

must be submitted to the Secretary of Agriculture not later than [date to be inserted 18 months from the effective date of the final rule].

#### § 294.13 Petition process.

(a) Review and consideration of petitions made pursuant to § 294.12 shall be accomplished as follows:

(1) Review—The Secretary shall review petitions and may request additional information from a petitioner before deciding whether to accept the petition. If the Secretary requests additional information from a petitioner, the petition will be considered complete when the petitioner provides the additional information.

(2) Disposition—The Secretary or the Secretary's designee shall respond to the petition within 180 days of receipt of a completed petition. The response shall accept or decline the petition to initiate a State-specific rulemaking.

#### § 294.14 Petition contents.

(a) Any petition made pursuant to § 294.12 shall provide the following:

(1) The location and description of the particular lands for which the petition is being made, including maps and other appropriate resources in sufficient detail to enable consideration of the petition;

(2) The particular management requirements recommended for the lands and any exceptions;

(3) The identification of the circumstances and needs intended to be addressed by the petition, including conserving roadless area values and characteristics; protecting human health and safety; reducing hazardous fuels and restoring essential wildlife habitats; maintaining existing facilities such as dams, or providing reasonable access to public and private property or public and privately owned facilities; and technical corrections to existing maps such as boundary adjustments to remove existing roaded areas;

(4) A description of how the recommended management requirements identified in accordance with paragraph (a)(2) of this section differs from existing applicable land management plan(s) or policies related to inventoried roadless area management, while still complying with applicable laws and regulations;

(5) A description of how the recommended management requirements identified in accordance with paragraph (a)(2) of this section compares to existing State land conservation policies and direction set forth in any applicable State land and resource management plan(s);

(6) A description of how the recommended management requirements identified in accordance with paragraph (a)(2) of this section would affect the fish and wildlife that utilize the particular lands in question and their habitat;

(7) A description of any public involvement efforts undertaken by the State during development of the petition, including efforts to engage local governments and persons with expertise in fish and wildlife biology, fish and wildlife management, forest management, outdoor recreation, and other important disciplines; and

(8) A commitment by the State that it will participate as a cooperating agency in any environmental analysis for a rulemaking process.

#### § 294.15 State-specific rulemaking.

If the Secretary or the Secretary's designee accepts a petition, the Forest Service shall be directed to initiate notice and comment rulemaking to address the petition. The Forest Service shall coordinate development of the proposed rule with the State. The Secretary or the Secretary's designee shall make the final decision for any State-specific inventoried roadless area management rule.

#### § 294.16 Scope and applicability.

(a) The provisions of this regulation apply exclusively to the development and review of petitions made pursuant to this subpart.

(b) Nothing in this regulation shall be construed to provide for the transfer to, or administration by, a State or local authority of any Federally owned lands.

Dated: July 12, 2004.

**Dale N. Bosworth,**

*Chief.*

[FR Doc. 04-16191 Filed 7-15-04; 8:45 am]

**BILLING CODE 3410-11-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[Region II Docket No. R02-OAR-2004-NJ-0003, FRL-7788-4]

### Approval and Promulgation of State Plans for Designated Facilities; New Jersey

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve a negative declaration submitted by the State of New Jersey. The negative

declaration fulfills EPA's promulgated Emission Guidelines for existing commercial and industrial solid waste incinerator (CISWI) sources. In accordance with the Emission Guidelines, States are not required to submit a plan to implement and enforce the Emission Guidelines if there are no existing CISWI sources in the State and if it submits a negative declaration letter in place of the State Plan.

**DATES:** Comments must be received on or before August 16, 2004.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02-OAR-2004-NJ-0003 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

C. E-mail: [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov)

D. Fax: (212) 637-3901.

E. Mail: "RME ID Number R02-OAR-2004-NJ-0003", Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

F. Hand Delivery or Courier. Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. 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, 8:30 to 4:30 excluding Federal holidays.

