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## Clean Air Act Section 111(d)/129 - Commercial and Industrial Solid Waste Incinerator Units: EPA Proposes to Accept Arkansas Negative Declaration

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The United States Environmental Protection Agency ("EPA") published an August 11th Federal Register Notice stating that it was notifying the public it has received a Clean Air Act Section 111(d)/129 negative declaration from Arkansas. See 85 Fed. Reg. 48485.

EPA is proposing to accept the Arkansas negative declaration in regards to existing incinerators subject to the commercial and industrial solid waste incinerator units ("CISWI") emission guidelines.

The Federal Register Notice also accepts negative declarations from New Mexico and Alburquerque-Bernalillo County, New Mexico.

Sections 111(d) and 129 of the Clean Air Act require states to submit plans to control certain pollutants (designated pollutions) at existing solid waste combustor facilities whenever standards of performance have been established under Section 111(d) for new sources of the same type. Further, EPA has to have established emission guidelines for such existing sources.

The federal agency is then required to establish standards of performance for new sources (i.e., new source performance standards) and emission guidelines for existing sources for each category of solid waste incinerator specified in Clean Air Act Section 129.

Emission guidelines for existing sources (i.e., designated facilities) are intended for states to use to develop a state plan to submit to EPA. After the state plan is approved by EPA it becomes federally enforceable. However, if a state does not submit an approved state plan, the federal agency is responsible for developing, implementing, and enforcing the federal plan.

40 C.F.R. 60.23(b) and 40 C.F.R. 62.06 provide that if there are no designated facilities of the designated pollutants in the state it may submit a letter of certification to that effect. This is denominated a negative declaration which is submitted in lieu of a plan. The negative declaration exempts a state from the requirements of subpart B that require the submittal of the Clean Air Act Section 111(d)/129 plan.

The Arkansas Department of Energy and Environment – Division of Environmental Quality submitted a negative declaration for incinerators subject to CISWI emission guidelines for its air pollution control jurisdiction. The submittal of this negative declaration exempts Arkansas from the requirement to submit a state plan under 40 C.F.R. Part 60, Subpart DDDD.

A copy of the Federal Register Notice can be downloaded [here](#).

