



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA-R08-RCRA-2016-0505; FRL-9962-18-Region 8]

Approval of Alternative Final Cover Request for Phase 2 of the City of Wolf Point, Montana, Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking direct final action to approve an alternative final cover for Phase 2 of the City of Wolf Point landfill, a municipal solid waste landfill (MSWLF) owned and operated by the City of Wolf Point, Montana, on the Assiniboine and Sioux Tribes' Fort Peck Reservation in Montana.

DATES: This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives relevant adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-RCRA-2016-0505, by one of the following methods:

- Online: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](http://www.regulations.gov).

- Email: roach.michael@epa.gov
- Mail: Michael Roach, Environmental Protection Agency Region 8, Mail Code 8P-R, 1595 Wynkoop Street, Denver, Colorado, 80202
- Hand delivery: Environmental Protection Agency Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202. Such deliveries are only accepted during normal hours of operation, which are Monday through Friday from 8:00 a.m. until 4:30 p.m.

Instructions: Direct your comments to Docket ID No. EPA-R08-RCRA-2016-0505. The EPA may publish any comment received to its public docket, without change and may be available online at <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 <http://www.regulations.gov> or by email. The <http://www.regulations.gov> website is an “anonymous” system, which means the 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 the EPA rather than going through <http://www.regulations.gov>, your email address will be captured automatically 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Roach, Resource Conservation and Recovery Program, Environmental Protection Agency Region 8, Mail Code: 8P-R, 1595 Wynkoop Street, Denver, Colorado, 80202; telephone number: (303) 312-6369; email address: roach.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA Using a Direct Final Rule?

The EPA is publishing this rule without a prior proposal because we view this as a noncontroversial action and anticipate no relevant adverse comment. However, in the “Proposed Rules” section of the Federal Register, we are publishing a separate document that will serve as the proposed rule to approve the alternative final cover request for Phase 2 of the City of Wolf Point, Montana, landfill if relevant adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the ADDRESSES section of this document.

If the EPA receives relevant adverse comments, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. What did EPA approve?

After completing a review of the City of Wolf Point's final site-specific flexibility request, dated May 1, 2011, and the amendments to that request, dated February 23, 2015, and February 9, 2016, the EPA approves Wolf Point's site-specific flexibility request to install an alternative final cover that varies from the final closure requirements of 40 Code of Federal Regulations (CFR) 258.60(a), but meets the criteria at 40 CFR 258.60(b). This approval applies to the 3.5 acres of the landfill that have not been previously closed.

III. What is a site-specific flexibility request?

Under Sections 1008, 2002, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), the EPA established revised minimum federal criteria for MSWLFs, including landfill location restrictions, operating standards, design standards and requirements for ground water monitoring, corrective action, closure and post-closure care, and financial assurance. Under RCRA Section 4005(c), states are required to develop permit programs for facilities that may receive household hazardous waste or waste from conditionally exempt small quantity generators, and the EPA

determines whether the program is adequate to ensure that facilities will comply with the revised criteria.

The MSWLF criteria are at 40 CFR part 258. These regulations are self-implementing and apply directly to owners and operators of MSWLFs. For many of these criteria, 40 CFR part 258 includes a flexible performance standard as an alternative to the self-implementing regulation. The flexible standard is not self-implementing, and use of the alternative standard requires approval by the Program Director of a state with an EPA-approved program.

Because the EPA's approval of a state program does not extend to Indian country, as that term is defined at 18 United States Code (U.S.C.) 1151, owners and operators of MSWLF units located in Indian country cannot take advantage of the flexibilities available to those facilities subject to an approved state program. However, the EPA has the authority under Sections 2002, 4004, and 4010 of RCRA to promulgate site-specific rules that may provide for use of alternative standards in Indian country. See *Yankton Sioux Tribe v. EPA*, 950 F. Supp. 1471 (D.S.D. 1996); *Backcountry Against Dumps v. EPA*, 100 F.3d. 147 (D.C. Cir. 1996).

The regulation at 40 CFR 258.60(a) establishes closure criteria for MSWLF units that are designed to minimize infiltration and erosion. The regulation requires final cover systems to be designed and constructed to:

- (1) Have a permeability of less than or equal to the permeability of any bottom liner system or natural sub-soils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less, and

- (2) Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum of 18 inches of earthen material, and
- (3) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of 6 inches of earthen material that is capable of sustaining native plant growth.

The regulation at 40 CFR 258.60(b) allows for variances from these specified MSWLF closure criteria. Specifically, the rule allows for the Program Director of an approved state to approve an alternative final cover design that includes:

- (1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (a)(1) and (a)(2) of 40 CFR 258.60, and
- (2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of 40 CFR 258.60.

IV. Overview of the City of Wolf Point's Site-Specific Flexibility Request and EPA's Action

The City of Wolf Point landfill is a MSWLF owned and operated by the City of Wolf Point on the Assiniboine and Sioux Tribes' Fort Peck Reservation in Montana. The landfill site is approximately 25 acres in size and served approximately 10,000 people in Roosevelt County, including the City of Wolf Point and the City of Poplar. The landfill lies within the boundaries of the Fort Peck Reservation. The landfill itself consists of two phases, or units, used as the area's municipal landfill. Phase 1, constructed in 1960, was closed and covered in 1999. Phase 2 was constructed in 2000 and stopped receiving waste in August 2008.

