



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 62**

**[EPA-R06-OAR-2019-0306; FRL-9995-26-Region 6]**

### **Approval and Promulgation of State Plans for Designated Facilities and Pollutants; New Mexico and Albuquerque-Bernalillo County; Municipal Solid Waste Landfills**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the section 111(d) Plan submitted by the New Mexico Environment Department (NMED) on May 25, 2017, to regulate landfill gas and its components, including methane, from existing municipal solid waste (MSW) landfills. The Plan is submitted to implement and enforce the Emissions Guidelines (EG) for existing landfills in New Mexico, except Albuquerque-Bernalillo County. We are also proposing to approve revisions to the section 111(d) Plan submitted by the New Mexico Environment Department (NMED) on behalf of the Albuquerque-Bernalillo County Air Quality Control Board on May 24, 2017, to implement and enforce the EG for existing MSW landfills in Albuquerque and Bernalillo County. The EG requires States to develop plans to reduce air emissions from all affected MSW landfills within their jurisdiction.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2019-0306 at <https://www.regulations.gov> or via email to [Shar.alan@epa.gov](mailto:Shar.alan@epa.gov). Follow the online instructions

for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. 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, please contact Alan Shar 214-665-6691, Shar.alan@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1201 Elm Street, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Shar, EPA Region 6 Office, State Planning Implementation Branch, 1201 Elm Street, Dallas, TX 75270, 214-665-6691, Shar.alan@epa.gov. To inspect the hard copy materials, please schedule an appointment with Alan Shar.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

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### **I. Background**

On August 29, 2016, the EPA finalized new source performance standards (NSPS) for MSW landfills and Emission Guidelines and Compliance Times for existing MSW landfills in 40 CFR part 60, subparts XXX and Cf, respectively. See 81 FR 59332 and 81 FR 59313. These actions were taken under section 111 of the Act.

With respect to existing sources, including existing MSW landfills, section 111(d) of the Act requires the EPA to establish a procedure under which each state shall submit a plan to the EPA which establishes standards of performance for any air pollutant: 1) for which air quality criteria have not been issued or which is not included on a list published under CAA section 108 or emitted from a source category which is regulated under CAA section 112, but; 2) to which a NSPS would apply if such existing source were a new source. The EPA established requirements for state plan submittals in 40 CFR part 60, subpart B. As discussed below, state plan submittals under CAA sections 111(d) must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cf, and the requirements of 40 CFR part 60, subpart B and 40 CFR part 62, subpart A.

Once a NSPS for a source category is promulgated, the EPA publishes an emissions guideline (EG) applicable to the control of the same pollutants from existing (designated) facilities. In this action, a MSW landfill for which construction, reconstruction, or modification was commenced on or before July 17, 2014, is considered a designated facility. The MSW landfills EG, revised in 2016 and promulgated at 40 CFR part 60, subpart Cf, updates the control requirements and monitoring, reporting, and recordkeeping provisions for existing MSW landfill sources. The MSW landfills EG incorporates by cross-reference or direct adoption certain requirements for state and federal plans, as specified in 40 CFR part 60, subpart Cf.

States with designated facilities must then develop plans implementing the EG and submit them to the EPA for review and approval. State plans must include compliance times and other elements, such as inventories, legal authority, and public participation documentation, to demonstrate the ability to enforce the EG. See 40 CFR part 60, subpart B. The MSW landfills EG, found at 40 CFR part 60, subpart Cf, concerns the regulation of landfill gas and its components, including methane, from MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014. The deadline to submit a state plan to the EPA was May 30, 2017.

In this action, we are proposing to approve the incorporation by reference (IBR) of Title 20, Chapter 2, Part 64 Municipal Solid Waste Landfills (20.2.64 NMAC) for the State of New Mexico; and proposing to approve the IBR of Title 20, Chapter 11, Part 71 Municipal Solid Waste Landfills (20.11.71 NMAC) for the Albuquerque-Bernalillo County Air Quality Control Board.

## **II. Evaluation**

EPA has evaluated the New Mexico Plan (submitted on May 25, 2017) and the Albuquerque-Bernalillo County Plan (submitted on May 24, 2017) to determine whether each meets the requirements of CAA section 111(d), 40 CFR part 60, subparts B and Cf, and 40 CFR part 62, subpart A. Both Plans were submitted to the EPA prior to the May 30, 2017 submittal deadline. See 40 CFR 60.30f(b). Section II.A below evaluates the New Mexico Plan while Section II.B evaluates the Albuquerque-Bernalillo County Plan.

A. *State of New Mexico Plan*

Title 20, Chapter 2, Part 64 - Municipal Solid Waste Landfills of the New Mexico Administrative Code (20.2.64 NMAC) establishes requirements for municipal solid waste landfills in New Mexico (except Albuquerque and Bernalillo County) in order to control their methane and nonmethane organic compounds emissions. 20.2.64 NMAC was revised on April 28, 2017 and became effective on May 31, 2017. Title 20, Chapter 2, Part 77 - New Source Performance Standards (20.2.77 NMAC) establishes state authority to implement federal NSPS for stationary sources in New Mexico. The CAA 111(d) Plan for MSW landfills in New Mexico was last approved by the EPA on November 24, 2006 (71 FR 67809). An approvable CAA section 111(d) Plan for MSW landfills has ten essential elements<sup>1</sup> incorporating the legal requirements for approvable state plans. See 40 CFR part 60, subparts B and Cf, and 40 CFR part 62, subpart A. These elements are as follows:

1. Identification of enforceable State mechanisms selected by the State for implementing the Emission Guidelines;

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<sup>1</sup> See “Municipal Solid Waste Landfills, Volume 2: Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfills Emission Guidelines,” U.S. EPA, OAQPS; EPA-456R/98-009, November 1998 (hereinafter “1998 State Plan Guidance”).

