

FACT SHEET

Request for Delegation of Authority to Implement and Enforce the Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction on or Before November 30, 1999 (40 CFR 62 Subpart III)

The U.S. Environmental Protection Agency (EPA) promulgated Emission Guidelines (EGs) for existing Commercial and Industrial Solid Waste Incineration (CISWI) Units under 40 CFR Part 60 Subpart DDDD. The Federal Plan containing these EGs for SSI units is codified in 40 CFR Part 62 Subpart III. The Southwest Clean Air Agency (SWCAA) requests delegation of authority to implement and enforce the SSI Federal Plan in accordance with 40 CFR § 62.14520.

Background

The Federal Clean Air Act (FCAA) requires the EPA to develop and adopt standards for solid waste incineration units pursuant to FCAA Sections 111 and 129. On August 7, 2013, the EPA promulgated New Source Performance Standards (NSPS) for "new" CISWI units and EGs for "existing" CISWI units located at facilities designed to incinerate wastes which are codified in 40 CFR Part 60 Subparts CCCC and DDDD, respectively. FCAA Sections 111(b) and 129(a) address emissions from new units (i.e., NSPS) and FCAA Sections 111(d) and 129(b) address emissions from existing units (i.e., EGs).

The NSPS are federal regulations directly enforceable upon CISWI units, and, under FCAA Section 129(f)(1), become effective six (6) months after promulgation. Unlike the NSPS, the EGs provide direction for developing State Plans; the EGs are not themselves directly enforceable. The EGs are implemented under an EPA-approved State or Tribal Plan or EPA-adopted Federal Plan that implements and enforces them once the state, tribal, or Federal Plan has become effective. Note that under 40 CFR § 60.2, "state" includes local agencies, such as SWCAA.

FCAA Section 129(b)(2) and 40 CFR Part 60 Subpart DDDD, direct States with existing CISWI unit(s) subject to the EGs to submit State Plans to the EPA that implement and enforce the EGs. There are no identified CISWI units in SWCAA's jurisdiction, however, facilities may become subject due to process changes at existing units or existing units may be discovered in the future. 40 CFR § 60.2541, provides an option for a State to request delegation of the Federal Plan for existing CISWI units rather than submit a State plan. The deadlines for states to submit State Plans to the EPA for review was December 3, 2001 and August 7, 2013, depending on the construction date of the affected units; a State Plan was not submitted by either of these dates. FCAA Section 111, FCAA Section 129(b)(3), and 40 CFR §§ 60.27(c) and (d) require the EPA to develop, implement, and enforce a Federal Plan for CISWI units in any state without an approvable State Plan within two (2) years after promulgation of the EGs. The Federal Plan for SSI units is codified in 40 CFR Part 62 Subpart III, effective October 3, 2003.

40 CFR Part 60 Subpart CCCC (new CISWI units) was incorporated by reference in SWCAA 400-115 on March 21, 2020 and SWCAA received delegation, under FCAA Section 111(c)(1), from EPA Region 10 on June 10, 2020.

SWCAA intends to adopt and implement the Federal Plan for CISWI units if it becomes applicable. SWCAA requests delegation of authority to implement and enforce the Federal SSI plan in

accordance with 40 CFR § 62.14520. 40 CFR Part 62 Subpart III (Federal Plan for existing CISWI units) is proposed to be incorporated by reference in SWCAA 400-050(5)(f) and is expected to be adopted by SWCAA's Board on June 3, 2021.

Demonstration of Adequate Resources and Legal Authority [40 CFR § 62.2541(a)(1)]

SWCAA currently has delegation for numerous NSPS and NESHAPs under Parts 60, 61, and 63. SWCAA has already demonstrated that it has adequate resources and authority to administer and enforce the NSPS and NESHAPs for which it already has delegation.

SWCAA is the implementing agency and its personnel will be assigned to implement and enforce the requirements of 40 CFR Part 62 Subpart III in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties in Washington State. SWCAA has 15 employees, including administrators, program managers, chemical engineers, environmental engineers, air quality specialists, inspectors, and clerical staff. Work duties of the technical staff include construction and operation permitting, inspection, compliance, and enforcement with experience in process auditing, field inspections, analytical techniques, source testing, environmental monitoring, data analysis, and asbestos remediation.

