

**COMMENTS AND RESPONSES ON
PROPOSED RESCISSION OF
10 CSR 10-6.368
CONTROL OF MERCURY EMISSIONS FROM ELECTRIC GENERATING UNITS
AND
RECOMMENDATION FOR RESCISSION**

On December 6, 2012, the Missouri Air Conservation Commission held a public hearing concerning the proposed rescission of rule 10 CSR 10-6.368 Control of Mercury Emissions From Electric Generating Units. The following is a summary of comments received and the Missouri Department of Natural Resources' Air Pollution Control Program corresponding responses. Any changes to the proposed rescission are identified in the responses to the comments.

The Missouri Department of Natural Resources' Air Pollution Control Program recommends the commission rescind this rule as proposed.

NOTE 1 - Legend for rule actions to be voted on is as follows:

- * *Shaded Text - Rule sections or subsections unchanged from Public Hearing. This text is only for reference.*
- * *Unshaded Text - Rule sections or subsections that are changed from the proposed text presented at the Public Hearing, as a result of comments received during the public comment period.*

NOTE 2 - All unshaded text below this line will be printed in the Missouri Register.

**Title 10 - DEPARTMENT OF
NATURAL RESOURCES**

Division 10 - Air Conservation Commission

**Chapter 6 – Air Quality Standards, Definitions, Sampling and Reference Methods and Air
Pollution Control Regulations for the Entire State of Missouri**

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 2012, the commission rescinds a rule as follows:

10 CSR 10-6.368 Control of Mercury Emissions From Electric Generating Units **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 2012 (37 MoReg 1460-1461). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received no comments on the proposed rescission.

10 CSR 10-6.368 Control of Mercury Emissions From Electric Generating Units

PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for mercury, which was developed to meet the requirements of the Clean Air Mercury Rule. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency's Clean Air Mercury Rule published on May 18, 2005.

(1) Applicability.

(A) Except as provided in subsection (1)(B) of this rule—

1. The following units in this state shall be mercury (Hg) Budget units, and any source that includes one (1) or more such units shall be an Hg Budget source, subject to the requirements of this rule: Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts electric (MWe) producing electricity for sale.
2. If a stationary boiler or stationary combustion turbine that, under paragraph (1)(A)1. of this rule, is not an Hg Budget unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than twenty-five (25) MWe producing electricity for sale, the unit shall become an Hg Budget unit as provided in paragraph (1)(A)1. of this rule on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

(B) The units in this state that meet the requirements set forth in subparagraph (1)(B)1.A. or paragraph (1)(B)2. of this rule shall not be Hg Budget units—

1. Cogenerator exemption.

A. Any unit that is an Hg Budget unit under paragraph (1)(A)1. or 2. of this rule—

- (I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and
- (II) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or

two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become an Hg Budget unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(II) of this rule.

2. Any unit that is an Hg Budget unit under paragraph (1)(A)1. or 2. of this rule, is a solid waste incineration unit combusting municipal waste, and is subject to the requirements of—

A. A State Plan approved by the administrator in accordance with subpart Cb of part 60 of 40 CFR (emissions guidelines and compliance times for certain large municipal waste combustors);

B. Subpart Eb of part 60 of 40 CFR (standards of performance for certain large municipal waste combustors);

C. Subpart AAAA of part 60 of 40 CFR (standards of performance for certain small municipal waste combustors);

D. A State Plan approved by the administrator in accordance with subpart BBBB of part 60 of 40 CFR (emission guidelines and compliance times for certain small municipal waste combustion units);

E. Subpart FFF, of part 62 of 40 CFR (Federal Plan requirements for certain large municipal waste combustors); or

F. Subpart JJJ of part 62 of 40 CFR (Federal Plan requirements for certain small municipal waste combustion units).

(2) Definitions. Definitions of certain terms specified in this rule, other than those defined in this section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) Unless otherwise noted in this section, all of the sections of 40 CFR 60 subpart HHHH promulgated as of June 9, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions. The following sections are not incorporated by reference:

1. 40 CFR 60.4104 Applicability;

2. 40 CFR 60.4140 State trading budgets (check with EPA);

3. 40 CFR 60.4141 Timing requirements for Hg allowance allocations; and

4. 40 CFR 60.4142 Hg allowance allocations.

