Administrative Code. The rule being removed applies to a single source, Aluminum Company of America (ALCOA), located in Warrick County. Because ALCOA remains subject to more stringent Federal requirements, EPA approval should not result in an adverse impact on air quality.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we 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. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by April 10, 2003.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the plan revision request is available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

I. What Action Is EPA Taking Today?

The EPA is proposing to approve the removal of State rules controlling fluoride emission limitations from existing primary aluminum plants as a revision to the plan for control of fluoride emissions from existing primary aluminum plants as requested by the State of Indiana on October 17, 2002, and as supplemented on January 22, 2003. The State submittal is in response to the repeal of these regulations from the Indiana Administrative Code (IAC). These rules have been superseded by other State rules which incorporate current Federal requirements into the IAC by reference. Because Federal requirements are federally enforceable, they need not be included in the State plan. The rule removed from the Indiana Plan applies to a single source, Aluminum Company of America (ALCOA) located in Warrick County. Because ALCOA remains subject to more stringent Federal requirements, Federal approval of this repeal should not result in an adverse impact on air quality.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: February 27, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–5742 Filed 3–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[CA 216–0387; FRL–7459–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Large Municipal Waste Combustors; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the California State Plan for implementing the emissions guidelines applicable to existing large municipal waste combustor units. The plan was submitted by the California Air Resources Board for the State of California to satisfy requirements of sections 111(d) and 129 of the Clean Air Act. The submitted plan applies to large municipal waste combustor units located in the San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District. We are taking comments on this proposal and intend to follow with a final action.

DATE: Any comments must arrive by April 10, 2003.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov.*

You can inspect copies of the submitted State Plan and EPA's technical support document at our Region IX office during normal business hours. You may also see copies of the submitted State Plan at the following location: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Background

A. Under What Authority Is EPA Proposing This Action?

Section 129 of the Clean Air Act, as amended in 1990 (CAA or the Act), requires EPA to develop regulations under section 111 to control air pollutant emissions from solid waste incineration units. Emissions from new municipal waste combustor (MWC) units are to be addressed by standards of performance for new sources (New Source Performance Standards or NSPS), and emissions from existing MWC units are to be addressed by guidelines (Emission Guidelines or EG). The Act requires that the MWC regulations reflect the maximum achievable control technology (MACT) and specifies that the emission standards for existing units in a category must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of units in the category (section 129(a)(2)).

This is commonly referred to as the ''MACT floor'' for existing MWC units. The Act requires that the EG for existing MWC units include MACT-based numerical emission limits for the following ten air pollutants: particulate matter (PM), opacity, sulfur dioxide (SO_2), hydrogen chloride (HCl), oxides of nitrogen (NO_X), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins/furans (see section 129(a)(4)). The EG must also include monitoring and reporting requirements and operator training requirements (§ 129(b)(1)).

On December 19, 1995, pursuant to sections 111 and 129 of the Act, EPA promulgated 40 CFR part 60, subpart Cb (Emission Guidelines and Compliance Schedules for Municipal Waste Combustors). *See* 60 FR 65387. The EG, contained in subpart Cb, apply to existing MWC units, defined as MWC units for which construction was commenced on or before September 20, 1994.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subpart Cb as it applies to MWC units with an individual capacity to combust less than or equal to 250 tons per day (tpd) of municipal solid waste (MSW) (small MWC units) and all cement kilns combusting MSW, consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA,* 101 F.3d 1395 (D.C. Cir. 1996), amended, 108 F.3d 1454 (D.C. Cir. 1997). As a result, on August 25, 1997, EPA amended subpart Cb to apply only to MWC units with an individual capacity to combust more than 250 tpd of MSW (large MWC units). *See* 62 FR 45116.