*Instructions:* Direct your comments to Regional Material in EDocket (RME) ID Number R02-OAR-2004-NJ-0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. 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, 8:30 to 4:30 excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Anthony (Ted) Gardella ([Gardella.Anthony@epa.gov](mailto:Gardella.Anthony@epa.gov)), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3892.

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

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- H. Statutory and Executive Order Revisions.

**A. What Action Is EPA Proposing Today?**

The EPA is proposing to approve a negative declaration submitted by the State of New Jersey dated March 4, 2004. This negative declaration finds that there are no existing facilities subject to regulation as commercial and industrial solid waste incinerators (CISWI) in the State of New Jersey. The negative declaration satisfies the federal Emission Guidelines requirements of EPA's promulgated regulation entitled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units" (65 FR 75338, December 1, 2000; and corrected at 66 FR 16605, March 27, 2001). The negative declaration officially certifies to EPA that, to the best of the State's knowledge, there are no CISWI sources in operation in the State of New Jersey.

In its March 4, 2004, letter, New Jersey further stated that its negative declaration was consistent with the EPA's database of CISWI units which shows only one potential CISWI incinerator located at the Hoffman LaRoche (HLR) facility in Nutley, New Jersey. However, New Jersey stated that the HLR incinerator is regulated as a co-fired combustor under EPA's Hospital/Medical/Infectious Waste Incinerator (HMIWI) Federal Plan (title 40, part 62, subpart HHH of the Code of Federal Regulations (40 CFR part 62, subpart HHH), promulgated on August 15, 2000) and therefore, exempt from the CISWI Emission Guidelines. As further detailed in section B below ("Why is EPA Proposing To Approve New Jersey's Negative Declaration?"), EPA agrees with New Jersey that the HLR incinerator is considered a co-fired combustor under EPA's HMIWI Federal Plan and, due to the nature of the waste combusted in the incinerator, is exempt from the CISWI Emission Guidelines.

**B. Why Is EPA Proposing To Approve New Jersey's Negative Declaration?**

EPA has evaluated the negative declaration submitted by New Jersey for

consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that New Jersey's negative declaration meets all applicable requirements and, therefore, EPA is approving the State's certification that there are no existing CISWI units in operation throughout the State.

EPA's approval of New Jersey's negative declaration is based on the following:

(1) New Jersey has met the requirements of § 60.23(b) in 40 CFR part 60, subpart B for submittal of a letter of negative declaration that certifies there are no existing facilities in the State. Such certification exempts the State from the requirements to submit a plan.

(2) Although EPA's November 2000 source inventory indicated there was one existing CISWI unit operating in the State of New Jersey at the HLR facility, the owner, in a letter dated June 14, 2004, notified EPA that its incinerator is exempt from the CISWI Federal Plan and CISWI Emission Guidelines. In its June 2004 notification letter, HLR stated that its incinerator combusts waste consisting of more than ninety percent pathological and low level radioactive waste and is therefore, in accordance with § 62.14525 of the CISWI Federal Plan and 40 CFR part 60, subpart DDDD (CISWI Emission Guidelines), exempt from CISWI requirements, except for recordkeeping requirements. EPA has reviewed HLR's Exemption Notification and agrees with the owner's exemption request. A copy of HLR's June 14, 2004, Exemption Notification letter and EPA's correspondence with the owner is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document or it can be viewed at <http://docket.epa.gov/rmepub/>.

It should be noted that since HLR's incinerator also conforms to the definition of a co-fired combustor under the HMIWI Federal Plan, the owner is only required to maintain records as to the type and quantity of waste combusted. Under the HMIWI Federal Plan, a co-fired combustor is considered an incinerator that combusts waste solids consisting of ten percent or less HMIWI waste.