- (B) Hg Allowance Timing.
1. Timing requirements for Hg allowance allocations.
 - A. By November 17, 2006, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator, for the control periods in 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017 consistent with the allocations established in subsection (3)(C) of this rule.
 - B. By October 31, 2007, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator, for the control period beginning 2018 and extending through ten (10) control periods consistent with the allocations established in subsection (3)(C) of this rule.
 - C. By October 31, 2018 and October 31 of every tenth year following, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator, for the control period ten (10) years in the future and extending through ten (10) control periods consistent with subsection (3)(C) of this rule.
- (C) Hg Allowance Allocations.
1. The state trading program Hg budget allocated by the director under paragraph (3)(C)2. of this rule for a control period will equal forty-four thousand five hundred seventy-six (44,576) ounces for calendar years 2010 to 2017 and seventeen thousand six hundred (17,600) ounces for calendar year 2018 and beyond.
 2. The following Hg budget units shall be allocated Hg allowances for each control period in accordance with Table I of paragraph (3)(C)2. of this rule.

Table I

Facility ID	Facility Name	Unit ID	Annual Hg Allocation In Ounces 2010–2017	Annual Hg Allocation in Ounces 2018 and beyond
2076	ASBURY	1	841	332
2079	HAWTHORN STATION	5A	2,053	810
2080	MONTROSE STATION	1	710	280
2080	MONTROSE STATION	2	737	291
2080	MONTROSE STATION	3	733	290
2094	SIBLEY	1	233	92
2094	SIBLEY	2	232	92
2094	SIBLEY	3	1,503	593
2098	LAKE ROAD	6	422	167
2103	LABADIE	1	2,269	896
2103	LABADIE	2	2,335	922
2103	LABADIE	3	2,593	1,024
2103	LABADIE	4	2,324	917
2104	MERAMEC	1	568	224
2104	MERAMEC	2	526	208
2104	MERAMEC	3	895	353
2104	MERAMEC	4	1,385	547

2107	SIOUX	1	1,632	644
2107	SIOUX	2	1,650	651
2123	COLUMBIA	6	25	10
2123	COLUMBIA	7	27	11
2132	BLUE VALLEY POWER	3	100	40
2161	JAMES RIVER	3	224	88
2161	JAMES RIVER	4	278	110
2161	JAMES RIVER	5	465	184
2167	NEW MADRID POWER PLANT	1	2,139	845
2167	NEW MADRID POWER PLANT	2	2,364	933
2168	THOMAS HILL ENERGY CENTER MB1		877	346
2168	THOMAS HILL ENERGY CENTER MB2		1,295	511
2168	THOMAS HILL ENERGY CENTER MB3		3,151	1,244
2169	CHAMMOIS POWER PLANT	2	244	97
6065	IATAN STATION	1	3,108	1,227
6155	RUSH ISLAND	1	2,244	886
6155	RUSH ISLAND	2	2,140	845
6195	SOUTHWEST	1	1,043	412
6768	SIKESTON	1	1,211	478
	Total		44,576	17,600

3. Any subject to section (1) other than those listed in Table 1 of this subsection will not be allocated Hg budget allowances under this rule.

(4) Reporting and Record Keeping. *(Not Applicable)*

(5) Test Methods. *(Not Applicable)*

COMMENTS AND RESPONSES ON

PROPOSED RULE

10 CSR 10-6.191

SEWAGE SLUDGE INCINERATORS

AND

RECOMMENDATION FOR ADOPTION

On December 6, 2012, the Missouri Air Conservation Commission held a public hearing concerning the proposed rule 10 CSR 10-6.191 Sewage Sludge Incinerators. The following is a summary of comments received and the Missouri Department of Natural Resources' Air Pollution Control Program corresponding responses. Any changes to the proposed rule are identified in the responses to the comments.

The Missouri Department of Natural Resources' Air Pollution Control Program recommends the commission adopt the rule action as proposed.

