



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL -10003-58-Region 2]

Territory of the U.S. Virgin Islands; Final Determination of Adequacy of U.S. Virgin Islands' Municipal Solid Waste Landfill Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination of adequacy of the Territory of the U.S. Virgin Islands' municipal solid waste landfill permit program.

SUMMARY: The Territory of the U.S. Virgin Islands (USVI) applied for a Determination of Adequacy of its Municipal Solid Waste Landfill (MSWLF) Permit Program under Section 4005 of the Resource Conservation and Recovery Act (RCRA). The components of authority and capability were contained in the USVI's application and its revisions. EPA reviewed the USVI's application, and revisions thereto, including its revised solid waste regulations. After consideration of all public comments received regarding the Tentative Determination of Adequacy, EPA is today issuing a Final Determination that the U.S. Virgin Islands' MSWLF permit program is adequate to ensure compliance with the revised MSWLF permit program criteria.

DATES: The Final Determination of Adequacy of the USVI MSWLF Permit Program shall be effective immediately upon publication of this Federal Register Notice, **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Kimiko Link, Sustainable Materials Management Section, Land, Chemicals and Redevelopment Division, link.kimiko@epa.gov, 212-637-4182.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4005(c)(1)(B) of the Resource, Conservation and Recovery Act (RCRA) Subtitle D, as amended by the Hazardous and Solid Waste Amendments (HSWA) 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 regulations codified in 40 CFR Part 258.

RCRA section 4005(c)(1)(C) requires the EPA to determine whether states have adequate permit programs for MSWLFs. Pursuant to RCRA, the term "State" includes the Territory of the U.S. Virgin Islands. Title 40 CFR Part 239 specifies the minimum requirements that state landfill permit programs must satisfy to be determined to be adequate by EPA, 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 who 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 each state to meet all of 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. Also, 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. 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. U.S. Virgin Islands

The Territory of the U.S. Virgin Islands originally applied for a Determination of Adequacy of its MSWLF Permit Program 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 met EPA requirements. 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 operations practices and the

development of appropriate solid waste regulations. In addition, in 2004, the USVI established the Waste Management Authority (WMA) and in recent years has pursued various efforts to improve its solid waste management program. The USVI WMA is the USVI agency charged with implementing solid waste management, and it oversees the operation of the Bovoni landfill on St. Thomas, the Anguilla landfill on St. Croix, and the Susanaberg Transfer Station on St. John. The WMA has a Solid Waste Director as well as landfill managers for the Bovoni and Anguilla landfills and the Susanaberg Transfer Station. 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 revised program application material to EPA in 2008, and in 2017 and 2018 submitted additional information that EPA had requested. EPA has reviewed all relevant materials concerning the USVI's MSWLF program including revised solid waste regulations.

Based on this documentation, EPA determined that: the USVI solid waste regulations are in conformance with the minimum requirements of 40 CFR Part 258 criteria; the Department of Planning and Natural Resources had sufficient authority and responsibility for implementing and enforcing solid waste management regulations, including establishing a permit program, maintaining inspection authority and pursuing enforcement activities; and that the USVI committed to ensuring that adequate technical support and legal personnel would be assigned to implement its permit program. Hence, on June 7, 2019, EPA published in the Federal Register a Tentative Determination of Adequacy of the USVI MSWLF Permit Program that concluded all portions of the USVI MSWLF permit program were adequate to ensure compliance with the revised federal criteria.

C. Public Comment

The public comment period for the Tentative Determination of Adequacy commenced with the publication of the action on June 7, 2019. Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribe's MSWLF program, the Region held three public hearings in the Territory on July 23rd in St. Croix, July 24th in St. Thomas, and July 25th in St. John. The public comment period ended on August 2, 2019. EPA considered all public comments received during the public comment period and the public hearings in determining whether to publish in the Federal Register, a Final Determination of Adequacy of the USVI's RCRA Subtitle D MSWLF Permit Program. Included below is a summary of responses to all major comments received at the public hearings and during the written comment period.

Fifteen comments were received during the three public hearings on consecutive days in St. Croix, St. Thomas and St. John on July 23rd, 24th and 25th, respectively, and the written comment period which closed on August 2, 2019. Most were supportive of the action.

Several commenters requested clarification on the authorities, responsibilities and roles associated with solid waste management in the USVI. Clarification was also sought on the implications of approval or disapproval and how the approval would increase the USVI's solid waste management options while ensuring human health and environmental protection.

EPA provided responses including the overview of the statutory role of the USVI and the federal government with respect to solid waste management and the required compliance with Part 258 landfill regulations established to protect human health and the environment.

Several comments received were related to the need for the USVI's solid waste regulations and future solid waste management plan to include recycling and organics management, the results of the waste characterization study, and the siting of landfills. EPA's response

clarified that the USVI Government is responsible for its solid waste management planning, including any organics diversion programs as well as the siting of any new landfills. EPA also indicated that the waste characterization report funded on behalf of the USVI would be provided to the USVI Government and be made available to the public when finalized.

D. Decision

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, including an appropriate technical correction to the solid waste regulations which has been officially promulgated.

After reviewing the public comments, I conclude that the USVI's application for adequacy determination meets all the statutory and regulatory requirements established by RCRA. Accordingly, the U.S. Territory of Virgin Islands is granted a determination of adequacy for all portions of its municipal solid waste landfill permit program.

Section 4005(a) of RCRA 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/tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state/tribal permit program approved by EPA at a MSWLF will adequately reflect the federal criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect immediately with the publication of this Final Determination of Adequacy of the USVI MSWLF Permit Program.

EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the Federal Register.

All the requirements and obligations in the Territory's program are already in effect as a matter of USVI law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective. Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, 6949a(c).

Dated: November 27, 2019.

Peter D. Lopez,

Regional Administrator,

U.S. Environmental Protection Agency,

Region 2.

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