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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY 32-194a, FRL-6414-1]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Plan submitted by New York to implement and enforce the Emission Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). The EG require states to develop plans to reduce toxic air emissions from all HMIWIs.

DATES: This direct final rule is effective on October 8, 1999 without further notice, unless EPA receives adverse comment by September 8, 1999. 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: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,
Region 2 Office, Air Programs Branch,
290 Broadway, 25th Floor, New York,
New York 10007-1866.

New York State Department of
Environmental Conservation, Division
of Air Resources, 50 Wolf Road,
Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Ted Gardella or Craig Flamm, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3892 or (212) 637-4021, respectively.

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I. What Action Is EPA Taking Today?

EPA is approving New York's State Plan submitted on September 9, 1998, and supplemented on March 11, May 12, and May 15, 1999, for the control of air emissions from HMIWIs throughout the State, except for those HMIWIs located on Indian Nation land. When EPA developed the New Source Performance Standards (NSPS) for HMIWIs, we simultaneously developed the Emission Guidelines (EG) to control air emissions from older HMIWIs (see 62 FR 48348-48391, September 15, 1997). New York State developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve New York's State Plan.

Under section 129 of the Act, the EG are not federally enforceable. Section 129(b)(2) of the Act requires states to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA. The procedures for adopting and submitting State Plans are located 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, see 60 FR 65414 (December 19, 1995). This action approves the State Plan submitted by New York to implement and enforce the EG, as it applies to older HMIWI units.

II. Why Is EPA Approving New York's State Plan?

EPA has evaluated the HMIWI State Plan submitted by New York for consistency with the Act, EPA guidelines and policy. EPA has determined that New York's State Plan

meets all requirements and, therefore, EPA is approving New York's Plan to implement and enforce the EG, as it applies to older HMIWIs.

III. Why Does EPA Want To Regulate Air Emissions From HMIWIs?

When burned, hospital waste and medical/infectious waste emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

IV. What Are EPA's Requirements for HMIWIs?

On September 15, 1997, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new HMIWIs and the EG applicable to older HMIWIs. The NSPS and EG are codified at 40 CFR part 60, subparts Ec and Ce, respectively, see 62 FR 48348 (September 15, 1997).

Under the EG, EPA requires that affected older HMIWIs do the following:

- (1) Control emissions for the following designated pollutants:

particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

(2) Control stack opacity.

(3) Include operator training/qualification, waste management plans, and testing/monitoring of pollutants and operating parameters.

(4) Inspect small incinerator equipment located in rural areas.

The Federal NSPS and EG define an HMIWI as any device that combusts any amount of medical/infectious waste or hospital waste. The terms medical infectious waste or hospital waste are defined in 40 CFR 60.51c.

The HMIWI source category is divided into three subcategories based on waste burning capacity: small (less than or equal to 200 pounds per hour (lb/hr)), medium (more than 200 lb/hr up to 500 lb/hr), and large (more than 500 lb/hr).

V. Are Any Sources Exempt From the Federal Requirements?

The following incinerator source categories are exempt from the federal requirements for HMIWIs:

(1) Incinerators that burn only pathological, low-level radiation, and/or chemotherapeutic waste (all defined in section 60.51c). However, the owner or operator must notify the EPA Administrator of an exemption claim and the owner or operator must keep records of the periods of time when only pathological, low-level radioactive, and/or chemotherapeutic waste is burned.

(2) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act.

(3) Incinerators that are subject to the NSPS and EG for Municipal Waste Combustors.

(4) Existing incinerators, processing operations, or boilers that co-fire medical/infectious waste or hospital waste with other fuels or wastes and that combust less than ten percent or less medical/infectious waste and hospital waste by weight (on a calendar quarter basis). However, the owner or operator must notify the EPA Administrator of an exemption claim and the owner or operator must keep records of the amount of each fuel and waste fired.

