

organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that this rule will not have a significant impact on a substantial number of small entities.

#### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under Figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. 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.

#### Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### PART 165—[AMENDED]

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, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01-141 to read as follows:

**§ 165.T01-141 Safety Zone: Chelsea Street Bridge fender system repair, Chelsea River, Chelsea, MA.**

(a) *Location.* The following area is a safety zone: All waters of the Chelsea River 100 yards upstream and 100 yards downstream for the centerline of the Chelsea Street Bridge.

(b) *Effective date.* This section is effective between the hours of 9:00 p.m. and 5:00 a.m., Monday through Friday, from August 4, 1999 through August 31, 1999.

(c) *Regulations.* (1) Entry into or movement within this zone is prohibited unless authorized by the COTP Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 apply.

Dated: August 4, 1999.

**J.R. Whitehead,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 99-21789 Filed 8-20-99; 8:45 am]

BILLING CODE 4910-15-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 62

[PA118-4080a; FRL-6426-1]

#### Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Pennsylvania; Large Municipal Waste Combustors (MWCs)

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is granting conditional approval of the Commonwealth of Pennsylvania's municipal waste combustor (MWC) 111(d)/129 plan submitted by the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, on April 27, 1998, and as amended on September 8, 1998. This action is a conditional approval because the submitted plan does not contain an expeditious compliance schedule for the supplemental MWC emissions guidelines (EG) limits promulgated on August 25, 1997. The plan was submitted to fulfill requirements of the Clean Air Act (CAA), and the EG that are applicable to existing MWC facilities with an individual unit combustor capacity greater than 250 tons per day (TPD) of municipal solid waste. An existing MWC unit is one for which construction commenced on or before September 20, 1994.

**DATES:** This final rule is effective October 22, 1999 unless, on or before

September 22, 1999, adverse or critical comments are received. If adverse comment is received, EPA 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:** Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, 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 above EPA address and by contacting Krishnan Ramamurthy at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania 17105-8468.

#### FOR FURTHER INFORMATION CONTACT:

James B. Topsale at (215) 814-2190, or by e-mail at topsale.jim@epamail.gov. While information may be obtained via e-mail, any comments must be submitted, in writing, as indicated in the ADDRESSES section of this document.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 111(d) of the CAA requires that "designated" pollutants controlled 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. Also, Section 129 of the CAA specifically addresses solid waste combustion. It requires EPA to establish emission guidelines (EG) for MWC units and requires states to develop state plans for implementing the promulgated EG. The Part 60, Subpart Cb, EG for MWC units differ from other EG adopted in the past because the rule addresses both Sections 111(d) and 129 CAA requirements. Section 129 requirements override certain related aspects of Section 111(d).

On December 19, 1995, pursuant to Sections 111 and 129 of the CAA, EPA promulgated new source performance standards (NSPS) applicable to new MWCs (i.e., those for which construction was commenced after September 20, 1994) and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR Part 60, Subparts Eb and Cb, respectively. See 60 FR 65387 and 65415. Subparts Eb and Cb regulate MWC emissions. Emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases,

(hydrogen chloride, sulphur dioxide, and nitrogen oxides).

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated Subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day (TPD) of municipal solid waste (MSW), consistent with their opinion in *Davis County Solid Waste Management and Recovery District v. EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, Subparts Cb and Eb were amended to apply only to MWC units with the capacity to combust more than 250 TPD of MSW per unit (i.e., large MWC units). Also, the amended EG made minor revisions to the emissions limitations for four pollutants—hydrogen chloride, sulfur dioxide, oxides of nitrogen, and lead. The amended requirements of the NSPS and EG were published in the **Federal Register** on August 25, 1997. See 62 FR 45119 and 45124 for the EG amendments.

Section 129(b)(2) of the CAA requires States to submit to EPA for approval state plans that implement and enforce the EG. State Plans must be “at least as protective” as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR Part 60, Subpart B. EPA originally promulgated the Subpart B provisions on November 17, 1975. However, EPA amended Subpart B on December 19, 1995, to allow the source specific subparts developed under Section 129 to include requirements that supersede the general provisions in Subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. See 60 FR 65414.