B. Why Did California Submit a State Plan?

Section 129(b)(2) of the Act requires States with existing MWC units subject to the EG to submit plans to EPA that implement and enforce the EG no later than one year after promulgation of the EG. Accordingly, State plans were due on December 19, 1996 (*See also* 40 CFR 60.39(b)). The court decision vacating the EG requirements for small MWC units and cement kilns did not affect the due date or the required content of State plans for large MWC units.[1] For existing large MWC units located in States that have not submitted an approvable plan within two (2) years of promulgation of the EG (*i.e.,* December 19, 1997), section 129(b)(3) of the Act requires EPA to adopt a Federal Plan to implement and enforce the EG. On November 12, 1998, EPA promulgated a Federal Plan for existing large MWC units not covered by an EPA-approved State plan, codified at 40 CFR part 62, subpart FFF. See 63 FR 63191. Any MWC units covered by a State plan submitted after December 19, 1997, are subject to the Federal Plan until EPA approves the State plan. California's State Plan (the Plan) was submitted by the California Air Resources Board (CARB) on September 23, 1998.

II. The State's Submittal

A. What Facilities Are Covered by the Plan?

According to CARB, there are only three facilities with existing large MWC units in the State. One of these facilities is located in the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and two facilities are located in South Coast Air Quality Management District (SCAQMD). Both air districts are using district operating permits, containing the requirements of the EG, as the enforceable mechanisms to implement the EG. The following table identifies the three MWC facilities (six large MWC units) covered by the State Plan and the corresponding permits issued by the districts. If there are additional MWC units that meet the applicability criteria of subpart Cb but are not identified in the State Plan inventory, then the Federal Plan would apply to them.

District/facility	Permit Nos.	Date of issue
SJVUAPCD: Stanislaus Resource Recovery Facility (2 units)	PTO N–2073–1–7	August 27, 2001.[c]
SCAQMD:		
Commerce Refuse to Energy Authority (1 unit)	PTO R–D96114[a]	May 7, 1998.
	PTO R–D96066[b]	May 7, 1998.
Southeast Resource Recovery Facility (3 units)	PTO R–D87714[a]	May 19, 1998.
	PTO R–D87608[b]	May 29, 1998.
	PTO R–D87716[a]	May 19, 1998.
	PTO R–D87609[b]	May 29, 1998.
	PTO R–D87717[a]	May 19, 1998.
	PTO R–D87610[b]	May 29, 1998.

[a] Resource recovery system permit
[b] Air pollution control system permit
[c] CARB's original State Plan submittal included PTO N–2073–1–2, issued on March 12, 1998. On May 2, 2002, CARB forwarded PTO N–2073–1–7, issued on August 27, 2001, to replace the expired PTO N–2073–1–2.

B. What is the Purpose of the Submitted Plan?

The California State Plan was submitted to satisfy the requirements of sections 111(d) and 129 of the Act, and to implement the EG contained in 40 CFR, part 60, subpart Cb. The Plan implements the emission limits established in the EG for organics (dioxins/furans), metals (cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), and opacity), acid gases (hydrogen chloride (HCl) and sulphur dioxide (SO_2)), nitrogen oxides (NO_X), and fugitive ash emissions. These pollutants can cause adverse effects to public health and the environment. The Plan also implements the EG requirements for MWC operating practices, which include requirements for carbon monoxide (CO) emissions, load, PM control device inlet flue gas temperature, and operator training/certification.

III. EPA's Evaluation and Action

A. How Is EPA Evaluating the Plan?

Under section 111(d) of the Act, EPA has established general procedures, codified at 40 CFR part 60, subpart B, that States must follow in adopting and submitting State plans. The following provides a brief discussion of the

[1] The vacatur of subpart Cb as it applies to small MWC units and cement kilns required EPA to reevaluate the emission limits for large MWC units. In the August 25, 1997, amendments to subpart Cb, EPA revised the emission limits for the following four pollutants: lead, hydrogen chloride, sulfur dioxide, and nitrogen oxides. Pursuant to section 129(b)(2) of the Act, State plans incorporating the revised limits were due on August 25, 1998. *See also* 40 CFR 60.39b(e).

requirements, found in subparts B and Cb, for an approvable State plan for existing large MWC units and EPA's review of the California State Plan with respect to those requirements. A detailed discussion of the Plan and EPA's evaluation can be found in the Technical Support Document (TSD) for the California Plan (February 2003).

