

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SC-200409(a); FRL-7628-5]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to sections 111(d)/129 plan submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) for the State of South Carolina on April 12, 2002, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) Units that Commenced Construction On or Before November 30, 1999.

DATES: This direct final rule is effective April 30, 2004 without further notice, unless EPA receives adverse comment by March 31, 2004. 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 submitted by mail to: Joydeb Majumder, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections IV.B.1. through 3. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder, at (404) 562-9121 or via electronic mail at majumder.joydeb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2000, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new CISWIs and EG applicable to existing CISWIs. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. Subparts CCCC and DDDD regulate the following: Particulate matter, opacity, sulfur dioxide,

hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

Section 129(b)(2) of the Act requires States to submit to EPA for approval of State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated 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.

This action approves the State Plan submitted by SC DHEC for the State of South Carolina to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

II. Discussion

SC DHEC submitted to EPA on April 12, 2002, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing CISWIs under their direct jurisdiction in the State of South Carolina: An inventory of emissions for affected CISWI units; A compliance schedule, emissions limitations, operator training and qualification requirements, a management plan, performance testing, record keeping, and operating limits for affected CISWI units; Provision for State progress reports; South Carolina's legal authority to carry out section 111(d)/129 State Plan requirements and identification of enforcement mechanisms; A record of Public Hearing; and their Final Regulation for existing CISWI units.

The approval of the South Carolina State Plan is based on finding that: (1) SC DHEC provided adequate public notice of public hearings for the EG for existing CISWIs, and (2) SC DHEC also demonstrated legal authority to adopt emission standards and limitations; enforce applicable laws, regulations, and standards, and seek injunctive relief; abate pollutant emissions on an emergency basis; prevent construction or modification where emissions will prevent attainment or maintenance of a national standard; obtain information necessary to determine whether air pollution sources are in compliance, including authority to require record keeping and to make inspections and

conduct tests of air pollution sources; and require owners or operators of stationary sources to install, maintain and use emission monitoring devices and to make periodic reports to the state, and to make such data available to the public.

SC DHEC cites the following references for the legal authority: The South Carolina Statutes SC Code Secs. 48-1-20, -50(23) regarding adoption of emission standards and limitations; SC Code Sec. 48-1-50(1), (3), (4), (5), (11) and Secs. 48-1-120, -130, -210, -320, -330 regarding the enforcement of applicable laws, regulations, and standards, and seek injunctive relief; SC Code Sec. 48-1-290 regarding abatement of pollutant emissions on an emergency basis; SC Code Sec. 48-1-50(5), (10) and Secs. 48-1-100, -110 regarding the prevention of construction or modification where emissions will prevent attainment or maintenance of a national standard; SC Code Sec. 48-1-50(10), (20), (22), (24) regarding obtaining information necessary to determine whether air pollution sources are in compliance, including authority to require record keeping and to make inspections and conduct tests of air pollution sources; and SC Code Secs. 48-1-50(22), -270 regarding requirements for owners or operators of stationary sources to install, maintain and use emission monitoring devices and to make periodic reports to the state, and to make such data available to the public.

SC DHEC has adopted 40 CFR 60, subpart DDDD, by reference into R.61-62.60—South Carolina Designated Facility Plan and New Source Performance Standards, all emission standards and limitations applicable to existing CISWI units. These standards and limitations have been approved as being at least as protective as the Federal requirements contained in subpart DDDD for existing CISWI units.

SC DHEC submitted compliance schedule information including a note of clarification for existing CISWIs under their jurisdiction in the State of South Carolina. The clarification regarding the compliance schedule indicated that SC DHEC conducted an extensive review of its inventory of sources to determine whether or not any of these sources meet the applicability criteria set forth in the rules. The result of the review indicated that existing CISWI units in South Carolina that meet the definition of a CISWI are air curtain incinerators. The emissions guidelines, 40 CFR 60 subpart DDDD, have few requirements for air curtain incinerators. Among the most significant requirements of the rules

with respect to air curtain incinerators is a requirement to meet a 10 percent opacity limit. SC DHEC has confirmed that all air curtain incinerators readily achieve a 10 percent opacity limit by simply adopting good operating practices. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing CISWI units.

SC DHEC submitted an emissions inventory of all designated pollutants for existing CISWI units under their jurisdiction in the State of South Carolina. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

SC DHEC includes its legal authority to require owners and operators of facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in the State Plan. In the State Plan, SC DHEC also submits its legal authority to conduct periodic inspection and testing and provisions to report applicable emissions standards and emissions data to the general public.

The State Plan outlines the authority to meet the requirements of monitoring, record keeping, reporting, and compliance assurance. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

SC DHEC will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting.

III. Final Action

This action approves the State Plan submitted by SC DHEC for the State of South Carolina to implement and enforce subpart DDDD, as it applies to existing CISWI units only. The 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 SIP revision should adverse comments be filed. This rule will be effective April 30, 2004 without further notice unless the Agency receives adverse comments by March 31, 2004.

If the 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. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 30, 2004 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under SC-200409. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency, South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the *Regulation.gov* Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking SC-200409" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that

is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to majumder.joydeb@epa.gov please include the text "Public comment on proposed rulemaking SC-200409" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to [Regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Joydeb Majumder, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Please include the text "Public comment on proposed rulemaking SC-200409" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Joydeb Majumder, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official

hours of business are Monday through Friday, 9:00 to 3:30 excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

V. Statutory and Executive Order Reviews

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 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2004. 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, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: February 17, 2004.

J. I. Palmer, Jr.,

Regional Administrator, Region 4.

■ Chapter I, title 40 of the Code of Federal Regulation 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 PP—South Carolina

■ 2. Subpart PP is amended by adding an undesignated center heading and § 62.10190 to read as follows:

AIR EMISSIONS FROM COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION (CISWI) UNITS—SECTION 111(d)/129 PLAN

§ 62.10190 Identification of Sources.

The Plan applies to existing Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.

[FR Doc. 04-4461 Filed 2-27-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Regional Docket Nos. II-2002-13-A; FRL-7627-6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for the Al Turi Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on a petition to object to a State operating permit.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued to a facility by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied the petition submitted by the New York Public Interest Research Group (NYPIRG) to object to the State operating permit issued to the following facility: Al Turi Landfill in Goshen, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review of those portions of the petition which EPA denied in the

United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007-1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for the Al Turi Landfill is available electronically at: http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/al_turi_decision2002.pdf.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone (212) 637-4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to the State operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On October 4, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for Al Turi Landfill. The petition raises issues regarding the permit application, the permit issuance process, and the permit itself. NYPIRG asserts that: (1) the permit does not comply with 40 CFR part 70 because the permit's expiration limits the effective date of many permit conditions; and (2) the final permit fails to correct deficiencies noted in NYPIRG's comments to NYSDEC on the draft Al Turi permit, including that (i) the permit is based on an inadequate permit application in violation of 40 CFR 70.5(c); (ii) the permit is not supported by an adequate statement of basis as required by 40 CFR 70.7(a)(5); (iii) the permit fails to specify whether or not the facility must submit an accidental release plan under section 112(r) of the