NOTE 1 - Legend for rule actions to be voted on is as follows:

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**Title 10 - DEPARTMENT OF
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**Chapter 6 - Air Quality Standards, Definitions, Sampling and Reference Methods and Air
Pollution Control Regulations for the Entire State of Missouri**

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 2012, the commission adopts a rule as follows:

10 CSR 10-6.191 Sewage Sludge Incinerators is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2012 (37 MoReg 1460). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received ten (10) comments from four (4) sources: the City of Independence Water Pollution Control Department; the Association of Missouri Cleanwater Agencies; the City of Kansas City, Missouri, Water Services Department; and the Metropolitan St. Louis Sewer District.

COMMENT #1: The City of Independence Water Pollution Control Department commented that they appreciate the program's efforts to maintain state primacy in implementing the provisions of 40 CFR 60, subpart Mmmm Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units, which is the federal regulation incorporated in 10 CSR 10-6.191.

RESPONSE: The department's Air Pollution Control Program thanks the City of Independence for their support of the proposed rule. No changes have been made to the rule text as a result of this comment.

COMMENT #2: The City of Independence Water Pollution Control Department commented that the National Association of Clean Water Agencies (NACWA) initiated a lawsuit in 2011 seeking judicial review of the federal sewage sludge incinerator (SSI) rule. NACWA expects final document submittal in January 2013 with oral arguments likely to occur in March or April of 2013. With the prospect of future legal proceeding on the federal SSI rule, the City of Independence requested assurance that regulated sources will not be expected to comply with provisions of federal regulations incorporated in 10 CSR 10-6.191 that may be stayed as a result of legal action.

RESPONSE: The department's Air Pollution Control Program does not intend to enforce any provisions of this rule, 10 CSR 10-6.191, that are incorporated by reference from any provisions of 40 CFR 60, subpart Mmmm if they are subsequently stayed by legal action. This assurance is also provided by 643.055, RSMo, which prevents the state from being sooner or stricter than federal regulations and effectively prevents Missouri from enforcing provisions of incorporated federal regulations that are not enforceable on a federal level. No changes have been made to the rule text as a result of this comment.

COMMENT #3: The City of Independence commented that the incorporated federal SSI rule includes requirements for SSI operator training and qualification that must be obtained through a state-approved program or by completing an incinerator operator training course that includes an examination designed and administered by the state-approved program. They requested the department keep regulated sources informed regarding plans for a state-approved SSI training program or available alternatives.

RESPONSE: The department's Air Pollution Control Program is developing a plan to meet the state's requirements for operator training and certification and will inform owners and operators of SSI units when the plan is available. No changes have been made to the rule text as a result of this comment.

Due to the similarity in the following two (2) comments, one (1) response that addresses these comments is presented after the two (2) comments.

COMMENT #4: The Association of Missouri Cleanwater Agencies and the City of Kansas City, Missouri, Water Services Department commented that there is no requirement for the department to adopt the proposed rule at this time and requests deferral of the adoption until the lawsuit by NACWA is resolved.

COMMENT #5: The Metropolitan St. Louis Sewer District commented that the proposed rule is not necessary and is not consistent with Missouri Air Conservation Law (MACL), the Missouri Administrative Procedures Act, and Titles V and VI of the federal Clean Air Act. The only requirement the state has at this time to comply with the new federal SSI rule is to submit a state plan to the U.S. Environmental Protection Agency (EPA) for EPA approval. The department should refrain from promulgating this proposed rule as it is unnecessary.

RESPONSE: The proposed state rule is part of the state plan pursuant to federal rule 40 CFR 60, subpart MMMM. This federal rule establishes the requirement for regulation of existing SSI units under a state plan and mandates submission of a state plan to EPA no later than March 21, 2013. There is no provision in the federal rule for deferral of the state plan pending the outcome of any known or future legal proceedings. Therefore, the regulatory requirements of 40 CFR 60, subpart MMMM remain in effect even though legal action has been initiated, and these provisions are enforceable until such time as the court orders a stay, vacatur, or other similar action. As stated in the response to comment #2, the department's Air Pollution Control Program will not enforce provisions of 10 CSR 10-6.191 that are stayed at the federal level. No changes have been made to the rule text as a result of this comment.

