

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

Harbors Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Revise § 165.T11-048 to read as follows:

#### § 165.T11-048 Security Zone; Waters adjacent to San Onofre, San Diego County, CA.

(a) *Location.* This security zone will encompass the waters within a one nautical mile seaward arc off San Onofre Nuclear Generating Station that is centered at the following coordinate: latitude 33°22.186' N, longitude 117°33.607' W. This security zone will not affect recreational activities within the surf zone or the beach.

(b) *Effective Dates.* This security zone will be in effect from 12:01 a.m. (PST) on March 21, 2003 to 11:59 p.m. (PDT) on May 21, 2003.

(c) *Waivers.* The COTP may waive any of the requirements of this rule for any person, vessel or class of vessel upon finding that circumstances are such that application of the security zone is unnecessary for national or port security.

(1) The following categories of persons are automatically exempt from requirement to depart the security zone but must comply with the provisions set forth below to operate in the security zone:

- (i) Recreational surfers;
- (ii) Hikers on the beach;
- (iii) Swimmers.

(2) Reports to the COTP and requests for waivers required by this section must be made by telephone or radio call to the following numbers or on the following channels: Marine Safety Office San Diego at (619) 683-6495 or VHF-FM channel 16.

(3) COTP reserves the authority to revoke any waivers granted in order to provide for the safety and security of boaters, the San Onofre Nuclear Generating Station or its personnel.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: March 21, 2003.

**Stephen P. Metruck,**

*Commander, Coast Guard, Captain of the Port, San Diego.*

[FR Doc. 03-8945 Filed 4-10-03; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[WV059-6027a; FRL-7479-9]

### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, State of West Virginia; Control of Emissions From Commercial and Industrial Solid Waste Incinerator Units

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

**ACTION:** Direct final rule.

**SUMMARY:** This action approves the commercial and industrial solid waste incinerator 111(d)/129 plan (the "plan") submitted to EPA on November 29, 2001 by the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ). The plan was submitted to fulfill requirements of the

Clean Air Act (CAA). The DAQ 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 final rule is effective on June 10, 2003 without further notice, unless EPA receives adverse written comment by May 12, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** James B. Topsale at (215) 814-2190, or by e-mail at [topsale.jim@epa.gov](mailto:topsale.jim@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

Sections 111(d) and 129 of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor 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 (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for CISWI units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity). On December 1, 2000 (65 FR 75338), EPA promulgated CISWI unit new source performance standards and EG, 40 CFR part 60, subparts CCCC and

DDDD, respectively. The designated facility to which the EG apply is each existing CISWI unit, as defined in subpart DDDD, that commenced construction on or before November 30, 1999.

Section 111(d) of the CAA requires that "designated" pollutants, regulated under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an EG document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as "maximum achievable control technology" (MACT). Section 129 requires EPA to promulgate a MACT based emission guidelines document for CISWI units, and then requires states to develop plans that implement the EG requirements. The CISWI EG under 40 CFR part 60, subpart DDDD, establish emission and operating requirements under the authority of the CAA, sections 111(d) and 129. These requirements must be incorporated into a State plan that is "at least as protective" as the EG, and is Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State plans are codified in 40 CFR part 60, subpart B.

## II. Review of West Virginia's CISWI Plan

EPA has reviewed the West Virginia CISWI plan in the context of the requirements of 40 CFR part 60, and subparts B and DDDD. A summary of the review is provided below.

### A. Identification of Enforceable State Mechanism(s) for Implementing the EG

On September 25, 2002, the DAQ submitted to EPA a copy of the plan's enforceable mechanism, regulation 45CSR18, "To Prevent and Control Emissions from Commercial and Industrial Solid Waste Incinerator Units." The regulation, which became effective on May 1, 2002, contains a compliance schedule that is not considered expeditious by EPA. As a result, the DAQ amended its plan to include a State Consent Order (CO) with a revised compliance schedule, which is applicable to the only known affected facility, E.I. Du Pont de Nemours and Company, Washington Works ("DuPont"), located in Wood County, West Virginia.

