

**Federal Register.** EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by September 24, 2001.

**ADDRESSES:** Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. 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 Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Michael Ioff at (215) 814-2166, the EPA Region III address above or by e-mail at [ioff.mike@epa.gov](mailto:ioff.mike@epa.gov). Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 15, 2001.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*  
[FR Doc. 01-21430 Filed 8-23-01; 8:45 am]

BILLING CODE 6560-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 62

[CT067-7224; A-1-FRL-7043-3]

#### 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:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to Connecticut's State Plan for Municipal Waste Combustors (MWC) submitted by the Connecticut Department of Environmental Protection on November 28, 2000 and June 4, 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 proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut on June 4, 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<sub>x</sub>) from MWC units. These actions are being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before September 24, 2001.

**ADDRESSES:** Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning Unit, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England, One Congress Street, Suite 1100, Boston, MA 02114-2023. Copies of the State submittal and the EPA's technical support document 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, One Congress Street, 11th floor, Boston, MA 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 at (617) 918-1532 or [brown.dan@epa.gov](mailto: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 Revisions to the MWC State Plan and Ozone State Implementation Plan Did Connecticut Submit to EPA?
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    2. Emission Limits
  - B. Connecticut's June 4, 2001 Submittal.
- II. Why Did Connecticut Submit Revisions to the MWC State Plan and SIP?
- III. What Action is the EPA Taking Today?
- IV. What are the Administrative Requirements?

#### I. What Revisions to the MWC State Plan and Ozone State Implementation Plan Did Connecticut Submit to EPA?

##### A. Connecticut's November 28, 2000 Submittal

On November 28, 2000, the Connecticut Department of Environmental Protection (CT DEP) submitted a revision to its State Plan to implement the Municipal Waste Combustor Emission Guidelines and New Source Performance Standards. The November submittal consisted of the revised Connecticut regulation 22a-174-38 (Section 38) which CT DEP adopted and which became effective on October 26, 2000, a statement of changes made to Section 38, and documentation of a public hearing.

The changes made to Section 38 included revisions to the definitions, emission limits and compliance schedule as discussed below.

##### 1. Definitions

There was a minor revision to the definition of "NO<sub>x</sub> emission reduction credit" or "ERC" in Section 38 (a)(21) to make this definition consistent with other CT DEP usage.

##### 2. Emission Limits

Emission limits in Section 38(c) Table 38-1 were revised to add sulfur dioxide (SO<sub>2</sub>) limits for mass burn waterwall combustors for which construction commenced after December 20, 1989. The new emission limits are 29 ppmv SO<sub>2</sub> or an 80% reduction by weight or volume. These emission limits are more stringent than the federal requirements for SO<sub>2</sub> for MWCs constructed after December 20, 1989 (30 ppmv or 80% reduction).

Emissions limits in Section 38(c) Table 38-1 were revised to add hydrogen chloride (HCl) emission limits for mass burn waterwall combustors for which construction commenced after December 20, 1989. The HCl emission

limits are 25 ppmv or a 95 percent reduction by weight or volume. These emission limits are equivalent to the federal requirements for HCl for MWCs constructed after December 20, 1989.

Emissions limits in Section 38(c) Table 38–3 were revised to add NO<sub>x</sub> emission limits for mass burn waterwall combustors for which construction commenced after December 20, 1989 and on or before September 20, 1994. The NO<sub>x</sub> emission limits are 180 ppmv, which conforms with the federal requirements for NO<sub>x</sub> for mass burn waterwall MWCs constructed after December 20, 1989.

#### B. Connecticut's June 4, 2001 Submittal

On June 4, 2001, the CT DEP submitted a request for parallel processing of proposed revisions to its State Implementation Plan for Ozone (SIP). Under the parallel processing procedure, we work closely with the CT DEP while it is developing its revision to its SIP. The State submits a copy of the proposed SIP revision to us concurrent with its public hearing. We review this proposed state action, and prepare a notice of proposed rulemaking to be published in the **Federal Register**. Thus, we provide for concurrent public comment periods on both the state action and Federal action. After the CT DEP submits the formal MWC Plan and SIP revision request (including a final state rule and response to all public comments raised during the State's public participation process), we will prepare a final rulemaking notice. If the CT DEP's formal SIP submittal contains changes which occur after the EPA's

notice of proposed rulemaking, such changes must be described in our final rulemaking action. If the changes are significant, then we must decide whether it is appropriate to re-propose the state's action.

