



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2019-0160; FRL-9999-79-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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving 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: This final 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 as of **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2019-0160. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) 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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mike Gordon, Permits Branch (3AD10), Air & 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 July 1, 2019 (84 FR 31279), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed approval of a Clean Air Act (CAA) section 111(d) plan submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). The formal State Plan was submitted by Delaware on October 10, 2017.

II. Summary of State 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 determining 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. A detailed explanation of the rationale behind this approval is available in the Technical Support Document (TSD).

Other specific requirements of Delaware’s State Plan for MSW landfills and the rationale for EPA’s proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA is approving the Delaware section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. Therefore, EPA is amending 40 CFR part 62, subpart I, to reflect this action. The scope of the 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 accordance with the requirements of 1 CFR 51.5, EPA is finalizing regulatory text that includes the incorporation by reference of Delaware Administrative Code 1120 (Section 30), effective July 11, 2017, entitled “Standards of Performance for Municipal Solid Waste Landfills After July 11, 2017,” which is part of the CAA section 111(d) plan applicable to existing MSW landfills in Delaware as discussed in section II of this preamble. The regulatory provisions of DE Admin. Code 1120 (Section 30). The regulatory provisions of DE Admin. Code 1120 (Section 30) incorporate by reference the Standards of Performance for Municipal Solid Waste landfills promulgated by EPA at 40 CFR part 60, subpart XXX, and establish emission standards and compliance times for the control of methane and other organic compounds from MSW landfills, open or closed, located in Delaware, that commenced construction, modification, or reconstruction after July 17, 2014 or that have accepted waste after November 8, 1987 or that have additional capacity available to accept waste. EPA has made, and will continue to make, the Delaware plan, including DE Admin. Code 1120 (Section 30), generally available through www.regulations.gov, Docket No. EPA-R03-OAR-2019-0160, 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). 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

A. General Requirements

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, 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 rule 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, 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 approving Delaware's State Plan for existing MSW landfills 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, Air pollution control, Incorporation by reference, Intergovernmental relations, Landfills, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 27, 2019.

Cosmo Servidio,
Regional Administrator,
Region III.

Editorial note: This document was received for publication by the Office of the Federal Register on February 4, 2020.

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

PART 62 – APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

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

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

Subpart I--Delaware

2. Section 62.1950 is revised to read as follows:

§ 62.1950 Identification of plan.

(a) Section 111(d) plan for municipal solid waste landfills and the associated Delaware Department of Natural Resources, Division of Air and Waste Management, Regulation No. 20, Section 28, as submitted on April 23, 1998, to implement 40 CFR part 60, subpart Cc.

(b) Control of Emissions from Existing Municipal Solid Waste Landfills, including Delaware Administrative Code 1120 (Section 30), submitted by the Delaware Department of Natural Resources and Environmental Control on October 10, 2017, to implement 40 CFR part 60, subpart Cf. The Plan includes the regulatory provisions cited in paragraph (d) of this section, which the EPA incorporates by reference.

(c) After **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the substantive requirements of the municipal solid waste landfills state plan are contained in paragraph (b) of this section and owners and operators of municipal solid waste landfills in Delaware must comply with the requirements in paragraph (b) of this section.

(d)(1) The material incorporated by reference in this section was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the material is available at the EPA Region III office, 1650 Arch Street, Philadelphia, PA 19103, 215-814-5000. You may inspect a copy 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 Delaware, Delaware Department of Natural Resources and Environmental Control, State of Delaware Administrative Code.

(i) Title 7 Natural Resources and Environmental Control, 1120 New Source Performance Standards, 30.0 Standards of Performance for Municipal Solid Waste Landfills After July 11, 2017, dated July 11, 2017.

(ii) [Reserved]

3. Section 62.1951 is revised to read as follows:

§ 62.1951 Identification of sources.

(a) The plan in § 62.1950(a) applies to all Delaware existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 and that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

(b) The plan in § 62.1950(b) applies to all existing municipal solid waste landfills under the jurisdiction of the Delaware Department of Natural Resources and Environmental Control for which construction, reconstruction, or modification was commenced on or before July 17, 2014.

4. Section 62.1952 is revised to read as follows:

§ 62.1952 Effective date.

(a) The effective date of the plan submitted on April 23, 1998 by the Delaware Department of Natural Resources and Environmental Control for municipal solid waste landfills is November 16, 1999.

(b) The effective date of the plan submitted on October 10, 2017 by the Delaware Department of Natural Resources and Environmental Control for municipal solid waste landfills is **[insert date 30 days after date of publication in the Federal Register]**.

[FR Doc. 2020-02507 Filed: 2/19/2020 8:45 am; Publication Date: 2/20/2020]