A second state regulation, 45CSR6, effective July 1, 2001, establishes the air pollution control requirements for air curtain incinerator (ACI) units. 45CSR6, section 4.8, stipulates the air pollution

control requirements for both new and existing units. Affected facilities constructed on or before November 30, 1999 are subject to the same requirements as new units under 40 CFR part 60, subpart CCCC. The DAQ has made a conscious decision to subject these sources, if any, to the same standards as new sources. However, the DAQ is not aware of any affected ACI units.

### B. Demonstration of Legal Authority

The DAQ states that it has sufficient statutory and regulatory authority to implement and enforce the plan. This is discussed in section VII of the plan narrative, a November 29, 2001 letter from DAQ Counsel, and the January 22, 2003 plan amendment. The DAQ cites the following references for legal authority: W.Va. Code section 22-5-1 *et seq.*, applicable state CISWI air quality regulations WV CSR18, and WV CSR6, section 4.8. The DAQ has the required legal authority based on EPA's review of the submitted legal opinions, statutes, and rules. This includes the West Virginia CISWI regulations and the Dupont Consent Order; each of which is considered as being at least as protective as the applicable Federal requirements for existing CISWI units.

### C. Inventory of CISWI Units in West Virginia Affected by the EG

As noted above, there is only one known affected facility, Dupont, located in Wood County, West Virginia. There is no known affected ACI unit in West Virginia.

### D. Inventory of Emissions From CISWI Units in West Virginia

The submitted plan contains an estimate of emissions from the Dupont facility. Emissions estimates are provided for organics (dioxins/furans), acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides), and metals (cadmium, lead, mercury).

### E. Emission Limitations for CISWI Units

The state CISWI regulations include emission limitation requirements that are at least as protective as those in the EG, subpart DDDD.

### F. Compliance Schedules

The state CISWI regulation, 45 CSR18, which became effective on May 1, 2002, contains a compliance schedule, as noted above, that is not considered expeditious by EPA. As a result, the DAQ amended its plan to include the Dupont Consent Order, which includes a revised compliance schedule that requires final compliance on or before September 30, 2003. EPA believes the

revised compliance schedule is an expeditious one. This determination is based on a review of air pollution control retrofit case studies of smaller hospital/medical infectious waste incinerator units, which are similar in size and design to CISWI units. The retrofit case studies are referenced in EPA's November 25, 2002 proposed Federal plan (67 FR 70640) for CISWI units. See the proposed Federal plan preamble, section IV. F, "How Did EPA Determine the Compliance Schedule?" The Dupont Consent Order was executed on January 17 and 23, 2003, by DAQ and Dupont representatives, respectively. If an unknown individual CISWI unit is discovered after EPA approval of this plan, the unit will be subject to the Federal plan.

### G. Testing, Monitoring, Recordkeeping, and Reporting Requirements

The state CISWI regulations include the applicable source compliance testing, monitoring, recordkeeping, and reporting requirements of the EG.

### H. A Record of the Public Hearing on the State Plan

Public hearings were held in Charleston, West Virginia, on November 8, 2001 for the original plan, and then again on January 6, 2003 for the amended plan. The DAQ provided evidence of complying with the public notice and other hearing requirements of subpart B.

### I. Provision for Annual State Progress Reports to EPA

The DAQ will submit to EPA on an annual basis a report which details the progress in the enforcement of the plan. The first progress report will be submitted to EPA within one year after approval of the state plan.

## III. Final Action

EPA is approving the West Virginia CISWI plan for controlling designated pollutants under sections 111(d) and 129 of the CAA. Therefore, EPA is amending 40 CFR part 62 to reflect this action. This approval is based on the rationale discussed above and in further detail in the technical support document (TSD) associated with this action.

