospital/Medical/Infectious Waste Incinerators" with the Legislative Rulemaking Review Committee (LRMC) for its recommendation and approval to the 1999 Legislature. Legislative approval was received and the regulation became effective on June 1, 1999. Subsequent regulation amendments, which correct typographical errors and clarify the final compliance date, were also approved and became effective on May 1, 2000. The regulation applies to existing HMIWIs and incorporates by reference (IBR) related and applicable new source performance standards, Subpart Ec.

Q. Does the WV 111(d)/129 plan meet all EPA requirements for approval?

A. Yes. The WV DEP has submitted a plan that conforms to all EPA Subpart B and Ce requirements. Each of the above listed plan elements is approvable. Details regarding the approvability of the plan elements are included in the technical support document (TSD) associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

### III. Requirements Affected HMIWI Owners/Operators Must Meet

Q. How do I determine if my HMIWI is a designated facility subject to the WV 111(d)/129 plan?

A. If construction commenced on your HMIWI on or before June 20, 1996, your HMIWI is classified as an existing or designated facility that may be subject the plan. The plan contains no lower applicability threshold based on incinerator capacity. However, there are designated facility exemptions. Those exemptions include incinerators that burn only pathological, low level radioactive, and/or chemotherapeutic waste; co-fired combustors; incinerators permitted under Section 3005 of the Solid Waste Disposal Act; municipal waste combustors (MWC) subject to EPA's municipal waste combustor rule; pyrolysis units; and cement kilns.

Details regarding applicability and exemptions provisions are stipulated in WV regulation 45CSR24 § 3.

Q. As an affected HMIWI owner/operator, what general requirements must I meet under the approved EPA 111(d)/129 plan?

A. In general, the West Virginia HMIWI regulation establishes the following requirements:

- Emission limitations for particulate matter (PM), opacity, carbon monoxide (CO), dioxins/furans (CDD/CDF), hydrogen chloride (HCl), sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), lead (Pb), cadmium (Cd), and mercury (Hg)
- Compliance and performance testing
- Operating parameter monitoring
- Operator training and qualification
- Development of a waste management plan
- Source testing, recordkeeping and reporting
- A Title V permit

A full and comprehensive statement of the above requirements is incorporated in the WV DEP regulation 45CSR24.

Q. What emissions limits must I meet, and in what time frame?

A. You must install an emissions controls system capable of meeting the MACT emission limitations for the pollutants identified above. The pollutant emission limitations are stipulated in Table 1 of 45CSR24 §§ 4.3.a. and g.; and §§ 4.4.a. and i.. Compliance is required within one year after the effective date of EPA approval of the WV 111(d)/129 plan. With adequate justification, you may petition the WV DEP for a compliance schedule extension that does not extend beyond September 15, 2002. Petitions must be submitted no later than nine months after the effective date of EPA plan approval. Petitions must include documentation of your analysis undertaken to support the need for an extension, and your evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis. Also, your extension petition must include increments of progress that are no less stringent than those specified in the plan and regulation, 45CSR24 § 7.2.

Q. Are there any operational requirements for my HMIWI and emissions control system?

A. Yes, there are operational requirements. In summary, the operational requirements relate to: (1) The HMIWI and air pollution control devices (APCD) operating within certain established parameter limits, determined during the initial performance test; (2) the use of a trained and qualified HMIWI operator; and (3) the completion of an annual update of operation and maintenance information, and its review by the HMIWI operators.

Failure to operate the HMIWI or APCD within certain established operating parameter limits constitutes an emissions violation for the controlled air pollutants. However, as a HMIWI owner/operator, you are provided an opportunity to establish revised operating limits, and demonstrate that your facility is meeting the required emission limitations, providing a repeat performance test is conducted in a timely manner.

A fully trained and qualified operator must be available at your facility during the operation of the HMIWI, or the operator must be readily available to the facility within one hour. In order to be classified as a qualified operator, you must complete an appropriate HMIWI operator training course that meets the Subpart Ec criteria referenced in 45CSR24 §§ 4.3.b and 4.4.b. Compliance must be achieved within one year of the effective date of EPA approval of the plan. Also, as a HMIWI owner/operator, you are required to develop and update

annually site-specific information regarding your facility's operations. Each of your HMIWI operators is required on an annual basis to review the updated operational and maintenance information.

The WV regulation IBR the applicable operational requirements of the EG and the related NSPS. See 40 CFR subpart Ec, §§ 60.56c, 60.53c, and 60.58c for details regarding these operational requirements.

