



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 239

[FRL-9994-84-Region 2]

The Territory of the United States Virgin Islands: Notification of Tentative Determination of Adequacy of the U.S. Virgin Islands Municipal Solid Waste Landfill Permit Program; Public Hearings and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Virgin Islands (USVI) has requested that EPA consider approving its Resource Conservation and Recovery Act (RCRA) Subtitle D municipal solid waste landfills (MSWLF) Permit Program and with this action, EPA is proposing a Tentative Determination of Adequacy of the USVI MSWLF Permit Program. Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribe's MSWLF program, the Region has scheduled three public hearings on this tentative determination. Details appear below in the DATES section.

DATES: All comments on EPA's tentative determination of adequacy of the USVI RCRA Subtitle D MSWLF Permit Program must be received by the close of business on Friday, August 2, 2019. One public hearing will be held on St. Croix, USVI on Tuesday, July 23, 2019; a second hearing will take place on St. Thomas, USVI on Wednesday, July 24, 2019; a third hearing will take place on St. John, USVI on Thursday, July 25, 2019. Each hearing will begin at 6 p.m. The Government of the USVI is expected to participate in the public hearings held by EPA on this matter.

ADDRESSES: Copies of key documents concerning this matter are available between 8:30 a.m. and 5:00 p.m. at the following addresses for inspection and copying: U.S. EPA Region 2 Library, 290 Broadway, 16th Floor, New York, New York, 10007-1866, telephone (212) 637-3185; the USVI Department of Planning and Natural Resources, Division of Environmental Protection, 2607 Tutu Park Mall, St. Thomas, USVI 00802, telephone

(340) 774-3320; the Elaine Ione Strauve Public Library, Enighed Estate, St. John, USVI 00831, telephone (340) 776-6395; the USVI Department of Planning and Natural Resources, Division of Environmental Protection, 45 Estate Mars Hill, Frederiksted, St. Croix, USVI, 00840, telephone (340) 773-1082; the USEPA Caribbean Environmental Protection Division (CEPD) City View Plaza II – Suite 7000 #48 Rd. 165 km 1.2 Guaynabo, PR 00968-8069. Written comments should be sent to Judy-Ann Mitchell, Acting Deputy Division Director, Land, Chemicals, and Redevelopment Division, USEPA Region 2, 290 Broadway, New York, NY 10007 or via email at mitchell.judy-ann@epa.gov. The St. Croix public hearing on Tuesday, July 23, 2019 will be held at the Florence A. Williams Public Library, 1122 King Street, Christiansted, St. Croix, USVI 00823; the St. Thomas public hearing on Wednesday, July 24, 2019 will held at the Department of Planning and Natural Resources Charles W. Turnbull Regional Public Library Auditorium, 2607 Tutu Park Mall, St. Thomas, USVI 00802; the St. John public hearing on Thursday, July 25 will be held at the Cleone H. Creque Legislative Conference Room, St. John Legislative Annex, Cruz Bay, St. John, USVI 00830.

FOR FURTHER INFORMATION CONTACT: Judy-Ann Mitchell, Acting Deputy Division Director, Land, Chemicals, and Redevelopment Division, U.S. EPA Region 2, 290 Broadway, New York, New York, 10007-1866, telephone (212) 637-3721, mitchell.judy-ann@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984, requires States to develop and implement permit programs or other systems of prior approval to ensure that MSWLFs which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria. The RCRA requires the Environmental Protection Agency (EPA) to determine whether States have adequate “permit” programs for MSWLFs. Pursuant to the RCRA, the term “State” includes the territory of the

U.S. Virgin Islands. To implement these statutory provisions, EPA promulgated a State Implementation final rule, which provides criteria and procedures for making adequacy determinations of State municipal landfill permit programs. The EPA approval of state MSWLF programs provides Directors of approved states with various flexibilities including the authority to approve expansion of an existing landfill or siting a new landfill in a seismic zone, application of alternative daily cover, and alternate financial assurance mechanisms. The EPA notes that federal landfill criteria apply to all permitted and unpermitted MSWLF facilities.