1. Identification of Enforceable State Mechanism for Implementing the EG

Subpart B at 40 CFR 60.24(a) requires that the State plan include emissions standards, defined in 40 CFR 60.21(f) as ''a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions.'' In the State of California, local air quality management and air pollution control districts (districts) have primary responsibility for control of stationary air pollution sources, such as MWC units. Therefore, each district with existing large MWC units is required to develop a regulation or other enforceable mechanism to implement the EG. The SJVUAPCD and SCAQMD are using district operating permits, containing the requirements of the EG, as the enforceable mechanisms. The conditions of these submitted permits will remain in effect as part of the State Plan until a revision to the Plan is approved. Expiration of a district operating permit, or revisions to permit conditions, will not automatically revise the State Plan. Any revisions to the Plan must be submitted to EPA for review and approval as a section 111(d)/129 state plan revision.

2. Demonstration of Legal Authority

Subpart B at 40 CFR 60.26 requires that the State plan demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules contained in the plan. The State's Attorney General has certified that the State of California and the districts have sufficient legal authority to develop the State plan to implement the EG. In addition, the State's Attorney General has certified that the districts have the authority to modify existing district operating permits and incorporate the EG requirements. The State statutes providing such authority are contained in the California Health and Safety Code (H&SC).

3. Inventory of Existing MWCs in the State Affected by the State Plan

Subpart B at 40 CFR 60.25(a) requires that the State plan include a complete source inventory of all designated facilities regulated by the EG: existing MWC units (*i.e.*, those MWC units constructed prior to September 20, 1994) with the capacity to combust greater than 250 tpd of MSW (see 40 CFR 60.32b(a)). CARB has submitted an inventory of all existing large MWC units in California as part of the State Plan. These facilities were identified in the table shown in Section II.A of this document.

4. Inventory of Emissions From Existing MWCs in the State

Subpart B at 40 CFR 60.25(a) requires that the State plan include an emissions inventory that estimates emissions of the designated pollutant regulated by the EG: MWC emissions. For each affected MWC facility, the California State Plan contains information on estimated MWC emission rates (in tpy) for the nine regulated pollutants: dioxins/furans, Cd, Pb, Hg, PM, HCl, SO_2, NO_X, and CO. These estimated emission rates are based on stack test data and continuous emission monitoring data.

5. Emission Standards for MWCs

Subpart B at 40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG, and section 129(b)(2) of the Act requires that State plans be ''at least as protective'' as the EG. The district operating permits specify emission standards that are consistent with and ''at least as protective'' as those in Subpart Cb, as amended.

6. Compliance Schedules

Subpart B at 40 CFR 60.24(a) requires that the State plan include a compliance schedule that owners and operators of affected MWC units must meet in complying with the requirements of the plan. Subpart Cb at 40 CFR 60.39b requires that final compliance with the requirements of the EG be accomplished by no later than December 19, 2000.[2] For any compliance schedule extending more than 12 months beyond the date required for submittal of the State plan (December 19, 1996), 40 CFR 60.24(e)(1) requires that the compliance schedule include enforceable increments of progress toward compliance, as specified in 60.21(h)(1). The district operating permits establish interim and final compliance dates, as required by 60.24(e)(1) and 60.39(b). However, the SJVUAPCD permit for the Stanislaus Resource Recovery Facility does not require final compliance with all requirements of the EG by December 19, 2000. As discussed in the TSD, the Stanislaus facility is currently subject to the Federal Plan and should already be in compliance. Approval of the State Plan will not extend the compliance dates contained in the Federal Plan.

7. Testing, Monitoring, Recordkeeping and Reporting Requirements

Subpart Cb at 40 CFR 60.38b and 60.39b requires that the State plan contain applicable 40 CFR part 60, subpart Eb (MWC NSPS) requirements relating to performance testing, monitoring, reporting and recordkeeping. The district operating permits meet the requirements of 60.38b and 60.39b. However, as explained in the TSD, the SJVUAPCD permit contains language that is potentially confusing regarding the federal enforceability of certain conditions. EPA expects the facility to conduct annual tests in accordance with the district permit conditions and in accordance with 60.58b. Approval of the Plan does not relieve the facility from any testing requirements. Requirements contained in the State Plan become federally enforceable once the Plan is approved.

