



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R06-OAR-2019-0306; FRL- 9998-59-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: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving 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 provides for the implementation and enforcement of the Emissions Guidelines (EG) for existing landfills in New Mexico, except Albuquerque-Bernalillo County. We are also approving 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: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2019-0306. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Dallas, Texas 75270.

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 at 214-665-6691.

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

I. Background

The background for this action is discussed in detail in our June 21, 2019 (84 FR 29138) proposal. In that document, we proposed to approve revisions to the 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. We also proposed to approve revisions to the section 111(d) Plan for the Albuquerque-Bernalillo County (ABC) Air Quality Control Board submitted on May 24, 2017, to implement and enforce the EG for existing MSW landfills in Albuquerque

and Bernalillo County. For more information, see the technical support document¹ prepared in conjunction with the June 21, 2019 proposal.

We received one comment² on the proposal during the public comment period that closed on July 22, 2019.

II. Response to Comments

Comment: The commenter supports our proposed approval action. The commenter also urges the EPA to fully comply with the remainder of the terms of the court's order in *California et al. v. EPA*, 2019 WL 19995769 (N.D. Cal. 2019), with respect to other jurisdictions.

Response: The EPA appreciates the commenter's support. The June 21, 2019 proposal concerned revisions to section 111(d) Plans for the State of New Mexico and Albuquerque-Bernalillo County only. The EPA Region 6 is responsible for rulemaking actions within its jurisdictional area. With this final action, the EPA Region 6 has met its obligations in the court's order referenced by the commenter. Actions on Plans outside of the EPA Region 6's geographical jurisdiction are beyond the scope of this particular rulemaking action.

This concludes our response to the comment received. No changes have been made to the proposal (84 FR 29138, June 21, 2019) as a result of this comment.

III. Final Action

The EPA is finalizing 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 finalizing revisions to the CAA section 111(d) Plan submitted by the NMED on behalf of the

¹ EPA Document ID No. EPA-R06-OAR-2019-0306-0002 available at www.regulations.gov

² EPA Document ID No. EPA-R06-OAR-2019-0306-0005 available at www.regulations.gov

Albuquerque-Bernalillo County Air Quality Control Board on May 24, 2017, for existing MSW landfills in Albuquerque and Bernalillo County. Both Plans implement and enforce the EG for existing MSW landfills. See 40 CFR part 60, subpart Cf. The scope of the 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 accordance with the requirements of 1 CFR 51.5, we are finalizing regulatory text that includes the incorporation by reference of 20.2.64 NMAC (effective May 31, 2017) and 20.11.71 NMAC (effective May 13, 2017) which are part of the CAA section 111(d) Plans applicable to existing MSW landfills in New Mexico and Albuquerque-Bernalillo County, respectively. The regulatory provisions of 20.2.64 NMAC and 20.11.71 NMAC incorporate by reference the Emissions Guidelines (EG) for existing MSW landfills promulgated by the EPA at 40 CFR part 60, subpart Cf, and establish emission standards and compliance times for the control of methane and other organic compounds from certain MSW landfills that commenced construction, modification, or reconstruction on or before July 17, 2014. The emissions standards and compliance times of the two standards contain the same substantive requirements but apply to MSW landfills in different jurisdictions. The regulatory provisions of 20.2.64 NMAC apply to MSW landfills located in the State of New Mexico, except for MSW landfills located in Albuquerque and Bernalillo County, which are subject to the regulatory provisions of 20.11.71 NMAC. The EPA has made, and will continue to make, 20.2.64 NMAC and 20.11.71 NMAC (as well as the entire New Mexico and Albuquerque-Bernalillo County 111(d) Plans for MSW landfills) generally available electronically through www.regulations.gov, Docket 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). This incorporation by reference has been approved by the Office of the Federal Register and the Plans are federally enforceable under the CAA as of the effective date of this final rulemaking.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve section 111(d) state plan submissions 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, the EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. 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 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, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 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, the CAA section 111(d) Plans are not approved to apply in Indian country, as defined at 18 U.S.C. 1151, located in the state. As such, this rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), and it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days

after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

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

Dated: September 3, 2019.

Kenley McQueen,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62 – [AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

Subpart GG – New Mexico

2. Section 62.7855 is revised to read as follows:

§ 62.7855 New Mexico Environment Department.

(a) *Identification of plan.* Section 111(d) plan for municipal solid waste landfills and the associated 20.2.64 NMAC, as submitted on May 25, 2017. The plan includes the regulatory provisions cited in paragraph (d) of this section, which EPA incorporates by reference.

(b) *Identification of sources.* The plan applies to all existing municipal solid waste landfills under the jurisdiction of the New Mexico Environment Department for which construction, reconstruction, or modification was commenced on or before July 17, 2014, and are subject to the requirements of 40 CFR part 60, subpart Cf.

(c) *Effective date.* The effective date of the plan for municipal solid waste landfills is **[Insert date 30 days after date of publication in the Federal Register]**.

(d) *Incorporation by reference.* (1) The material incorporated by reference in this section was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material may be inspected or obtained from the EPA Region 6 office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, 214-665-2200 or electronically through www.regulations.gov, Docket No. EPA-R6-OAR-2019-0306. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of

this material at NARA, email fedreg.legal@nara.gov or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(2) State of New Mexico, New Mexico Environment Department, New Mexico Administrative Code, <http://164.64.110.134/nmac/>.

(i) 20.2.64 NMAC, Chapter 20 – Environmental Protection, Chapter 2 – Air Quality (Statewide), Part 64 – Municipal Solid Waste Landfills, New Mexico Administrative Code, effective May 31, 2017.

(ii) [Reserved]

3. Section 62.7856 is revised to read as follows:

§ 62.7856 Albuquerque-Bernalillo County Air Quality Control Board.

(a) *Identification of plan.* Section 111(d) plan for municipal solid waste landfills and the associated 20.11.71 NMAC, as submitted on May 24, 2017. The plan includes the regulatory provisions referenced in paragraph (d) of this section, which EPA incorporates by reference.

(b) *Identification of sources.* The plan applies to all existing municipal solid waste landfills under the jurisdiction of the Albuquerque-Bernalillo County Air Quality Control Board for which construction, reconstruction, or modification was commenced on or before July 17, 2014, and are subject to the requirements of 40 CFR part 60, subpart Cf.

(c) *Effective date.* The effective date of the plan for municipal solid waste landfills is **[Insert date 30 days after date of publication in the Federal Register]**.

(d) *Incorporation by reference.* (1) The material incorporated by reference in this section was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material may be inspected or obtained from the EPA Region 6 office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, 214-665-2200 or electronically through

www.regulations.gov, Docket No. EPA-R06-OAR-2019-0306. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(2) State of New Mexico, Albuquerque-Bernalillo County Air Quality Control Board, New Mexico Administrative Code, <http://164.64.110.134/nmac/>.

(i) 20.11.71 NMAC, Title 20 – Environmental Protection, Chapter 11 – Albuquerque-Bernalillo-County Air Quality Control Board, Part 71 – Municipal Solid Waste Landfills, New Mexico Administrative Code, effective May 13, 2017.

(ii) [Reserved]

[FR Doc. 2019-19499 Filed: 9/10/2019 8:45 am; Publication Date: 9/11/2019]