

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 62**

[EPA-R05-OAR-2013-0678; FRL-9903-33-Region-5]

**Direct Final Approval of Hospital/Medical/Infectious Waste Incinerator Negative Declaration for Designated Facilities and Pollutants: Michigan and Wisconsin****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is notifying the public that we have received negative declarations from Michigan and Wisconsin regarding Hospital/Medical/Infectious Waste Incinerator (HMIWI) units within those states. The Michigan Department of Environmental Quality (MDEQ) submitted its negative declaration on August 9, 2013. The Wisconsin Department of Natural Resources (WDNR) submitted its negative declaration on July 15, 2013. Each state notified EPA in its negative declaration letter that there are no HMIWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (Act) currently operating in its state.

**DATES:** This direct final rule will be effective February 3, 2014, unless EPA receives adverse comments by January 2, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2013-0678, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email*: [nash.carlton@epa.gov](mailto:nash.carlton@epa.gov).
3. *Fax*: (312) 692-2543.
4. *Mail*: Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official

hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2013-0678. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353-1151 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sieffert, Environmental Engineer, Environmental Protection

Agency, Region 5, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604, (312) 353-1151, [sieffert.margaret@epa.gov](mailto:sieffert.margaret@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. Final EPA Action
- III. Statutory and Executive Order Reviews

**I. Background**

Section 111(d) of the Act requires that EPA develop regulations providing that states must submit to EPA plans establishing standards of performance for certain existing sources of pollutants when a standard of performance would apply to the existing source if it were a new source, and if the pollutants are noncriteria pollutants (i.e., pollutants for which there is no national ambient air quality standards) and are not on a list published under section 108 of the Act or emitted from a source category regulated under section 112 of the Act. Section 129 of the Act and 40 CFR part 60, Subpart B apply the section 111(d) requirements to existing solid waste combustors, including HMIWIs, and provide that EPA should include, as part of the performance standards, emissions guidelines (EGs) that include the plan elements required by section 129.

EPA promulgated new source performance standards and EGs for HWIMIs on September 15, 1997 and December 19, 1995, respectively (62 FR 48382, 60 FR 65414), and amended them most recently on April 4, 2011 (76 FR 18407). The standards and EGs are codified at 40 CFR part 60, subparts Ec and Ce, respectively. Thus, states were required to develop plans for existing HWIMIs, pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B.

A HMIWI unit is defined in 40 CFR 60.51c as any device that combusts any amount of hospital waste and/or medical/infectious waste. The designated facilities to which the EGs apply are existing HMIWI units that: (1) commenced construction on or before June 20, 1996, or for which a modification was commenced on or before March 16, 1998; or (2) commenced construction after June 20, 1996 but no later than December 1, 2008, or for which a modification commenced after March 16, 1998 but no later than April 6, 2010, with limited exceptions as provided in paragraphs 40 CFR 60.32e(b) through (h).

40 CFR part 60, subpart B contains general provisions applicable to the

adoption and submittal of state plans for subject facilities under sections 111(d) and 129 (111(d)/129 plan). 40 CFR part 62, subpart A provides the procedural framework for the submission of the plans. However, 40 CFR 60.23(b) and 62.06 provide that, if there are no existing sources of the designated pollutant in a state, the state may submit a letter of certification to that effect (i.e., a negative declaration) in lieu of a plan. The negative declaration exempts the state from the provisions of 40 CFR part 60, subpart B that require the submittal of a 111(d)/129 plan.

On August 9, 2013, MDEQ submitted its HMIWI negative declaration, in which it certifies that there are no HWIMI units currently operating in Michigan. EPA received the negative declaration on August 16, 2013. On July 15, 2013, WDNR submitted its HMIWI negative declaration, in which it certifies that there are no HWIMI units currently operating in Wisconsin. EPA received WDNR's negative declaration on July 23, 2013.

## II. Final EPA Action

In this direct final action, EPA is providing the public with notice of, and amending 40 CFR part 62 to reflect, EPA's receipt of the Michigan and Wisconsin negative declarations. EPA is publishing this rule without prior proposal because EPA views this as a non-controversial 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 amend 40 CFR part 62 to reflect receipt of the negative declarations in the event adverse written comments are filed. This rule will be effective February 3, 2014 without further notice unless we receive relevant adverse written comments by January 2, 2014. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. EPA then will address all public comments in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on any part of this action 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. If we do not receive any comments, this action will be effective February 3, 2014.

