

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2003-0156; FRL-]

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule; request for public comment; notice of public hearing.

SUMMARY: On December 16, 2005, EPA published a final rule entitled, “Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units.” Following that final action, the Administrator received a petition for reconsideration. In response to the petition, EPA is announcing its reconsideration of and requesting comment on whether sewage and sludge incinerators should be excluded from the other solid waste incineration units (OSWI) rules.

DATES: Comments. Submit comments on or before [INSERT THE DATE 45 DAYS AFTER PUBLICATION OF THE NOTICE OF RECONSIDERATION IN THE FEDERAL REGISTER]. Because of the need to resolve the issues raised in this action in a timely manner, EPA will not grant requests for extensions beyond this date.

Public Hearing. If anyone contacts EPA by [INSERT THE DATE 7 DAYS AFTER PUBLICATION OF THE NOTICE OF RECONSIDERATION IN THE FEDERAL REGISTER] requesting to speak at a public hearing, EPA will hold a public hearing on [INSERT DATE 14 DAYS AFTER PUBLICATION OF THE NOTICE OF

RECONSIDERATION IN THE FEDERAL REGISTER]. If you are interested in attending the public hearing, contact Dorothy Apple at (919) 541-4487 to verify that a hearing will be held.

ADDRESSES: Comments. Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0156, by one of the following methods:

Web site: www.regulations.gov. Follow the online instructions for submitting comments.

E-mail: Send your comments via electronic mail to a-and-r-docket@epa.gov, Attention Docket ID No. EPA-HQ-OAR-2003-0156.

Facsimile: Fax your comments to (202) 566-1741, Attention Docket ID No. EPA-HQ-OAR-2003-0156.

Mail: Send your comments to: EPA Docket Center (EPA/DC), EPA, Mailcode 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2003-0156.

Hand Delivery: Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room B108, 1301 Constitution Ave., NW, Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR-2003-0156. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2003-0156. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, 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 www.regulations.gov or e-mail. The www.regulations.gov Web site is an “anonymous access” system, 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 www.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.

Public Hearing: If a public hearing is held, it will be held at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. Persons interested in presenting oral testimony must contact Dorothy Apple at (919) 541-4487 at least 7 days in advance of the hearing. If no one contacts Dorothy Apple in advance of the hearing with a request to present oral testimony at the hearing, we will cancel the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the reconsideration. The record for this action will remain open for 30 days after the date of the hearing to accommodate submittal of information related to the public hearing.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., 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 at www.regulations.gov or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Smith, Natural Resources and Commerce Group, Sector Policies and Programs Division (E143-03), U.S. EPA, Research Triangle Park, North Carolina 27711, (919)541-2421, e-mail smith.martha@epa.gov. For questions about the public hearing, contact Dorothy Apple at (919)541-4487.

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

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I. National Technology Transfer Advancement Act

I. General Information

A. Does the reconsideration notice apply to me?

Regulated Entities. This reconsideration proceeding potentially affects sewage sludge incinerators. Although there is not a specific North American Industrial Classification System (NAICS) code for sewage sludge incinerators, these units may be operated by municipalities or other entities and the following NAICS codes apply: Non-hazardous incinerators (NAICS 562213); sludge disposal sites (NAICS 562212); and sewage treatment facilities (NAICS 221320). The categories and entities regulated by the final OSWI rules are very small municipal waste combustion (VSMWC) units and institutional waste incineration (IWI) units. The final OSWI emission guidelines and new source performance standards (NSPS) affect the following categories of sources:

| Category | NAICS Code | Examples of potentially regulated entities |
|--|----------------------|---|
| Any State, local, or Tribal government using a VSMWC unit as defined in the regulations. | 562213, 92411 | Solid waste combustion units burning municipal waste collected from the general public and from residential, commercial, institutional, and industrial sources. |
| Institutions using an IWI unit as defined in the regulations. | 922, 6111, 623, 7121 | Correctional institutions, primary and secondary schools, camps and national parks. |
| Any Federal government agency using an OSWI unit as defined in the regulations. | 928 | Department of Defense (labs, military bases, munition facilities). |
| Any college or | | Universities, colleges and community |

| | | |
|---|------------|--|
| university using an OSWI unit as defined in the regulations. | 6113, 6112 | colleges. |
| Any church or convent using an OSWI unit as defined in the regulations. | 8131 | Churches and convents. |
| Any civic or religious organization using an OSWI unit as defined in the regulations. | 8134 | Civic associations and fraternal associations. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that were regulated by the final OSWI rules.