COMMENT #6: The Association of Missouri Cleanwater Agencies; the City of Kansas City, Missouri, Water Services Department; and the Metropolitan St. Louis Sewer District requested that, if the department proceeds with the rulemaking, language be added to the rule to automatically stay its requirements if a court vacates or remands the incorporated federal rule, or if parties to litigation agree to a settlement agreement that invalidates all or part of the federal rule.

RESPONSE: Similar language to exempt provisions of an incorporated federal rule that are stayed was proposed in amendments to 10 CSR 10-6.070, 6.075, and 6.080 in June 2012 (37 MoReg 966-971). EPA objected to this language (37 MoReg 1610-1611) on the basis it may create confusion and cause additional concerns or issues. In addition, EPA noted that this language may function as a delegation of state authority to EPA or federal courts in litigation to which the department is not a party. Due to EPA's objection, the language exempting provisions of the incorporated federal rule was deleted from the amendments to 10 CSR 10-6.070, 6.075, and 6.080 as adopted and similar language will not be added to the SSI rule. Regulated sources are assured they will not be expected to comply with provisions of incorporated federal regulations that are stayed, as stated in the response to comment #2. No changes have been made to the rule text as a result of this comment.

Due to the similarity in the following three (3) comments, one (1) response that addresses these comments is presented after the three (3) comments.

COMMENT #7: The Association of Missouri Cleanwater Agencies commented that it is important that Missouri's publicly-owned treatment works are not asked to spend significant

sums to address the new emissions limits ahead of the court's review of the validity of the EPA final rule. They disagree with the contention in the proposed rule that the public cost will be not more than five hundred dollars (\$500) in the aggregate. If this is based on the department's adoption of the federal rule, then it should be qualified to require a revised financial analysis for any aspects of EPA's final rule which are adopted by the department but later invalidated through ongoing litigation.

COMMENT #8: The City of Kansas City, Missouri, Water Services Department suggested that the lack of fiscal note is problematic despite the department's articulation that one is not necessary due to the existence of the federal rule. Real costs of Missouri adoption and permit implementation is not less than five hundred dollars (\$500), as stated in the proposed rule. They reference 536.200.1, RSMo, which mandates the issuance of a fiscal note, and Attorney General Opinion 21-92, which illustrates that fiscal notes are required for regulation that is imposed, mandated, or otherwise necessitated by third parties. A natural and logical extension can be made for a purported federal mandate or the state's election to adopt a federal model rule.

COMMENT #9: The Metropolitan St. Louis Sewer District commented that the proposed rule will have real and costly impact on the facilities impacted by the proposed rule. Early estimates of the district's cost of compliance with this proposed rule include an initial cost of twenty-five to forty million dollars (\$25M – 40M) in addition to an ongoing annual cost of about one hundred thousand dollars (\$100,000) per year. These costs have not been accounted for with the proposed rulemaking.

RESPONSE: The proposed state rule adopts by reference the regulatory requirements of 40 CFR 60, subpart M and imposes no additional requirements. Compliance costs such as training, permitting, testing, recordkeeping, retrofitting controls, etc., were imposed on the owners and operators of regulated SSI units with the federal rule promulgated on March 21, 2011. The federal rule requires Missouri to submit a state plan for regulation of existing SSI units that is at least as protective as the federal rule, and the proposed state rule is the legal mechanism for enforcement of the state plan. In the absence of a state plan, EPA will develop a federal plan to implement the provisions of 40 CFR 60, subpart M, and owners and operators of existing SSI units not covered under an approved state plan would have to comply with the federal plan. Therefore, the proposed state rule does not contribute to the cost of compliance for the owners and operators of the regulated SSI units and a fiscal note is not required pursuant to 536.200.1, RSMo. Attorney General Opinion (AGO) 21-92 addresses fiscal notes that are required by 536.200, RSMo, and is not relevant to this rulemaking since no fiscal note is required. However, this opinion does reconfirm that 536.200 fiscal notes only include estimated costs attributable to proposed state rulemakings and not costs associated with the mandate requirements (in this case, the federal rule) which was subject to its own cost analysis. The department rulemaking information on the web clearly stated that public agency costs were included in the federal rulemaking and that the state rulemaking will not impose any additional costs. No changes have been made to the rule text as a result of this comment.