## III. 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 notifies the public of EPA receipt of a negative declaration from an air pollution control agency without any existing HMIWI units in its state. This action imposes no requirements. 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 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 recognizes the negative declaration for existing HMIWI units from the MDEQ and WDNR, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

With regard to negative declarations for designated facilities received by EPA from states, EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR Part 62 accordingly. 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 section 111(d)/129 plan negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 negative declaration submission, to use VCS in place of a section 111(d)/129 negative declaration that otherwise satisfies the provisions of the 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 2014. 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 Michigan's and Wisconsin's section 111(d)/129 negative declarations for HMIWI sources 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, Air pollution control, Administrative practice and procedure, Hospital/medical/infectious waste incinerators, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 8, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS**

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

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. Subpart X is amended by adding new § 62.5610 and a new undesignated center heading to read as follows:

**CONTROL OF AIR EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS**

**§ 62.5610 Identification of plan—negative declaration.**

On August 9, 2013, the Michigan Department of Environmental Quality submitted a negative declaration letter to EPA certifying that there are no existing Hospital/Medical/Infectious Waste Incinerators (HMIWI) units in the State of Michigan subject to the emissions guidelines at 40 CFR part 60, subpart Ce.

■ 3. Subpart YY is amended by adding new § 62.12320 and a new undesignated center heading to read as follows:

**CONTROL OF AIR EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS**

**§ 62.12320 Identification of plan—negative declaration.**

On July 15, 2013, the Wisconsin Department of Natural Resources submitted a negative declaration letter to EPA certifying that there are no existing Hospital/Medical/Infectious Waste Incinerators (HMIWI) units in the State of Wisconsin subject to the emissions guidelines at 40 CFR part 60, subpart Ce.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 100217097–1757–02]

RIN 0648–XC981

**Reef Fish Fishery of the Gulf of Mexico; 2013 Accountability Measure and Closure for Hogfish in the Gulf of Mexico**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for the commercial and recreational sectors for hogfish in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2013 fishing year through this temporary final rule. Based on the commercial and recreational landings, NMFS determined that the stock (commercial and recreational) annual catch limit (ACL) for Gulf hogfish has been reached. Therefore, NMFS closes the commercial and recreational sectors for hogfish in the Gulf EEZ at 12:01 a.m., local time, December 2, 2013, until January 1, 2014. This closure is necessary to protect the Gulf hogfish resource.

**DATES:** This rule is effective 12:01 a.m., local time on December 2, 2013, until 12:01 a.m., local time on January 1, 2014, unless changed by subsequent notification in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, Southeast Regional Office, telephone 727–824–5305, email [rich.malinowski@noaa.gov](mailto:rich.malinowski@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf, which includes hogfish, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP). The Reef Fish FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On December 29, 2011, NMFS published the final rule for the Generic Annual Catch Limits/Accountability Measures Amendment to the Red Drum, Reef Fish Resources, Shrimp, and Coral and Coral Reefs Fishery Management Plans for the Gulf of Mexico (Generic

ACL Amendment; 76 FR 82044) as prepared and submitted by the Council. This final rule, in part, implemented changes to the Reef Fish FMP, including setting a stock ACL and implementing AMs for Gulf hogfish.

The Gulf hogfish stock ACL is 208,000 lb (94,347 kg), round weight, as specified in 50 CFR 622.41(p).

In accordance with regulations at 50 CFR 622.41(p), if the sum of commercial and recreational landings exceed the stock ACL in a fishing year, then if the stock ACL is again reached or projected to be reached in the following fishing year, NMFS is required to close the commercial and recreational sectors for hogfish for the remainder of that following fishing year. NMFS determined that the stock ACL for Gulf hogfish was exceeded in the 2012 fishing year. Based on 2013 commercial and recreational landings, NMFS has determined that the stock ACL of 208,000 lb (94,347 kg), round weight, for Gulf hogfish has been reached for the 2013 fishing year. Therefore, NMFS implements the in-season AM and the commercial and recreational harvest of Gulf hogfish will close at 12:01 a.m., local time on December 2, 2013, until 12:01 a.m., local time on January 1, 2014.

**Classification**

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf hogfish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(p) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule because such procedures are unnecessary. The AMs state that NMFS will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for Gulf hogfish for the remainder of the fishing year if landings reach or are projected to reach the stock ACL specified in 50 CFR 622.41(p) in the year following an overage of the hogfish stock ACL. All that remains is to notify the public of the reduced fishing season