B. How do I obtain a copy of this document and other related information?

Docket. The docket number for this action and the final OSWI new source performance standards (NSPS) (40 CFR part 60, subpart EEEE) and emission guidelines (40 CFR part 60, subpart FFFF) is Docket ID No. EPA-HQ-OAR-2003-0156.

Worldwide Web (WWW). In addition to being available in the docket, electronic copies of the final rule and the notice of reconsideration are available on the WWW through the Technology Transfer Network Web site (TTN). Following signature, EPA posted a copy of the final rule on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information

Section 129 of the Clean Air Act (CAA), entitled "Solid Waste Combustion," requires EPA to develop and adopt NSPS and emission guidelines for solid waste incineration units pursuant to CAA section 111. Section 111(b) of the CAA requires EPA to establish NSPS for new sources, and CAA section 111(d) requires EPA to

establish procedures for States to submit plans for implementing emission guidelines for existing sources. Congress specifically added section 129 to the CAA to address concerns about emissions from solid waste combustion units. Section 129(a)(1) of the CAA identifies five categories of solid waste incineration units:

- (1) Units with a capacity of greater than 250 tons per day (tpd) combusting municipal waste;
- (2) units with a capacity equal to or less than 250 tpd combusting municipal waste;
- (3) units combusting hospital, medical and infectious waste;
- (4) units combusting commercial or industrial waste; and
- (5) unspecified--other categories of solid waste incineration units.

EPA previously developed regulations for each of the listed categories of solid waste incineration units except for the undefined "other categories of solid waste incineration units." On December 9, 2004 (69 FR 71472), EPA proposed NSPS and emission guidelines for OSWI units. EPA received and considered public comments and promulgated final regulations for OSWI units on December 16, 2005.

Following the promulgation of the final OSWI rule, EPA received a petition for reconsideration from the Sierra Club. The purpose of this notice is to initiate a process for responding to one issue raised in the petition.

III. Actions We Are Taking

Today, we are granting reconsideration of and requesting comment on the sewage sludge incinerator issue, an issue raised in the petition for reconsideration. Generally, the Sierra Club contends that sewage sludge incinerators should be regulated as a type of OSWI under CAA section 129. Petitioner notes that the notice of proposal of the OSWI

rule did not mention sewage sludge incinerators, and claims that there was no opportunity to comment on EPA's decision not to regulate sewage sludge incinerators under OSWI. Moreover, they argue that EPA's rationale was advanced for the first time in the final rule and supporting documents.

EPA acknowledges that the OSWI proposal notice (69 FR 71472, December 9, 2004) did not specifically mention or request comment on whether sewage sludge incinerators should be regulated under the OSWI rules. EPA did publish notices on April 24, 2000, (65 FR 23459-01) and June 26, 2002, (67 FR 43113) in which EPA indicated that we had decided not to regulate sewage sludge incinerators as a category under CAA section 129 and listing it as an area source category to be regulated under CAA section 112(c)(3) and 112(k)(3). These notices; however, did not request public comment on whether sewage sludge incinerators should be regulated under section 129 or section 112. We have decided to grant reconsideration of this issue in the interest of ensuring full opportunity for comment. The issue is described in further detail below.

Our final decision on reconsideration for all the other issues raised by petitioners, and for which we are not granting reconsideration today, will be issued no later than the date by which we take final action on the sewage sludge incinerator issue discussed in this notice. We are requesting public comment only on the sewage sludge incinerator issue identified in this notice. We will not respond to any comments addressing other aspects of the OSWI rule or any related rulemakings.