VI. What Is a State Plan?

Section 111(d) of the Act requires that pollutants controlled under NSPS must also be controlled at older 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 a State Plan to adopt the EG into their body of regulations. States must also include in their State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

VII. What Does New York's State Plan Contain?

On September 9, 1998, the New York State Department of Environmental Conservation (NYSDEC) submitted its section 111(d) State Plan for implementing EPA's EG for older HMIWI units located in New York State. This submittal was supplemented by the NYSDEC on March 11, May 12, and May 15, 1999.

New York has adopted by reference the requirements of the EG in Part 200 of title 6 of the New York Code of Rules and Regulations (6NYCRR) of the State of New York, entitled, "General Provisions" and in Subpart 219-1 of 6NYCRR entitled "Incineration-General Provisions." These adoptions were effective on October 1, 1998. New York will enforce the requirements under Part 201, entitled, "Permits and Registration" which was also effective on October 1, 1998. By incorporating the EG by reference into Part 200, NYSDEC has the authority to include them as applicable requirements in the permits for the designated facilities and to enforce such requirements. For consistency, Subpart 219-1, which addresses the applicability of the various Part 219 Subpart requirements (New York's incineration rules) now includes the new requirements and necessary definition changes.

New York's State Plan contains the following:

(1) A demonstration of the State's legal authority to implement the section 111(d) State Plan;

(2) State rules adopted into 6NYCRR as the mechanism for implementing and enforcing the State Plan;

(3) An inventory of fifteen known HMIWI facilities, including eighteen incinerator units, along with measurements of their toxic air emissions;

(4) Emission limits that are as protective as the EG;

(5) Enforceable compliance schedules incorporated into each facility's existing State operating permit. Compliance dates vary from one year from the effective date of EPA approval of New York's State Plan to not later than September 15, 2002;

(6) Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

(7) Records for the public hearing; and

(8) Provisions for progress reports to EPA.

New York's State Plan was reviewed for approval with respect to the following criteria: 40 CFR 60.23 through 60.26, "Subpart B—Adoption and Submittal of State Plans for Designated Facilities"; and, 40 CFR 60.30e through 60.39e, "Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators."

VIII. What Sources Are Affected by New York's State Plan?

New York's State Plan regulates all the sources covered by EPA's EG for older HMIWIs for which construction commenced on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

IX. What Steps Do Affected Sources Need To Take?

Affected sources must meet the requirements listed in the EG, summarized as follows:

(1) Determine the size of your incinerator by establishing its maximum design capacity.

(2) Determine the specific emission limits that apply to you. Each size category of HMIWI has certain emission limits established that your incinerator must meet (see Table 1 of 40 CFR part 60, subpart Ce). The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events. (40 CFR 60.33e, as listed at 62 FR 48382, September 15, 1997).

(3) Meet the provisions required of small rural incinerators, if applicable. (See 40 CFR 60.33e(b), 60.36e, 60.37e(c)(d), and 60.38e(b), as listed at 62 FR 48380, September 15, 1997).

(4) Meet a 10% opacity limit on your discharge, averaged over a six-minute block (see 40 CFR 60.33e(c), as listed at 62 FR 48380, September 15, 1997).

(5) Provide for a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR part 60.53c(c) (see 40 CFR 60.34e, as listed at 62 FR 48380).

(6) Provide for operator certification, as discussed in (5) above, no later than one year after we approve New York's State Plan (see 40 CFR 60.39e), as listed at 62 FR 48382).

(7) Develop and submit to NYSDEC a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, *An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities*, 1993, and must be submitted to NYSDEC no later than sixty days following the initial performance test (see 40 CFR 60.35e, as listed at 62 FR 48380; and 40 CFR 60.38e, as listed at 62 FR 48381).

(8) Conduct an initial performance test to determine your incinerator's compliance with these emission limits. This performance test must be completed by the date specified at 40 CFR 60.37e and 60.8, as listed at 62 FR 48380.

(9) Install and maintain devices to monitor the parameters listed under Table 3 to Subpart Ec (see 40 CFR 60.37e(c), as listed at 62 FR 48381).