Q. What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?

A. Testing, monitoring, recordkeeping, and reporting requirements are summarized below: You are required to conduct an initial stack test to determine compliance with the emission limitations for PM, opacity, CO, CDD/CDF, HCl, Pb, Cd, and Hg. As noted above, operating parameter limits are monitored and established during the initial performance test. Monitored HMIWI operating parameters include, for example, waste charge rate, secondary chamber and bypass stack temperatures. APCD operating parameters include, for example, CDD/CDF and Hg sorbent (*e.g.*, carbon) flow rate, hydrogen chloride sorbent (*e.g.*, lime) flow rate, PM control device inlet temperature, pressure drop across the control system, and liquid flow rate, including pH. After the initial stack test, compliance testing is then required annually to determine compliance with the emission limitations for PM, CO, and HCl.

Recordkeeping and reporting are required in order to document (1) the results of the initial and annual performance tests, (2) the monitoring of site-specific operating parameters, (3) compliance with the operator training and qualification requirements, and (4) the development of the waste management plan. Records must be maintained for at least five years.

The WV regulation IBR the applicable testing, monitoring, recordkeeping, and reporting requirements of the EG and related NSPS. See 40 CFR subpart Ec, §§ 60.56c, 60.57c, and 60.58c, respectively for details regarding these requirements.

Q. Is there a requirement for obtaining a Title V permit?

A. Yes, affected facilities are required to submit a complete Title V application to the WV DEP no later than September 15, 2000.

#### IV. Final EPA Action

The WV 111(d)/129 plan for controlling HMIWI emissions is approvable. This approval does not include provisions, such as siting and

fugitive emission requirements, that relate solely to facilities subject to the NSPS, and are not referenced in the EG.

Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the WV 111(d)/129 plan for the control of HMIWI emissions from designated facilities. As provided by 40 CFR § 60.28(c), any revisions to the WV plan or associated regulations will not be considered part of the applicable plan until submitted by the WV DEP 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.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment 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 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective July 28, 2000 without further notice unless the Agency receives relevant adverse comments by July 13, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 28, 2000 and no further action will be taken on the proposed rule.

#### V. Administrative Requirements

##### 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. 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

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. 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan 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.*).

### *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 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**. This rule 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 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 August 14, 2000. 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 the West Virginia 111(d)/129 plan for HMIWI 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: June 1, 2000.

**Bradley M. Campbell,**

*Regional Administrator, EPA Region III.*

40 CFR part 62, subpart XX, is amended as follows:

### **PART 62—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401–7671q.

### **Subpart XX—West Virginia**

2. A new center heading and §§ 62.12150, 62.12151, and 62.12152 are added to Subpart XX to read as follows:

### **Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWIs)—SECTION 111(d)/129 Plan**

#### **§ 62.12150 Identification of plan.**

Section 111(d)/129 plan for HMIWIs and the associated West Virginia (WV) Department of Environmental Protection regulations, as submitted on August 18, 1999, and as amended on April 19, 2000.

#### **§ 62.12151 Identification of sources.**

The plan applies to all existing WV HMIWI for which construction was commenced on or before June 20, 1996.

#### **§ 62.12152 Effective date.**

The effective date of the plan is July 28, 2000.

[FR Doc. 00–14766 Filed 6–12–00; 8:45 am]

**BILLING CODE 6560–50–P**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 70**

[MT–001a; FRL–6714–4]

### **Clean Air Act Full Approval of Operating Permit Program; State of Montana**

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is promulgating full approval of the operating permit program submitted by the State of Montana. Montana's operating permit program was submitted for the purpose of meeting the federal Clean Air Act (Act) directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction.

**DATES:** This direct final rule is effective on August 14, 2000 without further notice, unless EPA receives adverse comment by July 13, 2000. If adverse comment is received, EPA 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:** Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Air and Radiation

Program, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466 and are also available during normal business hours at the Montana Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901.

#### **FOR FURTHER INFORMATION CONTACT:**

Patricia Reisbeck, 8P–AR, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Denver, Colorado 80202–2466, (303) 312–6435.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

As required under Title V of the Clean Air Act ("the Act") as amended (42 U.S.C. 7401 *et seq.*), EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V directs states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act directs states to develop and submit operating permit programs to EPA by November 15, 1993, and requires that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. § 7661a) and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval. If EPA has not fully approved a program by two years after the November 15, 1993 date, or before the expiration of an interim program approval, it must establish and implement a federal program. The State of Montana was granted final interim approval of its program on May 11, 1995 (see 60 FR 25143) and the program became effective on June 12, 1995. Interim approval of the Montana program expires on December 1, 2001.

#### **II. Analysis of State Submission**

The Governor of Montana submitted an administratively complete Title V operating permit program for the State of Montana on March 29, 1994. This program, including the operating permit regulations (Title 16, Chapter 8, Sub-Chapter 20, Sections 16.8.2001 through 16.8.2025, inclusive, of the