As required by Section 129(b)(3) of the CAA, on November 12, 1998 EPA promulgated a Federal Implementation Plan (FIP) for large MWCs that commenced construction on or before September 20, 1994. The FIP is a set of emissions limits, compliance schedules, and other requirements that implement the MWC EG, as amended. The FIP is applicable to those large existing MWCs not specifically covered by an approved State plan under Sections 111(d) and 129 of the CAA. Also, it fills a Federal enforceability gap until State plans are approved and ensures that the MWC units stay on track to complete pollution control equipment retrofit schedules to meet the final statutory compliance date of December 19, 2000. However, the FIP no longer applies once a State plan is approved. Unlike a FIP for sources regulated under Sections 110 or 172, the

Section 111(d)/129 FIP imposes no statutory or other sanctions because of deficient or unapproved state plans. An approved State plan is a State plan that EPA has reviewed and approved based on the requirements of 40 CFR Part 60, Subpart B to implement and enforce 40 CFR Part 60, Subpart Cb. See 63 FR 63192.

As noted above, emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases, (hydrogen chloride, sulphur dioxide, and nitrogen oxides). These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead and mercury can bioaccumulate in the environment. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings. In addition, nitrogen oxides emissions can contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

## II. Review of the Commonwealth of Pennsylvania's MWC 111(d)/129 Plan

EPA has reviewed the Commonwealth of Pennsylvania's (the “Commonwealth”) 111(d)/129 plan for existing large MWC units in the context of the requirements of 40 CFR Part 60, and Subparts B and Cb, as amended. A summary of that review is provided below.

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

The regulation at 40 CFR 60.24(a) requires that the Section 111(d) 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.” EPA interprets the term “regulation” in 60.21(f) to include, in addition to a uniform state requirement or state rule, other mechanisms that are legally enforceable under state law. These other mechanisms could include, for example, an administrative order, a compliance order, or a state operating permit. A state may select these other enforceable mechanisms provided that the state demonstrates that it has the underlying authority and demonstrates that the selected mechanism is state enforceable. Additional guidance on this matter is found in EPA's “Municipal Waste Combustion: Summary of the Requirements for Section 111(d)/129 Plans for Implementing the Municipal Waste Combustion Emission Guidelines (EPA-456R-96-003, July 1996). On

December 27, 1997, the Pennsylvania Department of Environmental Protection (PADEP) adopted and incorporated by reference (27 Pa. B. 6809) the federal EG for MWCs. Subsequently, on April 27, 1998 the PADEP submitted to EPA its MWC 111(d)/129 plan. At the time of submittal, the PADEP recognized that the plan did not contain the required legally enforceable mechanism and compliance dates to implement the adopted EG and related plan. On September 8, 1998, the PADEP submitted five (5) MWC federally enforceable state operating permits (FESOPs) and one (1) MWC plan approval (i.e., construction permit) to serve as the legally enforceable mechanisms for implementing its 111(d)/129 plan. Under the terms and conditions of the submitted permits, the applicable EG requirements (Subpart Cb) are nonexpiring and continue in full force and effect until modified by the PADEP as a 111(d)/129 plan revision. The PADEP has met the requirements of 40 CFR 60.24(a) to have legally enforceable emission standards.

### B. Demonstration of Legal Authority

Title CFR 60.26 requires the 111(d) plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules. As noted above, a state may select the use of an enforceable mechanism, other than a regulation, to implement the plan, providing the state demonstrates its legal authority to enforce the mechanism. The 111(d)/129 plan submitted by PADEP includes a legal opinion that the PADEP has sufficient statutory and regulatory authority under its plan approval (under Pennsylvania regulations a plan approval is a permit to construct) and state operating permit programs to implement applicable requirements adopted under Sections 111(d) and 129 of the CAA. A copy of the Commonwealth's Air Pollution Control Act (35 P.S. 4001 et. seq.) and the applicable regulations in 25 Pa. Code Article III (relating to air resources) for the issuance of plan approvals, State operating permits, and Title V permits were also submitted with the 111(d)/129 plan. The PADEP has demonstrated that it has the legal authority to adopt and implement the emission standards and compliance schedules governing MWC emissions. This meets the requirements of 40 CFR 60.26.

### C. Inventory of MWCs in Pennsylvania Affected by the EG

Title 40 CFR 60.25(a) requires the 111(d) plan to include a complete source inventory of all existing large

MWCs (i.e., unit capacity greater than 250 TPD). The PADEP has identified six (6) facilities with individual MWC units having combustion capacities greater than 250 TPD. The Commonwealth of Pennsylvania inventory of existing large MWC units identifies the following MWC plants: (1) American Ref-Fuel of Delaware Valley, LP (formerly Delaware County Resource Recovery Facility); (2) the Harrisburg Materials, Energy, Recycling and Recovery Facility; (3) Lancaster County Solid Waste Management Authority; (4) Montenay Montgomery Limited Partnership; (5) Wheelabrator Falls, Inc., Bucks County; and (6) York County Resource Recovery Center.