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs or other systems of prior approval to ensure that MSWLFs comply with the Federal Criteria under part 258. RCRA also requires in Section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C) that EPA determine whether State MSWLF permit programs are adequate to comply with the revised Federal Criteria. Title 40 CFR part 239 specifies the minimum requirements which State landfill permit programs must satisfy to be determined by EPA to be adequate, including: the state must have legally adopted enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF landfill criteria; the state must have an adequate compliance monitoring program and the legal authority to issue permits or other forms of prior approval to all new and existing MSWLFs in its jurisdiction; the State must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA, 42 U.S.C. 6974(b); and the State must also demonstrate that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with applicable regulations or its landfill permit.

The EPA Regions are authorized to determine whether a State has submitted an "adequate" program based on the statute and the regulations summarized above. EPA expects States to meet all these requirements for its MSWLF program before it gives full approval of the adequacy of a MSWLF program.

As a general matter, the Agency believes that approvals of state programs have an important benefit.

Approved State permit programs establish procedures for interaction between a state and an owner/operator regarding site-specific permit conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibility provided by part 258 to the extent that the State permit program allows such flexibility. EPA notes that regardless of the approval status of a State and the permit status of any facility, the federal landfill criteria apply to all permitted and unpermitted MSWLF facilities. EPA also notes that Section 4005(a) of RCRA, 42 U.S.C. 6945(a), provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State enforcement program.

B. Territory of the U.S. Virgin Islands

The USVI originally applied for a determination of adequacy under RCRA in October 1993. EPA reviewed the application and published in the Federal Register a Tentative Determination of Adequacy on June 16, 1995. However, the public hearings and public comments contained many adverse statements concerning deficiencies in the USVI solid waste program; in addition, the USVI did not promulgate revised solid waste regulations that could meet EPA approval. Accordingly, EPA did not publish a Final Determination of Adequacy. Based on continuing deficiencies in the USVI solid waste management program, on May 8, 2000 (65 FR 26546) EPA published in the Federal Register a Tentative Determination of Inadequacy and held two public hearings on St. Thomas and St. Croix. After review of public comments, EPA decided not to proceed with a Final Determination of Inadequacy and to allow the USVI additional time to develop its solid waste management program, which EPA believes has now occurred.

The EPA has continued to work with the USVI both on its day-to-day landfill operation practices and the development of appropriate solid waste regulations. In addition, in 2004 the USVI established the Waste

Management Authority and in recent years has pursued various efforts to improve its solid waste management program. Also, scheduling the work for the final closure of both the Anguilla and Bovoni landfills is now under the supervision of a federal judge and the Department of Justice, pursuant to federal Consent Decrees, which became effective in 2013 and 2014.

The USVI submitted program application material to EPA in 2008, and in 2017 and 2018 submitted additional information that EPA requested. EPA has reviewed all relevant materials concerning the USVI's MSWLF program, including revised solid waste regulations, and has made a tentative determination that all portions of the U.S. Virgin Islands' MSWLF permit program now are adequate to assure compliance with the revised Federal Criteria, except that correction of a technical/typographical error in a section of the Virgin Islands solid waste regulations needs to be made.

The USVI Attorney General has certified that the current laws and regulations, which are part of the Virgin Islands solid waste management program, are in full force and effect, and that an appropriate correction to the solid waste regulations is being processed. The Attorney General will update its certification when the correction of the regulations has been officially promulgated.

The USVI application materials for this program adequacy determination are available for public review in the locations described in the ADDRESSES section of this document.

C. Comment Period/Final Determination

EPA will consider all public comments received during the public comment period and public hearings, including any comments offered by the Virgin Islands government, and make a final determination on whether to approve the Virgin Islands' RCRA Subtitle D MSWLF Permit Program. EPA will give notice of its final determination in the Federal Register. The document will include a summary of the reasons for the final

determination, and a summary of responses to all major comments received at the public hearings and during the public comment period.

List of Subjects in 40 CFR Part 239

State solid waste program application, Requirements for adequate permit programs, EPA adequacy determination procedures.

Dated: May 9, 2019.

Peter D. Lopez,
Regional Administrator, Region 2.

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