IV. Discussion of Issue for Reconsideration

EPA acknowledges that earlier notices indicated that sewage sludge incinerators would be considered OSWI units (62 FR 1868, January 14, 1997; 63 FR 66087, December 1, 1998). However, as we discussed in the preamble to the final OSWI rules

and the response to comment document, later notices conveyed the fact we intended to regulate sewage sludge incinerators under Section 112 of the CAA, not under Section 129. As early as April 2000, EPA indicated that it no longer intended to regulate sewage sludge incinerators under CAA section 129:

The Agency has decided not to regulate sewage sludge incinerators as a category under Section 129 of the Clean Air Act.*.*.*. The Agency believes that sewage sludge generated by publicly-owned treatment works (POTWs) and combusted in SSI is "solid waste." However, this sludge is from a municipal source, and not from "commercial or industrial establishments or the general public." Therefore, SSIs that combust this sludge are not "solid waste incineration units" and Section 129 does not apply to them. Virtually all of the SSIs that would be candidates for regulation combust sludge from POTWs and, thus are not covered under Section 129.

Unified Agenda, (65 FR 23459-01, April 24, 2000).

EPA's intent to regulate these sources under CAA section 112 was also made clear when sewage sludge incinerators were included as an additional area source category listed pursuant to CAA sections 112(c)(3) and 112(k)(3)(B)(ii) (67 FR 43113, June 26, 2002). In addition, in previous regulatory activities, EPA was unable to identify any sewage sludge incinerators that were major sources (see 67 FR 6521, February 12, 2002). As discussed fully in the preamble to the final OSWI rules and the supporting response to comment document, the language of CAA section 129(h) makes clear the Congressional intent for CAA regulations under section 129 or section 112 to be mutually exclusive. Accordingly, source categories regulated by CAA section 112 may not also be subject to a CAA section 129 regulation.

However, we acknowledge that neither the April 2000 nor the June 2002 notice was a final regulatory action, and that no opportunity for public comment was available following either publication. Furthermore, as we did not discuss our intent to regulate sewage sludge incinerators under CAA section 112 in the proposed OSWI rules notice,

we accept that we have not offered opportunity for comment on this issue. Therefore, we are granting reconsideration of, and requesting comment on, the issue of excluding sewage sludge incinerators from regulation under CAA section 129 under the OSWI rules.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is “significant” and; therefore, subject to review by OMB and the requirements of the Executive Order. The Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this notice of reconsideration is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not proposing any new paperwork as part of today's notice. With this action, we are seeking public comments on an issue raised in a petition for reconsideration of the OSWI rule. The Office of Management and Budget has previously approved the information collection requirements contained in the existing regulations (40 CFR part 60, subparts EEEE and FFFF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0563 and EPA ICR No. 2163.02 for subpart EEEE, and OMB control number 2060-0562 and EPA ICR No. 2164.02 for subpart FFFF. A copy of the OMB approved Information Collection Requests (ICR), may be obtained from Susan Auby, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the final rules on small entities, small entity is defined as follows:

1. A small business that is an ultimate parent entity in the regulated industry that has a gross annual revenue less than \$6.0 million (this varies by industry category, ranging up to \$10.5 million for North American Industrial Classification System (NAICS) code 562213 (very small municipal waste combustors)), based on Small Business Administration's size standards;
2. A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or
3. A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's notice of reconsideration on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not propose any changes to the final OSWI rule and will not impose any requirements on small entities. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this reconsideration notice.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, EPA must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA’s regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this notice of reconsideration does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. We are not proposing to change the final OSWI rule. Thus, today's notice of reconsideration is not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA has determined that the notice of reconsideration contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the notice of reconsideration is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), 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 States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.”

This notice of reconsideration does not have Federalism implications. It will 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. The notice of reconsideration will not impose direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to today's notice of reconsideration.

F. Executive Order 13175: Consultation and 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.” “Policies that have Tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.”

This notice of reconsideration 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this notice of reconsideration.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045 (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, EPA 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 EPA considered.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This notice of reconsideration is not subject to Executive Order 13045 because it is not economically significant, and the original OSWI rules were based on technology performance and not on health and safety risks.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use

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

I. National Technology Transfer Advancement Act

CAA section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104-113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This notice of reconsideration does not involve technical standards. EPA's compliance with section 12(d) of the NTTAA has been addressed in the preamble of the underlying final OSWI rule. (70 FR 74891, December 16, 2005)

List of Subjects in 40 CFR Part 60

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

Dated:

Stephen L. Johnson,
Administrator