



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[EPA-R10-OAR-2020-0074; FRL-FRL 10006-46-Region 10]**

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants;  
Oregon Department of Environmental Quality; 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 Oregon Department of Environmental Quality (ODEQ). This state plan establishes emission limits for existing municipal solid waste (MSW) landfills and provides for the implementation and enforcement of these limits. ODEQ submitted this state plan to fulfill its requirements under section 111(d) of the CAA in response to the EPA's promulgation of Emissions Guidelines and Compliance Times for MSW landfills.

**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-R10-OAR-2020-0074 at <https://www.regulations.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 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://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Geoffrey Glass (he/him), U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 155, Mailcode: 15-H13, Seattle, Washington 98101. He can also be reached by phone at (206) 553-1847 or by email at [glass.geoffrey@epa.gov](mailto:glass.geoffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 29, 2016, the EPA finalized Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills in 40 CFR part 60, subpart XXX and Cf, respectively. 81 FR 59332. These actions were taken under section 111 of the CAA.

Section 111(d) of the CAA requires the EPA to establish a procedure for a state to submit a plan to the EPA that 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. The EPA established these requirements for state plan submittals in 40 CFR

part 60, subpart B.<sup>1</sup> 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.

On August 2, 2019, ODEQ submitted to the EPA a section 111(d) plan for existing MSW landfills. The submitted section 111(d) plan was in response to the August 29, 2016 promulgation of federal emission guidelines requirements for MSW landfills, 40 CFR part 60, subpart Cf (81 FR 59332).

## **II. Summary of the Plan and EPA Analysis**

The EPA has reviewed the ODEQ 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, the EPA is proposing to determine that ODEQ's section 111(d) plan meets the above-cited requirements. On July 19, 2019, Oregon amended the Oregon Administrative Rules at Chapter 340, Division 236 (OAR 340-236-500) by incorporating regulatory language to implement the emission guidelines for MSW landfills. The primary mechanism used by ODEQ to implement the emission guidelines for existing MSW landfills under state jurisdiction is through incorporation by reference of 40 CFR part 60, subpart Cf requirements into OAR 340-236-500. The changes ODEQ has made to the language in the emission guidelines were made to convert the language in the Emission Guidelines to enforceable requirements. These regulations will be applicable to MSW landfills in the state of Oregon under the plan upon the EPA's approval of the

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<sup>1</sup> The EPA adopted new implementing regulations for Emission Guidelines on July 8, 2019, by promulgating 40 CFR part 60, subpart Ba. (84 FR 32575) The EPA adopted the new subpart Ba implementing regulations for Municipal Solid Waste Landfills and they became effective on September 6, 2019 (84 FR 44547 (August 26, 2019)) after ODEQ submitted its state plan.

plan by final rulemaking.<sup>2</sup> A detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD).

### **III. Proposed Action**

The EPA is proposing to approve the ODEQ section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. Therefore, the EPA is proposing to amend 40 CFR part 62, subpart MM to reflect this action. This approval is based on the rationale previously discussed in this document 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 discussed in our previous approval of Oregon's MSW Landfill Plan, because the five-day notice provision in the Oregon Revised Statutes (ORS) 468.126(1) could preclude enforcement of the plan in some instances, application of the notice provision would disqualify the plan for EPA approval. Accordingly, pursuant to ORS 468.126(2)(e) and consistent with a letter from the state of Oregon, the five-day notice requirement of ORS 468.126(1) does not apply in the case of violations of the MSW Landfill Plan, even if requirements of the plan are incorporated into a

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<sup>2</sup> In its submittal, ODEQ demonstrated that the Lane Regional Air Protection Agency, a local clean air agency in Lane County, has authority adequate to implement and enforce the section 111(d) plan, but states that, at this time, there are no affected sources in Lane County.

permit. 63 FR 34816, 34817 (June 26, 1998).

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

In this document, the EPA is proposing to incorporate by reference ODEQ rules regarding MSW landfills discussed in section II of this preamble in accordance with the requirements of 1 CFR 51.5. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov>, Docket ID No. EPA-R10-OAR-2020-0074, and at the EPA Region 10 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, the 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 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 the ODEQ plan submittal for existing MSW landfills does not apply in Indian Country. Therefore, the state plan does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **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, Volatile organic compounds.

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

Dated: February 28, 2020.

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Chris Hladick,  
Regional Administrator,  
Region 10.

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