8. A Record of Public Hearings on the State Plan

Subpart B at 40 CFR 60.23 contains the requirements for public participation that must be met by the State in adopting a State plan. California fulfilled the public participation requirements for the State plan through separate district public participation and notification processes. CARB included documents in the Plan submittal demonstrating that the districts met the requirements by providing public notice of the Plan and the opportunity for public hearings on the Plan.[3]

9. Submittal of Annual State Progress Reports to EPA

Subpart B at 40 CFR 60.25(e) and (f) requires States to submit to EPA annual reports on the progress of plan enforcement. The first progress report must be submitted by the State one year after EPA approval of the State plan.

[2] As discussed in footnote 1, the amended subpart Cb contains revised emission limits for lead, hydrogen chloride, sulfur dioxide, and nitrogen oxides. 40 CFR 60.39b(f) requires compliance with these limits by no later than August 26, 2002. However, the Federal Plan requires compliance with the applicable revised limits by December 19, 2000.

[3] SJVUAPCD provided 30-day notice on March 16, 1998 of a public hearing held on April 16, 1998, on its portion of the State plan. SCAQMD provided public notice on February 19, 1998, of the opportunity for a public hearing to be held on March 26, 1998, if requested. SCAQMD did not hold a hearing because the district received no requests.

In summary, EPA finds that the California State Plan meets the requirements applicable to such plans in 40 CFR part 60, subparts B and Cb.

B. Does the Plan Meet the Evaluation Criteria?

We believe the Plan is consistent with the relevant policy and guidance regarding approval of CAA section 111(d)/129 State plans. The TSD describes in detail the discrepancies between the Plan and the EG regarding waivers, floating compliance dates, and testing requirements. EPA has determined that these discrepancies in the submitted Plan have limited impact because of the following reasons:

1. *Waivers:* The underlying federal conditions in the EG and Federal Plan will continue to apply in the case of waivers. EPA cannot delegate to districts the ability to approve waivers of load and temperature limits that are not in accordance with the purposes specified in 60.53b(b) and (c). Waivers of operator training course requirements must be approved by EPA, and as of this date, EPA Region 9 has not received any such requests.

2. *Floating compliance dates:* The final dates of compliance for the Stanislaus facility, as contained in the Federal Plan, have already passed and thus the facility should already be in compliance. Approval of the State Plan will not extend the compliance dates contained in the Federal Plan. The facility is subject to the Federal Plan until the State Plan approval becomes effective.

3. *Testing requirements:* The Stanislaus permit does contain the appropriate requirements for source testing, but it does not cite to the EG for these provisions. The permit contains language that is potentially confusing regarding federal enforceability of certain conditions. After a State incorporates a requirement in the State Plan and the State Plan is approved by EPA, the State requirement becomes federally enforceable.

C. EPA Recommendations To Further Improve the Plan

The TSD describes additional revisions that do not affect EPA's current action but are recommended for the next time the local agencies modify the facility permits.

D. Proposed Action

Based on the rationale discussed above and in further detail in the TSD, EPA is proposing approval of the State of California section 111(d)/129 plan for the control of emissions from existing large MWC units. Until the State Plan receives final approval, the sources covered by this plan will remain subject to the Federal Plan. The compliance schedules contained in the Federal Plan (40 CFR part 62, subpart FFF) will continue to apply to the Stanislaus Resource Recovery Facility. As provided by 40 CFR 60.28(c), any revisions to the California State Plan will not be considered part of the applicable plan until submitted by CARB in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B. We will accept comments from the public on this proposal for the next 30 days. Unless we receive significant new information during the comment period, we intend to publish a final approval action that will make the State Plan requirements federally enforceable.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed 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 proposed 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 proposed 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 proposes to approve 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 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 proposes to approve a State plan implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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 State plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State plan submission, to use VCS in place of a State plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed 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 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.

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

Dated: February 19, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 03–5748 Filed 3–10–03; 8:45 am]

BILLING CODE 6560–50–P