On May 1, 2011, the City of Wolf Point submitted a site-specific flexibility request to the EPA Region 8 and the Assiniboine and Sioux Tribes for Phase 2 of the Wolf Point landfill. The request sought EPA approval for the use of an alternative final cover that differs from the final closure requirements of 40 CFR 258.60. This request applies only to Phase 2, the 3.5 acres of the landfill not previously closed.

Between May 1, 2011, and February 9, 2016, the City of Wolf Point made revisions to its request in response to concerns raised by the EPA Region 8 and the Assiniboine and Sioux Tribes. Today, the EPA is approving Wolf Point's site-specific flexibility request to install an alternative final landfill cover that meets the requirements of 40 CFR 258.60(b).

The EPA is basing its approval on a number of factors, including final cover design, numerical soil modeling and site-specific climatic and soils data. The numerical soil modeling consisted of a sensitivity analysis of the proposed evapotranspiration alternative final cover system under a range of climate and vegetative growth conditions, compared to the performance of the standard final cover prescribed in 40 CFR 258.60. The EPA has determined that the evapotranspiration cover will perform equivalently to the standard prescriptive cover in 40 CFR 258.60(a) in preventing the movement of leachate through the system and erosion caused by wind and water.

As part of this approval, the EPA is requiring that upon finalization, the City of Wolf Point submit a complete set of final cover plans and specifications, including a construction quality assurance/quality control plan and closure/post-closure plan to the EPA. The EPA further requires the City of Wolf Point achieve revegetation rates of greater than 75 percent on Phase 2

of the closed landfill by the end of the third year after revegetation. Finally, the EPA requires that the City of Wolf Point maintain all documentation demonstrating compliance with plans and specifications, and 40 CFR 258.60(a)(1), (2), and (3) in the landfill operating record.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), this rule is not a “significant regulatory action” and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB).

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.) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA.

Because this rule will affect only a particular facility, this rule does not have federalism implications. It will 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, “Federalism,” (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

This rule is also not subject to Executive Order 13045, “Protection of Children From Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is the EPA’s conservative analysis of the potential risks posed by the City of Wolf Point’s proposal and the controls and standards set forth in the application.

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

As required by section 3 of Executive Order 12988, “Civil Justice Reform,” (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation and provide a clear legal standard for affected conduct.

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), calls for the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications.” The EPA has concluded that this action may

have Tribal implications because it is directly applicable to a facility operating on the Assiniboine and Sioux Tribes' Fort Peck Reservation. However, this determination will neither impose substantial direct compliance costs on Tribal governments nor preempt Tribal law. This determination to approve the City of Wolf Point's application will affect only the operation of the Wolf Point landfill.

The EPA consulted with the Assiniboine and Sioux Tribes early in the process of making this determination to approve Wolf Point's alternative final cover request so that the Tribes had the opportunity to provide meaningful and timely input. Between May 1, 2011, and February 9, 2016, technical issues were raised and addressed by the EPA concerning the City of Wolf Point's proposal. The EPA's consultation with the Tribes culminated in a May 19, 2016 letter from the Tribes in which they stated that they have no issues with the Wolf Point proposal. The EPA specifically solicits any additional comment on this determination from Tribal officials of the Assiniboine and Sioux Tribes.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, (e.g., materials specification, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

The technical standards included in the application were proposed by the City of Wolf Point. Given the EPA's obligations under Executive Order 13175 (see above), the agency has, to the extent appropriate, applied the standards established by Wolf Point and accepted by the Tribes. In addition, the agency evaluated the proposal's design against the engineering design and construction criteria contained in the EPA draft guidance document, "Water Balance Covers for Waste Containment: Principles and Practice (2009)."

Authority: Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6907, 6912, 6944, and 6949a.

List of Subjects in 40 CFR Part 258

Environmental protection, Incorporation by reference, Municipal landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: April 17, 2017.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

For the reasons stated in the preamble, 40 CFR part 258 is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c), 6949a(c) and 6981(a).

Subpart F—Closure and Post-Closure Care

2. Section 258.62 is amended by adding paragraph (c) to read as follows:

* * * * *

§ 258.62 Approval of site-specific flexibility requests in Indian country.

(c) City of Wolf Point Municipal Landfill final cover requirements. Paragraph (c) of this section applies to the City of Wolf Point Landfill Phase 2, a municipal solid waste landfill owned and operated by the City of Wolf Point on the Assiniboine and Sioux Tribes’ Fort Peck Reservation in Montana. The facility owner and/or operator may close the facility in accordance with this application, including the following activities more generally described as follows:

(1) The owner and operator may install an evapotranspiration system as an alternative final cover for the 3.5-acre Phase 2 area.

(2) The final cover system shall consist of a 4-foot-thick multi-layer cover system comprised of the following from bottom to top: A 12-inch intermediate layer, a 24-inch native silty-clay till layer, and a 12-inch native topsoil layer, as well as seeding and erosion control.

(3) The final cover system shall be constructed to achieve an equivalent reduction in infiltration as the infiltration layer specified in § 258.60(a)(1) and (a)(2), and provide an equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of this section.

(4) In addition to meeting the specifications of “The City of Wolf Point Landfill License #3 – Phase 2 Alternative Final Cover Demonstration (Revised)” application of February 9, 2016, the owner and operator shall:

(i) At finalization, submit to the EPA for approval final cover plans and specifications, including the final Construction Quality Assurance/Quality Control Plan and final Closure/Post-Closure Plan; and

(ii) Achieve re-vegetation rates greater than 75% by the end of the third year after revegetation.

(5) The owner and operator shall place documentation demonstrating compliance with the provisions of this section in the operating record.

(6) All other applicable provisions of 40 CFR part 258 remain in effect.

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