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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[R06-OAR-2004-NM-0002; FRL-7979-3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Bernalillo County, NM; Negative Declaration**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is approving three negative declarations submitted by the City of Albuquerque (Bernalillo County) certifying that there are no existing sources subject to the requirement of sections 111(d) and 129 of the Clean Air Act under their jurisdiction. These three negative declarations are for Sulfuric Acid Mist Emissions from Sulfuric Acid Plants, Fluoride Emissions from Phosphate Fertilizer Plants, and Total Reduced Sulfur Emissions from Kraft Pulp Mills. This is a direct final rule action without prior notice and comment because this action is deemed noncontroversial.

DATES: This direct final rule is effective on December 5, 2005 without further notice, unless EPA receives adverse comment by November 3, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R06-OAR-2004-NM-0002. All documents in the docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>, once in the system, select "quick search," then key in the appropriate RME Docket identification number. 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 Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for

public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665-7259, e-mail address boyce.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

I. What Is the Background for This Action?

Section 129 of the CAA requires us to develop new source performance standards (NSPS) and emission guidelines (EG) for the control of certain designated pollutants which includes these categories addressed in today's action: sulfuric acid mist emissions from sulfuric acid plants, fluoride emissions from phosphate fertilizer plants and total reduced sulfur emissions from kraft pulp mills. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines required by section 111(d) of the CAA.

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is "any air pollutant, emissions of which are subject to a standard of performance for new stationary sources but for which air quality criteria have not been issued, and which is not included on a list published under section 108(a) or

section 112(b)(1)(A) of the CAA." 40 CFR 60.21(a).

Section 129(b) of the CAA also requires us to develop an EG for the control of certain designated pollutants. Under section 129 of the CAA, the EG is not federally enforceable. Section 129(b)(2) requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become federally enforceable upon EPA approval.

The status of our approvals of State plans for designated facilities (often referred to as "111(d) plans" or "111(d)/129 plans") is given in separate subparts in 40 CFR part 62, "Approval and Promulgation of State Plans for Designated Facilities and Pollutants." The Federal plan requirements for the control of certain designated pollutants are also codified in separate subparts at the end of part 62.

Procedures and requirements for development and submission of state plans for controlling designated pollutants are given in 40 CFR part 60, "Standards of Performance for New Stationary Sources," subpart B, "Adoption and Submittal of State Plans for Designated Facilities" and in 40 CFR part 62, subpart A, "General Provisions." If a State does not have any existing sources of a designated pollutant located within its boundaries, 40 CFR 62.06 provides that the State may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the State from the requirements of 40 CFR part 60, subpart B, for that designated facility. In the event that a designated facility is located in a State after a negative declaration has been approved by EPA, 40 CFR 62.13 requires that the Federal plan for the designated facility, as required by section 129 of the CAA and 40 CFR 62.02(g), will automatically apply to the facility.

This **Federal Register** action approves negative declarations submitted by the City of Albuquerque (Bernalillo County), New Mexico for the following: sulfuric acid mist emissions from sulfuric acid plants, fluoride emissions from phosphate fertilizer plants and total reduced sulfur emissions from kraft pulp mills.

II. State Submittal

The Albuquerque Environmental Health Department submitted letters dated November 23, 2004, certifying that there are no existing sulfuric acid mist emissions from sulfuric acid plants, no existing fluoride emissions from phosphate fertilizer plants and no existing total reduced sulfur emissions from kraft pulp mills, under its

jurisdiction in the City of Albuquerque and Bernalillo County, New Mexico (excluding tribal lands). These negative declarations meet the requirements of 40 CFR 62.06.

III. Removal of 40 CFR 62.7881

We are removing the 40 CFR 62.7881, "Identification of sources—negative declaration" and the centered heading "Emissions From Existing Commercial and Industrial Solid Waste Incineration Units" immediately before § 62.7881, because this is a duplicate of the negative declaration in § 62.7890(b).

The EPA published in the **Federal Register** on January 10, 2005 (70 FR 1668), a document approving a negative declaration submitted by the City of Albuquerque (Bernalillo County), New Mexico, which certified that there are no existing commercial and industrial solid waste incineration units in Bernalillo County. The January 10, 2005, **Federal Register** action added a new undesignated center heading "Emissions From Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units" followed by a new § 62.7881, "Identification of sources—negative declaration." We later discovered that there was already a centered heading in Subpart GG entitled "Emissions From Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units" that had been added when we approved the CISWI negative declaration for the State of New Mexico in § 62.7890 on June 13, 2003 (68 FR 35299). On June 27, 2005 (70 FR 36849) we partially corrected the error by revising § 62.7890 to include the Bernalillo County CISWI negative declaration codified in § 62.7881. However the June 27, 2005, correction failed to remove § 62.7881 and the centered heading immediately before it. This **Federal Register** action corrects this oversight by removing § 62.7881 and the centered heading "Emissions From Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units" immediately before § 62.7881.