#### *D. Inventory of Emissions From MWCs in Pennsylvania*

Title 40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG. Emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). For each MWC plant, the PADEP plan contains information on estimated MWC emission rates in terms of concentrations and mass emissions rates. The emissions rates data were obtained from source stack tests, continuous emission monitors, and utilization of EPA estimating procedures (AP-42). This meets the emission inventory requirements of 40 CFR 60.25(a).

#### *E. Emission Limitations for MWCs*

Title 40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG, except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met. However, this exception clause is superseded by Section 129(b)(2) of the CAA which requires that state plans be "at least as protective" as the EG. Title 40 CFR 60.33b of the EG contain the emissions limitation applicable to existing large MWCs. The FESOPs and plan approval submitted by PADEP reference applicable emissions limitations that are consistent and "at least as protective" as those in the EG, as amended.

#### *F. Compliance Schedules*

A state Section 111(d) plan must include a compliance schedule that owners and operators of affected MWCs must meet in complying with the requirements of the plan. Any proposed

revision to a compliance schedule is subject to the requirements of Subpart B, 60.28, Plan revisions by the State. Title 40 CFR 60.39b of the EG provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG requirements must be accomplished within 3 years of EPA plan approval, but in no case later than December 19, 2000. As a result of the *Davis County* litigation, noted above, compliance with supplemental EG emissions limits for lead, sulfur dioxide, hydrogen chloride, and nitrogen oxides could extend until August 26, 2002, or 3 years after EPA approval of the 111(d)/129 plan, whichever is earlier. However, Section 129(f)(2) of the CAA states that requirements promulgated pursuant to Sections 111 and 129 must be effective "as expeditiously as practicable after approval of a State plan."

The PADEP submittal requires compliance with the original 1995 EG emissions limits no later than December 19, 2000. However, PADEP's submittal requires compliance with the 1997 EG supplemental emissions limits later than August 26, 2002, or 3 years after EPA approval of the 111(d)/129 plan, whichever is earlier. In accordance with Section 129(f)(2) and the FIP promulgated for MWCs and its background information document, EPA has determined that the final compliance dates for the supplemental emissions limits, stipulated in the 111(d)/129 plan FESOPs and plan approval submitted by PADEP are not expeditious. See 63 FR 63196. The exception is the Harrisburg MWC facility permit which requires the permittee to cease operation no later than December 19, 2000. The same types of air pollution control technology serve as the basis for both the 1995 EG limits and the 1997 EG amended (supplemental) limits. That technology consists of spray dryer/fabric filter or electrostatic precipitator (ESP), carbon injection, and selective non-catalytic reduction (SNCR) for non-refractory combustor types. The plan submitted by PADEP contains no economic, technical, or other rationale to justify a compliance date extension until August 26, 2002 for the supplemental emissions limits.

Title 40 CFR 60.24(e)(1) provides that any compliance schedule, extending more than 12 months from the date required for plan submittal, shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site

construction or installation of emission control equipment, completion of on-site construction/ installation of emission control equipment, and final compliance. In addition, 40 CFR 60.39b requires that all large MWCs for which construction was commenced after June 26, 1987 must meet the mercury and dioxins/furans emissions limitations within one year following issuance of a revised construction or operating permit, if a permit modification is required, or within one year following EPA approval of the State plan, whichever is later. The MWC FESOPs and plan approval establish interim and final compliance schedules, as required by 40 CFR 60.24(e)(1), and 60.39b. However, as noted above, Section 129(f)(2) of the CAA stipulates that requirements promulgated pursuant to Sections 111 and 129 must be effective "as expeditiously as practicable after approval of a State plan."

Therefore, EPA is approving the FESOPs and plan approval interim and final compliance schedules submitted by PADEP for the original 1995 EG emissions limits, but is not approving PADEP's final compliance schedule (August 26, 2002, or 3 years after EPA approval of the state plan, whichever is earlier) for the 1997 supplemental emissions limits submitted by PADEP. See 62 FR 45116. EPA is granting conditional approval of the 111(d)/129 plan submitted on August 27, 1998 and as amended September 8, 1998 for MWCs. EPA will fully approve the final compliance schedule for the supplemental emissions limits after the PADEP submits amended FESOPs, or some other appropriate State enforceable mechanism, to require final compliance of the 1997 supplemental emission limits by no later than December 19, 2000. In the interim, the December 19, 2000 compliance date provisions for meeting the 1997 supplemental emission limits, imposed in the FIP promulgated on November 12, 1998, shall continue to apply to the sources in Pennsylvania.

