

State plan, small MWC units within the State of New York's jurisdiction will be subject to New York's State plan as of the effective date of this action and the Federal plan will no longer apply.

II. Background

A. What Is a State Plan?

Section 111 of the CAA, "Standards of Performance for New Stationary Sources," authorizes EPA to set air emissions standards for certain categories of sources. These standards are called New Source Performance Standards (NSPS). When a NSPS is promulgated for new sources, section 111(d) also requires that EPA publish an EG applicable to the control of the same pollutant from existing (or designated) facilities. States with designated facilities must then develop a State plan to adopt the EG into the State's body of regulations. States must also include in their State plan other requirements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State plans.

B. What Is a Small MWC State Plan?

A small MWC State plan is a State plan, as described above, that controls air pollutant emissions from existing small incinerators with a combustion design capacity of 35 to 250 tons per day of municipal solid waste or refuse derived fuel that commenced construction on or before August 30, 1999.

C. Why Is EPA Requiring New York To Submit a Small MWC State Plan?

When EPA developed the NSPS for small MWCs, we simultaneously developed the EG to control air emissions from existing small MWCs (see 62 FR 76378, December 6, 2000). Under section 129 of the CAA, the EG is not federally enforceable; therefore, section 129 of the CAA also requires states to submit to EPA for approval State plans that implement and enforce the EG. These State plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA.

The procedures for adopting and submitting State plans are located in 40 CFR part 60, subpart B. If a state fails to have an approvable plan in place by December 6, 2001, the EPA is required to promulgate a Federal plan to establish requirements for those sources not under an EPA-approved State plan. Even though EPA promulgated the Federal plan on January 31, 2003, New York's State plan is approvable since it was deemed at least as protective as the

standards set in the EG. New York has developed and submitted a State plan, as required by section 111(d) of the CAA, to gain Federal approval to implement and enforce the small MWC EG.

D. What Are the Requirements for a Small MWC State Plan?

A section 111(d) State plan submittal must meet the requirements of 40 CFR part 60, subpart B, §§ 60.23 through 60.26, and 40 CFR part 60, subpart BBBB (see 62 FR 76378, December 6, 2000). Subpart B contains the procedures for the adoption and submittal of State plans. This subpart addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements.

EPA promulgated the EG as 40 CFR part 60, subpart BBBB on December 6, 2000. Subpart BBBB contains the technical requirements for existing small MWCs and applies to units that commenced construction on or before August 30, 1999. A state will generally address the small MWC technical requirements by adopting by reference subpart BBBB. The section 111(d) state plan is required to be submitted within one year of the EG promulgation date, *i.e.* by December 6, 2001. Prior to submittal to EPA, the State must make available to the public the State plan and provide opportunity for public comment.

III. New York's State Plan

A. What Is Contained in the New York State Plan?

On October 22, 2002, the New York State Department of Environmental Conservation (NYSDEC) submitted its section 111(d) State plan for implementing EPA's EG for existing small MWC units located in New York State.

New York has adopted by reference the requirements of the EG in Part 200 of Title 6 of the New York Code of Rules and Regulations (6NYCRR) of the State of New York, entitled "General Provisions" and in Subpart 219-1 of 6NYCRR entitled "Incineration-General Provisions" and Subpart 219-8 of 6NYCRR entitled "Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or before August 30, 1999." These amended regulations became effective on October 18, 2002. By incorporating the EG by reference into Part 200, NYSDEC has the authority to include them as applicable within

Subpart 219-8, which addresses the applicability of the various Part 219 (New York's incineration rules) requirements. Part 219 now includes the new requirements incorporated from the EG, as well as the necessary compliance schedules and necessary definition changes required for the transformation of emission guidelines into a State plan. As a result, the Part 219 requirements are enforceable by New York and become federally enforceable once the State plan is approved by EPA.

New York's State plan contains the following:

- (1) A demonstration of the State's legal authority to implement the section 111(d) State plan;
- (2) State rules adopted into 6NYCRR Parts 200 and 219 as the mechanism for implementing and enforcing the State plan;
- (3) An inventory of three known small MWC facilities, including eight small MWC units, along with an inventory of their air pollutant emissions;
- (4) Emission limits that are as protective as the EG;
- (5) Enforceable compliance schedules incorporated into Part 219, New York's incineration rule. For Class I Units, compliance dates vary from three years from the effective date of EPA's approval of New York's State plan to not later than December 6, 2005, whichever is earlier. For Class II Units, compliance dates vary from one year from the effective date of EPA's approval of New York's State plan to not later than December 6, 2005, whichever is earlier.
- (6) Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
- (7) Records of the public hearing on the State plan; and,
- (8) Provisions for annual state progress reports to EPA on implementation of the State plan.

B. What Approval Criteria Did We Use To Evaluate New York's State Plan?

EPA reviewed New York's State plan for approval against the following criteria: 40 CFR 60.23 through 60.26, "Subpart B—Adoption and Submittal of State Plans for Designated Facilities;" and 40 CFR 60.1600 through 60.1940, "Subpart BBBB—Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999."

IV. EPA's Rulemaking Action

The EPA has determined that New York's State plan meets all the applicable approval criteria and, therefore, EPA is approving, through direct final rulemaking action, New