The June 4, 2001, request for parallel processing consisted of the revised Connecticut regulation 22a–174–38 (Section 38) which Connecticut adopted and which became effective on October 26, 2000, a request that the adopted Section 38 be incorporated into the SIP to further reduce NO<sub>x</sub> emissions from MWC units, and a calculation of the additional NO<sub>x</sub> reductions anticipated.

The revised Section 38 included additional NO<sub>x</sub> emission limits and compliance schedules that were previously adopted in the state regulation but were never submitted to the EPA for approval. Specifically, emission limits in Section 38(c) were revised by adding a new "Table 38–3a Additional Nitrogen Oxide Emission Limits." Table 38–3a adds more stringent NO<sub>x</sub> limits that MWC owners and operators must comply with by May 1, 2003. These "Phase II" NO<sub>x</sub> limits are more stringent than the federal requirements for NO<sub>x</sub> for MWC units and are included in Table 1 along with the existing Phase I limits for comparison. In addition to the Phase II NO<sub>x</sub> emission limits, the compliance schedule in Section 38(m) is revised to add a deadline of May 1, 2003, by which time MWC owners and operators must meet the new Phase II NO<sub>x</sub> emission limits.

The Phase II NO<sub>x</sub> emission limits and compliance schedule were adopted into

Section 38, which became effective on October 26, 2000. However, the regulatory text was not submitted to the EPA with the November 28, 2000 SIP revision and CT DEP did not request this revision be made to MWC State Plan at that time. In its June 4, 2001 SIP submittal, CT DEP is now requesting that we approve these more stringent NO<sub>x</sub> limits and compliance schedule into the MWC State Plan.

In addition, CT DEP requested that the NO<sub>x</sub> limits and related regulatory provisions in its adopted Section 38 be incorporated into the SIP since the state will achieve further NO<sub>x</sub> emission reductions from MWC units. The SIP submittal presented an analysis of the additional NO<sub>x</sub> reductions expected from the Phase II NO<sub>x</sub> limits. Connecticut DEP projected annual heat input for MWC units based on a projected utilization rate of 90 percent of the maximum rated capacity of the affected MWC units. The statewide NO<sub>x</sub> reductions achieved by the Phase II NO<sub>x</sub> limits were then calculated relative to reductions already achieved by Connecticut's NO<sub>x</sub> Rule that requires reasonably available control technology (RACT) to be applied to major sources of NO<sub>x</sub>. The reductions achieved by NO<sub>x</sub> RACT have already been included in the SIP and, therefore, only Phase II reductions beyond NO<sub>x</sub> RACT reductions are creditable as additional NO<sub>x</sub> reductions. The Phase II limits are expected to achieve a creditable NO<sub>x</sub> reduction of 592 tons per year, 248 tons per ozone season, and 1.62 tons per summer day.

TABLE 1.—EXISTING "PHASE I" NO<sub>x</sub> EMISSION LIMITS AND ADDITIONAL "PHASE II" NO<sub>x</sub> EMISSION LIMITS IN CONNECTICUT REG. SEC. 22A–174–38 TABLE 38–3 AND TABLE 38–3A

Municipal waste combustor yTechnology	NO <sub>x</sub> emission limit (ppmv) <sup>1</sup>	
	Phase I	Phase II
Mass Burn Refractory Combustor .....	185	177
Mass Burn Waterwall Combustor for which construction commenced on or before December 20, 1989 <sup>2</sup> .....	205	200
Mass Burn Waterwall Combustor for which construction commenced after December 20, 1989 <sup>3</sup> , and on or before September 20, 1994 .....	180	177
Mass Burn Waterwall Combustor for which construction commenced after September 20, 1994:		
For one-year period following initial performance test .....	180	177
For period of time subsequent to one-year period above .....	150	150
Processed-Municipal Solid Waste Combustor .....	220	146
Reciprocating Grate Waste Tire Fired Incinerator/Boiler .....	79	N/A

<sup>1</sup> Corrected to seven percent oxygen, dry basis, or equivalent percentage carbon dioxide as specified in CT Sec. 22a–174–38.