IV. Final Action

We are approving negative declarations submitted by the City of Albuquerque Environmental Health Department certifying that there are no existing sulfuric acid mist emissions from sulfuric acid plants, no existing fluoride emissions from phosphate fertilizer plants, and no existing total reduced sulfur emissions from kraft pulp mills, under its jurisdiction in the City of Albuquerque/Bernalillo County (excluding tribal lands).

If a designated facility is later found within any noted jurisdiction after publication of this **Federal Register** action, then the overlooked facility will become subject to the requirements of the Federal plan for that designated facility, including the compliance schedule. The Federal plan will no longer apply, if we subsequently receive and approve the 111(d)/129 plan from the jurisdiction with the overlooked facility.

Since the City of Albuquerque has not submitted a demonstration of authority over "Indian Country," (as defined in 18 U.S.C. 1151) we are limiting our approval to those areas that do not constitute Indian Country. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation. Any existing designated facility that may exist on "Indian Country" is subject to the Federal plan for the designated facility. See 40 CFR 62.13.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action 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 these rules should relevant adverse comments be filed. This action will be effective December 5, 2005 unless EPA receives adverse written comments by November 3, 2005.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent direct 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 December 5, 2005 and no further action will be taken on the proposed rule.

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 and local declarations that rules implementing certain federal standards are unnecessary. 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 state and local declarations that rules implementing certain federal standards are unnecessary, 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 state and local declarations that rules implementing certain federal standards are unnecessary, 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 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 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. 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. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 2005. Filing a petition for reconsideration by the Administrator of this direct 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 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 62

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

Dated: September 19, 2005

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR 62 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 GG—New Mexico

■ 2. Section 62.7851 is amended by adding a new paragraph (b) at the end to read as follows.

§ 62.7851 Identification of sources.

* * * * *

(b) Negative declaration for Bernalillo County.

Letter from the City of Albuquerque Air Pollution Control Division dated November 23, 2004, certifying that there

are no existing sulfuric acid plants subject to 40 CFR 60 subpart Cd in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board.

■ 3. Section 62.7853 is revised to read as follows:

§ 62.7853 Identification of plan—negative declaration.

(a) Letter from the New Mexico Environmental Improvement Division dated November 5, 1979 certifying that there are no existing kraft pulp mills in the State subject to part 60 subpart B of this chapter.

(b) Letters from the City of Albuquerque Air Pollution Control Division dated July 8, 1980, and November 23, 2004, certifying that there are no existing kraft pulp mills subject to 40 CFR 60 subpart B in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board.

■ 4. Section 62.7854 is amended by redesignating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 62.7854 Identification of plan—negative declaration.

(a) The State Department of Health and Social Services submitted on October 31, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the State subject to part 60 subpart B of this chapter.

(b) Letter from the City of Albuquerque Air Pollution Control Division dated November 23, 2004, certifying that there are no phosphate fertilizer plants subject to 40 CFR 60 subpart B in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board.

§ 62.7881 [Removed]

■ 5. Section 62.7881, "Identification of sources—negative declaration" is removed and the centered heading "Emissions From Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units" immediately before § 62.7881 is also removed.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R06-OAR-2005-OK-0004; FRL-7979-7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oklahoma; Plan for Controlling Emissions From Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on the "State Plan" submitted by the state of Oklahoma on June 29, 2005, to fulfill the requirement of sections 111(d)/129 of the Clean Air Act for commercial and industrial solid waste incineration (CISWI) units. The State Plan provides for the implementation and enforcement of the Emissions Guidelines, as promulgated by EPA December 1, 2000, applicable to existing CISWI units for which construction commenced on or before November 30, 1999. The State Plan establishes emission limits, monitoring, operating, and recordkeeping requirements for commercial and industrial solid waste incinerator (CISWI) units for which construction commenced on or before November 30, 1999.

DATES: This direct final rule is effective on December 5, 2005 without further notice, unless EPA receives adverse comment by November 3, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier by following the detailed instructions provided under the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2833, at (214) 665-7259 or boyce.kenneth@epa.gov.

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