**C. What If an Existing CISWI Source Is Discovered After EPA Takes Final Action on New Jersey's Negative Declaration?**

Section 60.2530 of 40 CFR part 60, subpart DDDD (page 75363 at 65 FR 75338, December 1, 2001) requires that if, after the effective date of EPA's final action on New Jersey's negative

declaration, an existing CISWI unit is found in the State, the Federal Plan (40 CFR part 62, subpart III, promulgated on October 3, 2003) implementing the Emission Guidelines would automatically apply to that CISWI unit until a State Plan is approved by EPA.

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

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

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

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the stringency of compliance schedules (60 FR 65414).

#### **E. Where Can You Find the Emission Guidelines Requirements for CISWI Sources?**

On December 1, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new CISWI sources and the Emission Guidelines applicable to existing CISWI sources. The NSPS and Emission Guidelines are codified at 40 CFR part 60, subparts CCCC and DDDD (65 FR 75337), respectively.

#### **F. Who Must Comply With the Emission Guidelines Requirements?**

If you own or operate a combustion device that combusts commercial and industrial waste and you (1) began construction of your CISWI unit on or before November 30, 1999, or (2) began reconstruction or modification of your CISWI unit prior to June 1, 2001, you must comply with these requirements.

See § 60.2555 of 40 CFR part 60, subpart DDDD for a list of incinerator source categories that are exempt from the Federal requirements for CISWIs.

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

EPA has determined that New Jersey's negative declaration meets all applicable requirements and, therefore, EPA is approving New Jersey's certification that no CISWI units are in operation within the State of New Jersey. If any existing CISWI sources are discovered in the future, the Federal Plan implementing the Emission Guidelines would automatically apply to that CISWI unit until the State Plan is approved by EPA.

#### **H. Statutory and Executive Order Revisions**

##### *Executive Order 12866, Regulatory Planning and Review*

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

##### *Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*" 44 U.S.C. 3502(3)(A). Because the proposed rule applies to New Jersey's negative declaration letter for CISWI units, there are no companies affected by this proposal and therefore, the Paperwork Reduction Act does not apply.

##### *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 rule will not have a significant impact on a substantial number of small entities because as a negative declaration no sources in the state are subject to the CISWI Emission Guidelines requirements. Therefore, because the Federal proposed approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act*

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

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve 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.

##### *Executive Order 13132, Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a

regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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

*Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

*Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

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

and reasonably feasible alternatives considered by the Agency.

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

*Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*National Technology Transfer and Advancement Act*

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

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

**List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 8, 2004.

**Walter Mugdan,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 04-16208 Filed 7-15-04; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 239 and 257**

[FRL-7787-4]

**Adequacy of Indiana Solid Waste Landfill Permit Programs Under RCRA Subtitle D**

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to approve Indiana's solid waste

regulation, which ensures that hazardous waste from conditionally exempt small quantity generators (CESQGs) will be disposed of only in accordance with EPA regulations. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving Indiana's regulations by a direct final rule. EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this approval in the preamble to the direct final rule. Unless we receive written comments that oppose this approval during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the direct final rule, and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You will not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by August 16, 2004.

**ADDRESSES:** Written comments should be sent to Susan Mooney, Waste Management Branch (Mail code: DW-8J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, telephone: 312/886-3585. Comments may also be submitted electronically to: [mooney.susan@epa.gov](mailto:mooney.susan@epa.gov) or by facsimile at (312) 353-4788. You may examine copies of the relevant portions of Indiana's regulations during normal business hours at EPA Region 5.

**FOR FURTHER INFORMATION CONTACT:** Susan Mooney, Waste Management Branch (Mail code: DW-8J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, telephone: (312) 886-3585, e-mail: [mooney.susan@epa.gov](mailto:mooney.susan@epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information, please see the Direct Final Rule published in the "Rules and Regulations" section of today's **Federal Register**.

Dated: June 16, 2004.

**Bharat Mathur,**

*Acting Regional Administrator, US EPA, Region 5.*

[FR Doc. 04-16205 Filed 7-15-04; 8:45 am]

**BILLING CODE 6560-50-P**