2. A demonstration of State's legal authority to carry out the Section 111(d) State plan as submitted;
3. An inventory of existing MSW landfills in the State affected by the Emission Guidelines;
4. Inventory of emissions from existing MSW landfills in the State;
5. Emission standards for existing MSW landfills that are "no less stringent" than those in the Emission Guidelines;
6. State process for review and approval of site-specific gas collection and control system design plans;
7. Compliance schedules extending no later than 30 months after the date the annual nonmethane organic compounds (NMOC) emission rate reaches or exceeds thresholds in Subpart Cf;
8. Testing, monitoring, recordkeeping, and reporting requirements;
9. A record of public hearing(s) on the State Plan; and
10. Provision for annual State progress reports to the EPA on implementation of the State Plan.

Each element of the New Mexico Plan has been evaluated in detail in the Technical Support Document (TSD) prepared in conjunction with this action.<sup>2</sup> Our evaluation demonstrates that the New Mexico Plan meets all these 10 elements and is consistent with the requirements for approvable section 111(d) state plans for MSW landfills.

B. *Albuquerque-Bernalillo County Plan*

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<sup>2</sup> Pages 4-15 of the TSD, Docket ID. NO. EPA-R06-OAR-2019-0306 at [www.regulations.gov](http://www.regulations.gov)

Title 20, Chapter 11, Part 71 - Municipal Solid Waste Landfills of the New Mexico Administrative Code (20.11.71 NMAC) establishes requirements for municipal solid waste landfills in Albuquerque-Bernalillo County in order to control their methane and nonmethane organic compounds emissions and serves as the enforceable mechanism to implement the EG. The Plan was adopted by the Albuquerque-Bernalillo County Air Quality Control Board on April 12, 2017 and became effective on May 13, 2017. Title 20, Chapter 11, Part 63 - New Source Performance Standards for Stationary Sources (20.11.63 NMAC) provides for the authority to adopt specified federal NSPS requirements codified at 40 CFR part 60 (e.g., 40 CFR part 60, subpart Cf for existing MSW landfills) within the Albuquerque-Bernalillo County jurisdictional area. The 111(d) Plan for MSW landfills for Albuquerque-Bernalillo County was last approved by the EPA on November 8, 1999 (64 FR 60689). For detailed evaluation of the 10 essential elements for approvable CAA section 111(d) state plans for MSW landfills (as referenced in Section II.A. above) for the Albuquerque-Bernalillo County Plan, please see the TSD prepared in conjunction with this action.<sup>3</sup> Our evaluation demonstrates that the Albuquerque-Bernalillo County Plan meets all these 10 elements and is consistent with the requirements for approvable section 111(d) state plans for MSW landfills.

### **III. Proposed Action**

The EPA is proposing to approve revisions to the CAA section 111(d) Plan submitted by the NMED on May 25, 2017, to regulate landfill gas and its components, including methane, from existing MSW landfills in New Mexico, except for Albuquerque and Bernalillo County. We are also proposing to approve revisions to the CAA section 111(d) Plan submitted by the NMED on behalf of the Albuquerque-Bernalillo County Air Quality Control Board on May 24,

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<sup>3</sup> Pages 16-26 of the TSD, Docket ID. NO. EPA-R06-OAR-2019-0306 at [www.regulations.gov](http://www.regulations.gov)

2017, for existing MSW landfills in Albuquerque and Bernalillo County. Both Plans are submitted to implement and enforce the EG for existing MSW landfills. See 40 CFR part 60, subpart Cf. The scope of the proposed approval of the section 111(d) Plans is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, 40 CFR part 60, subpart Cf.

#### **IV. Incorporation by Reference**

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference of the CAA section 111(d) Plan for New Mexico applicable to MSW landfills. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the New Mexico regulations regarding MSW landfills and to Albuquerque-Bernalillo County Air Quality Control Board regulations regarding MSW landfills in Albuquerque and Bernalillo County, as described in the Proposed Action section of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov), docket ID NO. EPA-R06-OAR-2019-0306 and in hard copy at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the Act, the Administrator is required to approve submission of CAA section 111(d) state plans that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this

action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule for existing MSW landfills within the State of New Mexico (including Albuquerque - Bernalillo County) does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the section 111(d) plan is not approved to apply in Indian country, as defined at 18 U.S.C. 1151, located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Municipal solid waste landfill, Intergovernmental relations, Methane, Reporting and recordkeeping requirements.

Dated: June 17, 2019.

**David Gray,**

*Acting Regional Administrator, Region 6.*

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