COMMENT #10: The Metropolitan St. Louis Sewer District commented the state's approach for complying with the rule should propose economically-feasible methods for compliance with the federal rule in order to make it consistent with the general intent of the MACL. The proposed rule should be more narrowly tailored to meet the federal rule's requirement of issuing a state plan outlining how the state will comply with the federal rule.

RESPONSE: The federal rule implementing requirements for prevention, abatement, and control of SSI emissions is already promulgated, and incorporating its provisions into a state rule is the most practical and economically-feasible method of regulating SSI emissions in Missouri. The federal rule requires any deviation from the federal rule to be as protective as the federal rule, while MACL prevents the state from being sooner or stricter than federal regulations. Therefore, the proposed state rule must implement the federal requirements without being stricter or more lax. No changes have been made to the rule text as a result of this comment.

10 CSR 10-6.191 Sewage Sludge Incinerators.

- (1) Applicability.
 - (A) This rule applies to each sewage sludge incineration (SSI) unit, as defined in section (2) of this rule, for which construction was commenced on or before October 14, 2010, except as provided in subsection (1)(C) of this rule.
 - (B) If the owner or operator of an SSI unit makes physical or operational changes to an SSI unit for which construction commenced on or before September 21, 2011, primarily to comply with this rule, 10 CSR 10-6.070 New Source Performance Regulations does not apply to that unit.
 - (C) Exemptions to this rule are as follows:
 1. Combustion units that incinerate sewage sludge and are not located at a wastewater treatment facility designed to treat domestic sewage sludge. Owners or operators of combustion units claiming exemption under this paragraph must notify the director; and
 2. Any SSI unit that becomes subject to 10 CSR 10-6.070 New Source Performance Regulations because the owner or operator made changes after September 21, 2011, that meet the definition of modification, as defined in section (2) of this rule.
- (2) Definitions.
 - (A) The provisions of 40 CFR 60.5250, promulgated as of July 1, 2011, shall apply and are hereby incorporated by reference in this rule, as published by the Office of Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.
 - (B) Definitions of certain terms specified in this rule, other than those defined in subsection (2)(A) of this rule, may be found in 10 CSR 10-6.020.
- (3) General Provisions. The following references to 40 CFR 60.5085 through 60.5225, 40 CFR 60.5240 through 60.5245, and 40 CFR 60, Subpart M Tables 1 through 6, promulgated as of July 1, 2011, shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.
 - (A) Increments of Progress—40 CFR 60.5085 through 60.5125;
 - (B) Operator Training and Qualifications—40 CFR 60.5130 through 60.5160;

- (C) Emission Limits, Emission Standards, and Operating Limits and Requirements—40 CFR 60.5165 through 60.5181;
 - (D) Initial Compliance Requirements—40 CFR 60.5185 through 60.5200;
 - (E) Continuous Compliance Requirements—40 CFR 60.5205 through 60.5215;
 - (F) Performance Testing, Monitoring, and Calibration Requirements—40 CFR 60.5220 through 60.5225;
 - (G) Title V Operating Permit—40 CFR 60.5240 through 60.5245; and
 - (H) Table 1 through Table 6. The compliance dates for the increments of progress are—
 - 1. For Increment 1, submit final control plan within one (1) year of the effective date of this rule; and
 - 2. For Increment 2, final compliance by March 21, 2016.
- (4) Reporting and Record Keeping. The provisions of 40 CFR 60.5230 through 40 CFR 60.5235, promulgated as of July 1, 2011, shall apply and are hereby incorporated by reference in this rule, as published by the Office of Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.
- (5) Test Methods. *(Not applicable)*

**COMMENTS AND RESPONSES ON
THE PROPOSED
SECTION 111(d)/129 STATE PLAN
FOR SEWAGE SLUDGE INCINERATORS IN MISSOURI
AND
RECOMMENDATION FOR ADOPTION**

On December 6, 2012, the Missouri Air Conservation Commission held a public hearing concerning the inclusion of the Section 111(d)/129 State Plan for Sewage Sludge Incinerators (SSI) to the Missouri 111(d)/129 State Plan. The following is a summary of comments received and the Missouri Department of Natural Resources' corresponding responses. Any changes to the proposed plan addition are identified in the responses to the comments.