(10) Document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years (see 40 CFR 60.38e, as listed at 62 FR 48381).

(11) Report to NYSDEC the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager (see 40 CFR 60.38e, as listed at 62 FR 48381).

(12) Comply with all the requirements of this State Plan within one year after we approve it; however, there are provisions to extend your compliance date (see 40 CFR 60.39e, as listed at 62 FR 48381). Those sources who have modified their state operating permits to include a compliance schedule to come into compliance with the State Plan within a year or more of our approval, must do so by the dates specified in their individual compliance schedules.

X. What Are EPA's Conclusions?

EPA has determined that New York's State Plan meets all requirements and, therefore, EPA is approving New York's Plan to implement and enforce the EG, as it applies to older HMIWs.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant 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 State Plan should relevant adverse comments be

filed. This rule will be effective October 8, 1999 without further notice unless the Agency receives relevant adverse comments by September 8, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** 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. Any 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 October 8, 1999 and no further action will be taken on the proposed rule.

XI. Administrative Requirements

Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order (E.O.) 12866 entitled "Regulatory Planning and Review."

Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule implements requirements specifically set forth by the Congress in sections 111 and 129 of the Clean Air Act, as amended in 1990, without the exercise of any discretion by EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Executive Order 13045

E.O. 13045, entitled "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 E.O. 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 E.O. 13045 because it is not an economically significant action under Executive Order 12866 and does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule implements requirements specifically set forth by the Congress in sections 111 and 129 of the Clean Air Act, as amended in 1990, without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Regulatory Flexibility Act

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 final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under section 111 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not create any new requirements, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning State Plans on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 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 annual costs to state, local, or tribal governments in the aggregate; or to 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 annual costs of \$100 million or more to either state, 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, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

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).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 8, 1999. 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, Hospital/Medical/Infectious Waste Incinerators, Reporting and recordkeeping requirements.

Dated: July 23, 1999.

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

Subpart HH—New York

2. Part 62 is amended by adding § 62.8105 and an undesignated heading to subpart HH to read as follows:

Metals, Acid Gases, Organic Compounds, Particulates and Nitrogen Oxide Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

§ 62.8105 Identification of plan.

(a) The New York State Department of Environmental Conservation submitted to the Environmental Protection Agency a "State Plan for implementation and

enforcement of 40 CFR part 60, subpart CE, Emissions Guidelines for Hospitals/Medical/Infectious Waste Incinerators" on September 9, 1998 and supplemented on March 11, May 12, and May 15, 1999.

(b) Identification of sources: The plan applies to all existing HMIWI facilities for which construction was commenced on or before June 20, 1996, as described in 40 CFR Part 60, Subpart Ce.

(c) The effective date for the portion of the plan applicable to existing Hospital/Medical/Infectious Waste Incinerators is October 8, 1999.

[FR Doc. 99-20305 Filed 8-6-99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5 and 90

[ET Docket No. 96-256, FCC 98-283]

Revision of the Experimental Radio Service Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On November 19, 1998 (63 FR 64199), the Commission published final rules in the Report and Order, which revised the rules governing the Experimental Radio Service. This document contains corrections to that rule.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418-2452.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending parts 5 and 90 of the Commission's rules in the **Federal Register** on November 19, 1998, (63 FR 64199). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 98-30381, published on November 19, 1998, 63 FR 64199, the Commission is correcting §§ 5.3(f), 5.59(d), 5.59(f), 5.61(c), 5.61(c)(6), 5.61(c)(9), 5.89(c), 5.105, 5.109(b), and 90.203 of the Commission's rules.

In rule FR Doc. 98-30381 published on November 19, 1998 (63 FR 64199) make the following corrections.

1. On page 64202, in the third column of § 5.3 paragraph (f) is corrected to read as follows:

§ 5.3 Scope of service.

* * * * *

(f) Demonstration of equipment to prospective purchasers by persons