

in Indian Country. When we developed our New Source Performance Standard (NSPS) for CISWIs, we also developed Emissions Guidelines (EG) to control air emissions from older CISWIs as we were required to do by Section 129(a) of the CAA (42 U.S.C. Section 7429(a)). (See 65 FR 75337–75376, December 1, 2000). North Dakota developed a State Plan, as required by section 111(d) of the CAA (42 U.S.C. Section 7411(d)), to adopt the EG into their body of regulations, and we are acting today to approve the state plan as meeting all requirements of section 111(d) and 129 of the CAA and EPA regulations governing the adoption and approval of state plans for designated facilities (40 CFR part 60, subpart B). We are also approving negative declarations submitted by Colorado's Department of Public Health and Environment on May 6, 2002; Montana's Department of Environmental Quality on January 28, 2002; South Dakota's Department of Environment and Natural Resources on February 28, 2002; Utah's Department of Environmental Quality on April 23, 2002; Wyoming's Department of Environmental Quality on December 16, 2002. The EPA does not require States to develop plans or regulations to control emissions from sources for which there are none present in the State (40 CFR 62.06).

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective November 17, 2003, unless by October 17, 2003, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective November 17, 2003.

III. Why Do We Need To Regulate CISWI Emissions?

When burned, commercial and industrial solid waste emit various air pollutants, including organics (dioxins/furans), carbon monoxide, metals (lead, cadmium, and mercury), acid gases (hydrogen chloride, sulfur dioxide, and

nitrogen oxides) and particulate matter (including opacity). Mercury is highly toxic and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through the ingestion of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

IV. What Is a State Plan?

Section 111(d) of the Act requires that pollutants, other than criteria pollutants, controlled under the NSPS must also be controlled at older sources in the same source category. Once an NSPS is promulgated for a non-criteria pollutant, we then publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into their body of regulations. States must also include in this State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate the ability to implement and enforce it.

V. What Does the North Dakota State Plan Contain?

North Dakota adopted the Federal NSPS and EG by reference into its State regulations at NDAC 33–15–12–02. The North Dakota State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. Incorporation by reference of the model rule (40 CFR 60.2575 through 60.2875) including tables 1 through 5 into NDAC 33–15–12 as the mechanism for implementing the emission guidelines. Section 23–25–10 of the North Dakota Century Code gives the North Dakota Department of Health the authority to enforce any properly adopted rule.
3. An inventory of approximately 9 known designated facilities in operation, along with estimates of their toxic air emissions and 11 known designated facilities that are shut down yet still capable of operating. The North Dakota Department of Health anticipates that nearly all of the active CISWIs will shut down rather than attempt to comply with this plan. The air curtain incinerator units operated by the City of Fargo and Markwed Excavating, and perhaps a few more units, will remain operational. Any units currently shut down are expected to remain shut down.
4. Emission limits that are as protective as the EG;
5. A compliance date of 3 years after Environmental Protection Agency approval of the state plan but not later than December 1, 2005.
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing; and,
8. Provisions for progress reports to EPA.

The North Dakota State Plan was reviewed for approval with respect to the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities*; and, 40 CFR 60.2500 through 60.2875, *Subpart DDDD—Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999*.

VI. Is My CISWI Subject To These Regulations?

The EG for existing CISWIs affect any CISWI built on or before November 30, 1999. CISWI unit means any combustion device that combusts commercial and industrial waste as