#### *H. Testing, Monitoring, Record Keeping, and Reporting Requirements*

The EG at 40 CFR 60.38b and 60.39b cross reference applicable NSPS requirements (Subpart Eb) for MWCs relating to performance testing, monitoring, reporting and recordkeeping requirements that state plans must include. The FESOPs and plan approval submitted by PADEP meet the requirements of 40 CFR 60.38b and 60.39b.

### *I. A Record of Public Hearing on the State Plan*

Public hearings were held in Conshohocken and Harrisburg, PA on January 7 and 8, 1998, respectively. Notices for both hearings were published in the *PA Register* and two newspapers on December 6, 1997, and one newspaper on December 7, 1997, more than 30 days prior to the respective public hearing dates. The State plan includes the records from both of the noted public hearings. The PADEP certified on April 27, 1998 that the 40 CFR 60.23 public hearing requirements were met. The state provided evidence of complying with EPA public notice and other hearing requirements, including a record of public comments received. The 40 CFR 60.23 requirement for a public hearing on the 111(d)/129 plan has been met by the PADEP.

### *J. Provision for Annual State Progress Reports to EPA*

The PADEP will submit to EPA on an annual basis a report which details the progress in the enforcement of the MWC 111(d)/129 plan in accordance with 40 CFR 60.25. The first progress report will be submitted to EPA one year after the approval of Commonwealth's MWC 111(d)/129 plan by EPA.

### **III. Final Action**

Based upon the rationale discussed above and in further detail in the technical support document (TSD) associated with this action, EPA is conditionally approving the Commonwealth of Pennsylvania's MWC 111(d)/129 plan for the control of MWC emissions from affected facilities. With the explicit exception of the compliance schedule and date for meeting the 1997 supplemental emissions limits, the provisions of the FIP promulgated on November 12, 1998 no longer apply to affected facilities in the Commonwealth. The provisions of the November 12, 1998 FIP for MWCs promulgated on November 12, 1998 regarding the compliance schedule and date for meeting the 1997 supplemental emissions limits continue to apply to affected facilities in the Commonwealth. EPA's approval of the Commonwealth's 111(d)/129 plan is conditioned upon the submittal of a 111(d)/129 plan revision that contains an enforceable mechanism(s) that requires affected facilities to be in full compliance with all supplemental emissions limits (lead, sulfur dioxide, hydrogen chloride, and nitrogen oxides) no later than December 19, 2000. That submittal must be made by the Commonwealth to EPA by no

later than August 22, 2000. If Pennsylvania fails to meet the condition by the due date indicated above, EPA will notify the PADEP by letter that the condition of this plan approval has not been met, that the conditional approval of its 111(d)/129 plan for MWCs has converted to a disapproval, and that the entire FIP for MWCs promulgated on November 12, 1998 (63 FR 63191) has been reinstated in the Commonwealth. Subsequently, a notice will be published in the **Federal Register** announcing that the Commonwealth's MWC 111(d)/129 whole plan has been disapproved and the entire FIP promulgated on November 12, 1998 will be reinstated. Upon fulfillment of the condition by the due date specified, EPA's conditional approval shall be converted to a full approval and the provisions of the FIP for MWCs promulgated on November 12, 1998 (63 FR 63191) relating to the compliance schedule for supplemental emissions limits shall no longer apply in the Commonwealth.

The 1995 original and 1997 supplemental emissions limitations and compliance schedule requirements are not applicable to the Harrisburg MWC facility provided it ceases operation no later than December 19, 2000, as stipulated under the terms and conditions of its FESOP, and remains shut down.

The submitted FESOPs and plan approval include PADEP new source review and other requirements that are outside the scope of the 111(d)/129 plan requirements. EPA is taking no action on those PADEP requirements that are outside the scope of the EG and 111(d)/129 plan requirements. As provided by 40 CFR 60.28(c), any revisions to the Commonwealth's MWC 111(d)/129 plan or associated regulations, FESOPs, and plan approval will not be considered part of the applicable plan until submitted by the PADEP 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, requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment 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 the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective October 22, 1999 without further notice unless the Agency receives relevant adverse comments by September 22, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect, and that the MWC FIP requirements remain in effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 22, 1999 and no further action will be taken on the proposed rule.

### **IV. Administrative Requirements**

#### *A. Executive Orders 12866*

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

#### *B. Executive Order 12875*

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

#### *C. Executive Order 13045*

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health

or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

#### *D. Executive Order 13084*

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Pursuant to Section 605(b) of the RFA,

I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under Federal, State, or Local law and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

#### *F. Unfunded Mandates*

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *G. 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).