<sup>2</sup> The Phase II Limits apply to combustors for which construction commenced on or before December 31, 1985.

<sup>3</sup> The Phase II Limits apply to combustors for which construction commenced after December 31, 1985.

#### II. Why Did Connecticut Submit Revisions to the MWC State Plan and SIP?

The CT DEP submitted attainment demonstrations for both the Southwest

Connecticut nonattainment area and the Greater Connecticut nonattainment area on September 16, 1998. The EPA published proposed rulemaking regarding CT DEP's attainment

demonstration for the Southwest Connecticut nonattainment area on December 16, 1999 (64 FR 70348). The proposal indicated that the attainment analysis for Southwest Connecticut did

not prove attainment by 2007. Specifically, the EPA calculated a 5 ppb shortfall between the future year modeled ozone values and the ozone standard. Based on this shortfall, we proposed conditional approval of the attainment demonstration and developed additional emission reduction targets of 3.8 percent VOC and 0.3 percent NO<sub>x</sub> reductions from the 1990 baseline as one of the conditions for approval. These additional emission reductions needed for attainment are referred to as the "shortfall."

In response to the EPA's conditional approval of the attainment demonstration, CT DEP submitted a SIP revision concerning addenda to the ozone attainment demonstrations for Greater Connecticut and Southwest Connecticut on February 8, 2000. The February submittal committed to adopt additional NO<sub>x</sub> emission limits applicable to MWC units and to submit these regulations to the EPA by December 31, 2000.

On November 28, 2000 CT DEP submitted a revision to the MWC Plan. The revision included revised Connecticut regulation 22a-174-38 which Connecticut adopted and which became effective on October 26, 2000. The revised regulation established more stringent "Phase II" NO<sub>x</sub> limits for MWC units which MWC owners and operators must comply with no later than May 1, 2003. However, at that time, Connecticut did not request that the Phase II NO<sub>x</sub> limits be incorporated into the MWC Plan and the provisions related to the Phase II standards were struck out of the regulatory text submitted to us.

On June 4, 2001, Connecticut submitted a revision to the MWC Plan and the SIP formally requesting that EPA incorporate the state adopted MWC regulations, including the Phase II NO<sub>x</sub> limits, into the MWC Plan and the SIP. The Phase II NO<sub>x</sub> standards further reduce emissions of NO<sub>x</sub> from MWC units and partially addresses the shortfall of additional VOC and NO<sub>x</sub> emission reductions needed for attainment of the ozone standard in Southwest Connecticut.

Connecticut's original MWC Plan was developed for implementing the MWC emission guidelines and was submitted to the EPA on October 12, 1999. On December 19, 1995, according to sections 111 and 129 of the Clean Air Act (Act), the EPA issued new source performance standards (NSPS) applicable to new MWCs and emissions guidelines (EG) applicable to existing MWCs. The NSPS and EG are codified at 40 CFR Part 60, Subparts Eb and Cb,

respectively. See 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxin and dibenzofurans. Subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons/day of municipal solid waste (large MWC units).

Connecticut's October 1999 plan contained state regulation Sec. 22a-174-38 for MWC units (Section 38). Section 38 included "Phase I" NO<sub>x</sub> emission limits (see Table 1) and a NO<sub>x</sub> emission trading program. The regulation also included emission limits for particulate matter, cadmium, lead, mercury, sulfur dioxide, hydrogen chloride, dioxin/furan and opacity. The EPA approved the plan and Section 38 by a direct final rule on April 20, 2000 (65 FR 21354). Please refer to that notice for more information.