The Missouri Department of Natural Resources' Air Pollution Control Program recommends the commission adopt the plan action as proposed. If the commission adopts this plan, it will be the department's intention to submit this plan to the U.S. Environmental Protection Agency (EPA) for inclusion in the Missouri 111(d)/129 State Plan.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received eight (8) comments on the proposed state plan from three (3) sources: the Association of Missouri Cleanwater Agencies; the city of Kansas City, Missouri, Water Services Department; and the Metropolitan St. Louis Sewer District.

COMMENT #1: The Association of Missouri Cleanwater Agencies; the city of Kansas City, Missouri, Water Services Department; and the Metropolitan St. Louis Sewer District commented that the federal rule only requires that the department issue a state plan outlining how the state will comply with the federal rule without adoption of the proposed state rule. The plan need only identify enforceable mechanisms for implementing the guidelines and demonstrate the authority to carry out the plan. The plan could explain that the proposed rule will be issued after the conclusion of litigation over EPA's final rule.

RESPONSE: The proposed state rule is a required part of the state plan, as the enforceable mechanism, pursuant to federal rule 40 CFR 60, subpart M MMM. This federal rule establishes the requirement for regulation of existing SSI units under a state plan and mandates submission of a state plan to EPA no later than March 21, 2013. There is no provision in the federal rule for deferral of the state plan pending the outcome of any known or future legal proceedings. Therefore, the regulatory requirements of 40 CFR 60, subpart M MMM remain in effect even though legal action has been initiated, and these provisions are enforceable until such time as the court orders a stay, vacatur, or other similar action. The department's Air Pollution Control Program does not intend to enforce any provisions of 10 CSR 10-6.191 that are incorporated by reference from any provisions of 40 CFR 60, subpart M MMM if they are subsequently stayed by legal action. This assurance is also provided by 643.055, RSMo, which prevents the state from being sooner or stricter than federal regulations and effectively prevents Missouri from enforcing

provisions of incorporated federal regulations that are not enforceable on a federal level. No changes have been made to the plan as a result of this comment.

Due to the similarity in the following two (2) comments, one (1) response that addresses these comments is presented after the two (2) comments.

COMMENT #2: The Association of Missouri Cleanwater Agencies and the city of Kansas City, Missouri, Water Services Department, commented that the department and the Commission should time the submittal of the state plan to EPA so that EPA approval is unlikely to occur prior to March 21, 2013 (otherwise DNR will accelerate the federal compliance deadline which is three years from plan approval or March 21, 2016, whichever is earlier). SSIs will need the full measure of time (until March 21, 2016) to comply with the final rule.

COMMENT #3: The Association of Missouri Cleanwater Agencies and the city of Kansas City, Missouri, Water Services Department, commented that the Increment 1 compliance date of one (1) year from the effective date of the rule could occur before the EPA has approved the state plan.

RESPONSE: The final compliance date as established in 40 CFR 60, Subpart M, is March 21, 2016, or three years after EPA approves the state plan, whichever is earlier. The state plan and rule will be submitted to EPA after they are adopted by the commission. The intent is to submit the plan and rule by March 21, 2013, to avoid a federal plan from being developed. The EPA then would have one year to approve the state plan, by March 21, 2014, in which case the final compliance date would be March 21, 2016.

The first increment of progress, which requires the submittal of a control plan, is due one year after the effective date of the state rule. Assuming the rule is published in the *Code of State Regulations* (CSR) in April 2013, with an anticipated effective date in May 2013, the control plan would be due by May 2014, which would be after EPA's deadline of March 2014 for approval of the state plan. No changes have been made to the plan as a result of these comments.

COMMENT #4: The Metropolitan St. Louis Sewer District commented that the state plan should propose economically feasible methods for compliance with the federal rule.

RESPONSE: Pursuant to 40 CFR 60 Subpart M, the state plan must be as protective as the federal emission guidelines. And 643.055, RSMo, prevents the state from being sooner or stricter than federal regulations. Therefore, the state plan is neither stricter nor more lax than the federal rules in establishing requirements and limits. The methods used in achieving compliance with the established limits are left to the individual source's discretion. No changes have been made to the plan as a result of this comment.