#### *H. 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 October 22, 1999. 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 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, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirement.

Dated: August 11, 1999.

**W. Michael McCabe,**  
*Regional Administrator, Region III.*

40 CFR Part 62, Subpart NN, is amended as follows:

#### **Part 62—[AMENDED]**

1. The authority citation for Part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

#### **Subpart NN—Pennsylvania**

2. A new center heading and §§ 62.9640, 62.9641, and 62.9642 are added to read as follows:

#### **Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With a Unit Capacity Greater Than 250 Tons per Day**

##### **§ 62.9640 Identification of plan.**

The 111(d)/129 plan for municipal waste combustors (MWC) with a unit capacity greater than 250 tons per day (TPD) and the associated Pennsylvania Department of Environmental Protection five (5) MWC federally enforceable state operating permits (FESOPs) and one (1) MWC plan approval (i.e., construction permit) that were submitted to EPA on April 27, 1998 and as amended on September 8, 1998. The 111(d)/129 plan is conditionally approved pending receipt, within one year of EPA plan approval, of an enforceable mechanism that requires affected facilities to be in compliance no later than December 19, 2000, with the 1997 MWC emissions

guidelines' supplemental emissions limits.

**§ 62.9641 Identification of sources.**

The plan applies to all existing MWC facilities with a MWC unit capacity greater than 250 TPD of municipal solid waste.

**§ 62.9642 Effective date.**

The effective date of the 111(d)/129 plan is October 22, 1999.

[FR Doc. 99-21658 Filed 8-20-99; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300907; FRL-6096-3]

RIN 2070-AB78

### Buprofezin; Extension of Tolerance for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends a time-limited tolerance for residues of the insecticide buprofezin and its metabolites in or on tomatoes at 0.7 part per million (ppm) and tomato paste at 1.0 ppm for an additional 2-year period, and citrus fruit at 2.0 ppm; dried citrus pulp at 10 ppm; cotton seed at 1.0 ppm; cotton gin byproducts at 20 ppm; milk at 0.03 ppm; and cattle, sheep, hogs, goats, and horse meat and fat at 0.02 ppm; and meat byproducts at 0.5 ppm for an additional 29-month period. These tolerances will expire and are revoked on December 31, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on tomatoes, citrus, and cotton. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

**DATES:** This regulation becomes effective August 23, 1999. Objections and requests for hearings must be received by EPA, on or before October 22, 1999.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number [OPP-300907], must be submitted to: Hearing Clerk

(1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300907], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP-300907]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9367, ertman.andrew@epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a final rule, published in the **Federal Register** of August 5, 1998 (63 FR 41720)(FRL-6018-5), which announced that on its own initiative under section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104-170) it established a time-limited tolerance for the residues of buprofezin and its metabolites in or on tomatoes at 0.7 ppm and tomato paste at 1.0 ppm, with

an expiration date of December 31, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA issued a final rule, published in the **Federal Register** of July 30, 1997 (63 FR 40735)(FRL-5732-1), which announced that on its own initiative under section 408(l)(6), as amended by FQPA (Public Law 104-170) it established time-limited tolerances for the residues of buprofezin and its metabolites in or on citrus fruit at 2.0 ppm; dried citrus pulp at 10 ppm; cotton seed at 1.0 ppm; cotton gin byproducts at 20 ppm; milk at 0.03 ppm; and cattle, sheep, hogs, goats, and horse meat and fat at 0.02 ppm; and meat byproducts at 0.5 ppm; with an expiration date of July 31, 1998. EPA subsequently published a final rule in the **Federal Register** of June 19, 1998 (63 FR 33583) (FRL-5794-7), extending these tolerances to expire on July 31, 1999. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of buprofezin on tomatoes for this year's growing season due to the continuation of the emergency condition with silverleaf whiteflies. Silverleaf whitefly is a key pest on tomatoes from the seedling stage through harvest in Florida year-round in all production regions. High populations feeding on plants cause irregular ripening, reducing fruit value. Whiteflies may also transmit tomato mottle geminivirus (TMV) and tomato yellow leaf curl virus (TYLCV) during feeding. TYLCV was discovered in tomatoes in Florida in the summer of 1997 and is, therefore, a new pest-related problem. Because whitefly is such a good vector of the virus and the virus is so prevalent, only minimal infestations of whitefly are required to transmit TYLCV to tomato plants. After having reviewed the submission, EPA concurs that emergency conditions