### III. What Action Is the EPA Taking Today?

We are proposing to approve the revisions to the MWC Plan and SIP which were submitted by CT DEP on November 28, 2000 and June 4, 2001. Our review of Connecticut's November 28, 2000 and June 4, 2001 submittals indicates that the revisions to the MWC Plan are at least as protective as the emission guidelines applicable to existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste. Connecticut's MWC Plan, as approved by EPA, covers only large, existing MWC units. Small and new units are not subject to the requirements of 40 CFR part 60, subpart Cb and are not subject to this approval of the MWC Plan under sections 111(d) and 129 of the Act. Connecticut's additional mercury emission limits of 0.028 mg/dscm or 85 percent reduction by weight are not proposed as part of the MWC Plan, and will not be federally enforceable. Connecticut's shutdown provisions for mass burn refractory units are also not proposed for inclusion in the MWC Plan.

We are proposing to approve the NO<sub>x</sub> emission limits and related regulatory provisions of Connecticut's MWC rule sec. 22a-174-38 into Connecticut's ozone SIP. We are proposing approval of this SIP-strengthening revision under section 110 of the Act.

Connecticut DEP has demonstrated its legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain

information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

The November 28, 2000 submittal also included documentation of adequate public notice and public hearing. As indicated above, the June 4, 2001 submittal requested parallel processing to facilitate expeditious approval into the SIP by October 2001. Connecticut DEP issued a public hearing notice on June 1, 2001 and held a public hearing on July 10, 2001 and is preparing a final SIP revision concurrent with our proposed approval.

We are soliciting public comments on the revisions discussed in this notice or on other relevant matters. These comments will be considered before we take final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England office listed in the ADDRESSES section of this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

### 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 a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state 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 SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

## List of Subjects

### 40 CFR Part 52

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

### 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: August 15, 2001.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

[FR Doc. 01-21442 Filed 8-23-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 140

[FRL-7043-1]

### Extension of Comment Period for Proposed Rule To Establish a No Discharge Zone (NDZ) for State Waters Within the Boundaries of the Florida Keys National Marine Sanctuary (FKNMS)

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** EPA is proposing to establish a NDZ for State Waters within the boundaries of the FKNMS pursuant to section 312(f)(4)(A) of the Clean Water Act. This proposed rule was published in the **Federal Register** on July 26, 2001 (66 FR 38967-38969). In response to concerns from the boating community, the comment period for this action will be extended for an additional 60 days, from August 27, 2001, to October 26, 2001.

**DATES:** Comments must now be submitted to EPA on or before October 26, 2001.

**ADDRESSES:** Written comments or requests for information may be submitted to Wesley B. Crum, Chief, Coastal Section, EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303-8960.

**FOR FURTHER INFORMATION CONTACT:** Wesley B. Crum at (404) 562-9352.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 01-21445 Filed 8-23-01; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Parts 416, 482, and 485

[CMS-3070-CN]

RIN 0938-AK95

### Medicare and Medicaid Programs; Hospital Conditions of Participation: Anesthesia Services

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction notice.

**SUMMARY:** This document corrects a technical error that appeared in the proposed rule published in the **Federal Register** on July 5, 2001 entitled, "Medicare and Medicaid Programs; Hospital Conditions of Participation: Anesthesia Services."

**DATE:** This correction is made on August 24, 2001.

### FOR FURTHER INFORMATION CONTACT:

Stephanie Dyson, RN (410) 786-9226;

Jeannie Miller, RN (410) 786-3164.

### SUPPLEMENTARY INFORMATION:

#### Background

In the July 5, 2001 proposed rule entitled, "Hospital Conditions of Participation: Anesthesia Services," there was a technical error in the preamble.

In the first sentence of the **ADDRESSES** section, we listed an incorrect zip code for the mailing address for submission of written comments on the proposed regulation. We are correcting the zip code for the comments from 21207-8013 to 21244-8013. The complete address for written, mailed comments is: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-3070-P, P.O. Box 8013, Baltimore, MD 21244-8013.

#### Correction of Errors

In FR Doc. 01-16964 of July 5, 2001 (66 FR 35395), we are making the following correction:

#### Corrections to Preamble

In the first sentence of the **ADDRESSES** section (page 35395), we are correcting the zip code for mailed comments from 21207-8013 to 21244-8013.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance; and Program No.