There are a number of plan elements which are not relevant or germane to this plan approval action. Accordingly, EPA is taking no action on the following plan elements:

- (1) The provisions of 45CSR6 that regulate incinerators other than affected ACI units;
- (2) The compliance date provisions codified at 45CSR18, section 7.1; and

(3) The Dupont Consent Order, Section I, Findings of Facts, paragraphs 4 and 6, relating to greenhouse gas emissions, and state permit requirements not required under subpart DDDD. These three elements are not part of the EPA approved West Virginia CISWI plan.

As provided by 40 CFR 60.28(c), any revisions to the West Virginia plan, or the associated Dupont Consent Order, will not be considered part of the applicable plan until submitted by the DAQ 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.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply approves a pre-existing Federal requirement for state air pollution control agencies and existing CISWI units that are subject to the provisions of 40 CFR part 60, subparts B and DDDD, respectively. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective June 10, 2003 without further notice unless the Agency receives relevant adverse comments by May 12, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### IV. Statutory and Executive Order Reviews

##### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 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.*).

##### B. Submission to Congress and the Comptroller General

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the West Virginia CISWI plan, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: March 31, 2003.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 62, subpart XX, 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 XX—West Virginia**

■ 2. An undesignated center heading and sections 62.12155, 62.12156, and 62.12157 are added to subpart XX, to read as follows:

**Emissions From Existing Commercial Industrial Solid Waste Incinerators (CISWI) Units—Section 111(d)/129 Plans**

**§ 62.12155 Identification of plan.**

Section 111(d)/129 CISWI plan submitted on November 29, 2001, amended September 25, 2002, and January 22, 2003.

**§ 62.12156 Identification of sources.**

The plan applies to the Dupont CISWI unit located in Wood County, West Virginia.

**§ 62.12157 Effective date.**

The effective date of the plan is June 10, 2003.

[FR Doc. 03–8829 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 89**

[AMS–FRL–7482–1]

**Control of Emissions From New Nonroad Diesel Engines: Amendments to the Nonroad Engine Definition**

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is issuing a direct final rule revising the definition of nonroad engines to include all diesel-powered engines used in agricultural operations in the State of California that are certified by the engine maker to meet the applicable nonroad emission standards. Our rule will consider such engines as nonroad engines without regard to whether these engines are portable or transportable or how long these engines remain in one fixed location at a farm.

**DATES:** This direct final rule is effective on May 14, 2003, without further notice, unless we receive adverse comments by May 12, 2003, or receive a request for a public hearing by April 28, 2003. Should we receive any adverse comments on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments: All comments and materials relevant to today’s action should be submitted to Public Docket No. OAR–2003–0046 at the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Docket: Materials relevant to this rulemaking are contained in Public Docket Number OAR–2003–0046 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301

Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

**FOR FURTHER INFORMATION CONTACT:** Robert Larson, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Transportation and Regional Programs Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4277, fax (734) 214–4956, e-mail [larson.robert@epa.gov](mailto:larson.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Regulated Entities*

Entities potentially impacted by this change in regulation are farming interests in the State of California and those interests that manufacture or put into commerce new, compression-ignition nonroad engines, including:

Category	NAICS codes	Examples of potentially regulated entities
Manufacturing .....	333618	Manufacturers of new nonroad diesel engines.
Agriculture, Forestry, Fishing, Hunting .....	111XXX	Farms with crop production.
Agriculture, Forestry, Fishing, Hunting .....	112XXX	Farms with animal production.
Manufacturing .....	333111	Farm machinery and equipment.

*B. How Can I Get Copies of This Document?*

1. *Docket.* EPA has established an official public docket for this action under Air Docket ID No. OAR–2003–0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing. The official public docket is the collection of materials that

is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 Air Docket is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/edocket/> to submit or view public comments, access the index of the contents of the official

public docket, and access those documents in the public docket that are available electronically. Once in the system, select “search” and key in the appropriate docket identification number.

EPA is publishing this rule without a prior proposal. However, if we receive adverse comment on this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating that this rule is being withdrawn due to adverse comment. In the “Proposed Rules” section of today’s **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. This rule will be effective on