



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2019-0160; FRL-9995-87-Region 3]

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants;
Delaware; Control of Emissions from Existing Municipal Solid Waste Landfills**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a Clean Air Act (CAA) section 111(d) plan submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). This plan was submitted to fulfill the requirements of the CAA and in response to EPA's promulgation of Emissions Guidelines and Compliance Times for municipal solid waste (MSW) landfills. The Delaware plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

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 ID No. EPA-R03-OAR-2019-0160 at <https://www.regulations.gov>, or via email to gordon.mike@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, 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. 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 the person identified in the “For Further Information Contact” section. For 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: Mike Gordon, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2039. Mr. Gordon can also be reached via electronic mail at gordon.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 29, 2016, the EPA finalized Standards of Performance for MSW landfills and Emission Guidelines and Compliance Times for MSW landfills in 40 CFR part 60 subpart XXX and Cf. 81 FR 59332 and 81 FR 59313, respectively. These actions were taken under section 111 of the CAA. Section 111(d) of the CAA requires EPA to establish a procedure for a state to submit a plan to 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 standard of performance under CAA section 111 would apply if such existing source were a new source. EPA established these requirements for state plan submittal in 40 CFR part 60, subpart B. State 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 part 62, subpart A. On October 10, 2017, DNREC submitted to EPA a formal section 111(d) plan for existing municipal solid waste landfills. The submitted section 111(d) was in response to the August 29, 2016 promulgation of Federal New Source Performance Standards and Emission Guidelines requirements for MSW landfills, 40 CFR part 60, subparts XXX and Cf, respectively (76 FR 15372).

II. Summary of the Plan and EPA Analysis

EPA has reviewed the Delaware section 111(d) plan submittal in the context of the requirements of 40 CFR part 60, subparts B and Cf, and part 62, subpart A. In this action, EPA is proposing to determine that the submitted section 111(d) plan meets the above-cited requirements. Included within the section 111(d) plan are regulations under the Delaware Administrative Code, specifically DE Admin. Code 1120 (Section 30), entitled “Standards of Performance for Municipal Solid Waste Landfills After July 11, 2017.” Section 30 of DE Admin. Code 1120, which is included in the Plan, applies to each municipal solid waste landfill, open or closed, that commenced construction, reconstruction, or modification after July 17, 2014 or that has accepted waste after November 8, 1987 or that has additional capacity available to accept waste. While Delaware has chosen to regulate new and existing landfills under the same state regulation, for purposes of this action, the Plan applies to any Delaware “designated facility,” which in the context of the Emissions Guideline means each existing MSW landfill for which construction, reconstruction, or modification was commenced on or before July 17, 2014, which is consistent

with the requirements of 40 CFR part 60, subpart Cf. In this action, EPA is proposing to incorporate by reference (IBR) DE Admin. Code 1120 (Section 30), which became effective in the State of Delaware on July 11, 2017. A detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD).

III. Proposed Action

EPA is proposing to approve the Delaware section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. Therefore, EPA is proposing to amend 40 CFR part 62, subpart I to reflect this action. This approval is based on the rationale previously discussed and in further detail in the TSD associated with this action. The scope of the proposed approval of the section 111(d) plan is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, subpart Cf. The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR § 60.30f(c), as well as 7 DE Admin. Code 1120 Section 30.1.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference of the state plan. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference DNREC rules regarding MSW landfills discussed in section II of this preamble. EPA has made, and will continue to make, these materials generally available through the docket for this action, EPA-R03-OAR-2019-0160, at <https://www.regulations.gov> and at the EPA Region III 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

In reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 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 CAA; 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 approval of Delaware's state plan submittal for existing MSW landfills does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the state plan is not approved to apply in Indian country 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, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: June 20, 2019.

Cosmo Servidio,
Regional Administrator,
Region III.

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