Regarding 40 CFR Part 62 Subpart III, there are no known CISWI units currently operating at facilities within the SWCAA jurisdiction. Should the Federal Plan become applicable to a CISWI unit at a facility, the facility will be assigned to a SWCAA employee who will be primarily responsible for inspection and reviewing facility compliance with applicable rules. Additional employees provide support through writing construction and operating permits, aiding in the review of source tests, and program administration, as needed.

Pursuant to 40 CFR § 60.2541(a)(1), SWCAA must also demonstrate that it has the legal authority to administer and enforce the Federal Plan. According to 40 CFR § 60.26(a), the demonstration must include the authority to (1) adopt emission standards and compliance schedules applicable to designated facilities; (2) enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief; (3) obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities; (4) require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to SWCAA on the nature and amounts of emissions from such facilities; and (5) make such data available to the public as reported and as correlated with applicable emission standards. Note that, as required under 40 CFR § 62.14830, each CISWI unit is required to obtain a Title V Air Operating Permit and, thus, will also be subject to the requirements under that program.

A legal opinion demonstrating SWCAA's authority to receive delegation of a federal program was submitted to the Washington State Department of Ecology on December 18, 1996 and to EPA on May 5, 1997 as part of the request for straight delegation of the National Emission Standards for Hazardous Air Pollutants (NESHAPs). EPA authorized a straight delegation of the NESHAPs to SWCAA on December 1, 1998 (63 FR 66054).

Pursuant to 81 FR 26054 (April 29, 2016), if a legal opinion was previously submitted, the opinion should be updated at the time a new delegation request is submitted. Additional information is enclosed in the Attachment stating that SWCAA has the legal authority "to receive delegation and demonstrate that the rule will be implemented and enforced relative to the designated facilities".

Inventory of the Affected CISWI Units and Associated Emissions [40 CFR §§ 62.2515(a)(1) and (a)(2)]

There are no known CISWI units currently operating at facilities within the SWCAA jurisdiction.

Provision for State Progress Reports to EPA [40 CFR §§ 60.2515(a)(7) and 60.25(e) and (f)]

SWCAA will submit periodic reports at least annually to EPA that meet the requirements of 40 CFR § 60.25(e) and (f). The first progress report will be submitted to EPA one year after EPA approval of the delegation request.

Public Involvement [40 CFR §§ 60.2515(a)(6), 60.23(d), and (e)]

SWCAA will publish the public notice, hearing information, and this document with attachment on the SWCAA website at least thirty (30) days prior to the hearing date and the information will remain posted for the full public notice period.

The public comment period will begin on April 13, 2021 and will end at close of business on May 21, 2021. The proposed federal plan is available for review on the SWCAA web page at <https://www.swcleanair.gov/permits/othernotices.asp>, or from John St.Clair at (360) 574-3058, ext 127. SWCAA will hold an online public hearing regarding this delegation proposal on August 10, 2021 at 6 pm. Attendees must register with the Agency prior to the hearing. If appropriate, the sign-in sheet from the hearing listing each of the commenters and their organizational affiliations will be attached to the application along with a brief written summary of each presentation or written submission.

SWCAA will maintain records of the hearing, including the sign-in sheet from the hearing listing each of the commenters and their organizational affiliations, and each presentation or written submission, for a minimum of two (2) years.

The hearing will be conducted in accordance with 40 CFR § 62.2541(a)(6). A certification to this fact will accompany the application.

Memorandum of Agreement Commitment [40 CFR § 60.2541(a)(4)]

SWCAA requests delegation of 40 CFR Part 62, Subpart III and commits to enter into a Memorandum of Agreement with the EPA Regional Administrator that sets forth the terms, conditions, and effective date of the delegation and that serves as the mechanism for the transfer of authority, in accordance with 40 CFR § 60.2541(a)(4).