



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[EPA-R03-OAR-2019-0537; FRL-10004-07-Region 3]**

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants;  
Virginia; Emission Standards for 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 Virginia Department of Environmental Quality (VADEQ). 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 Virginia 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 date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-EPA-R03-OAR-2019-0537. 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:** Cynthia Stahl, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2180. Ms. Stahl can also be reached via electronic mail at [stahl.cynthia@epa.gov](mailto:stahl.cynthia@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On October 29, 2019 (84 FR 57838), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of a CAA section 111(d) plan submitted by the VADEQ. The formal State Plan was submitted by Virginia on August 29, 2019.

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

EPA has reviewed the Virginia 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 Virginia state rule 9VAC5 Chapter 40 Article 43.1, entitled “Emission Standards for Municipal Solid Waste Landfills for which Construction, Reconstruction, or Modification was Commenced on or before July 17, 2014,” published on January 9, 2017 and effective on February 22, 2017. A detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD).

Other specific requirements of Virginia'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. Public comments in support of EPA's proposed action were received on the NPRM.

### **III. Final Action**

EPA is approving the Virginia 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 VV 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 part 1, "Discretionary Authority," of Virginia's 111(d) plan submittal.

### **IV. General Information Pertaining to 111(d) Plan Submittals from the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that

protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would

not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

#### **V. 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 Virginia state rules, specifically, 9VAC5-20-21, published on January 9, 2017 entitled “Documents incorporated by reference” and specifically identified provisions of 9VAC5 Chapter 40 Article 43, entitled “Emission Standards for Municipal Solid Waste Landfills, and Article 43.1, entitled “Emission Standards for Municipal Solid Waste Landfills for which Construction, Reconstruction, or Modification was Commenced on or before July 17, 2014,” (both published on January 9, 2017) which are part of the CAA section 111(d) plan applicable to existing MSW landfills in Virginia as discussed in section II of this preamble. 9VAC5-20-21 sets out the constraints of incorporation by reference into VA State regulations and contains the documents that have been IBRed. The regulatory provisions of 9VAC5 Chapter 40 establish emission standards and compliance times for the control of methane and other organic compounds from certain existing MSW landfills located in Virginia

that commenced construction, modification, or reconstruction on or before July 17, 2014. These provisions set forth requirements meeting criteria promulgated by EPA at 40 CFR part 60, subpart Cf. EPA has made, and will continue to make, all of the provisions that will be incorporated by reference as well as the rest of the Virginia plan, generally available through [www.regulations.gov](http://www.regulations.gov), [Docket No. EPA-R03-OAR-2019-0537](#), 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.

## **VI. 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 Virginia'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, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: 05/27/2020

Cosmo Servidio,  
Regional Administrator,  
Region III.

40 CFR Part 62 is amended 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 VV--Virginia**

2. Amend Subpart VV by adding after § 62.11652 an undesignated center heading and §§ 62.11660, 62.11661, and 62.11662 to read as follows:

**Emissions from Existing Municipal Solid Waste Landfills -- Section 111(d) Plan**

**§ 62.11660 Identification of plan.**

(a)(1) Control of landfill gas emissions from existing municipal solid waste landfills, submitted by the Virginia Department of Environmental Quality on August 29, 2019, to implement 40 CFR part 60, subpart Cf. The Plan includes regulatory provisions cited in paragraph (a)(2) of this section, which the EPA incorporates by reference.

(2) 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 Virginia must comply with the requirements in paragraph (b) of this section.

(b) Incorporation by reference:

(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. 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](mailto:fedreg.legal@nara.gov) or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

(2) Virginia Code Commission, Commonwealth of Virginia, Virginia Register of Regulations, <https://register.dls.virginia.gov>.

(i) 9VAC5-20. General Provisions; 9VAC5-20-21. Documents incorporated by reference, published January 9, 2017.

(ii) 9VAC5-40. Existing Stationary Sources, published January 9, 2017:

(A) Article 43 Emission Standards for Municipal Solid Waste Landfills (Rule 4-43), published January 9, 2017, excluding 9 VAC5-40-5800F;

(B) Article 43.1 Emission Standards for Municipal Solid Waste Landfills for which Construction, Reconstruction, or Modification was Commenced on or before July 17, 2014 (Rule 4-43.1), published January 9, 2017, excluding 9VAC5-40-5940, 9VAC5-40-5945, 9VAC5-40-5960 A, 9VAC5-40-5965 A, 9VAC5-40-5970 A, and 9VAC5-40-5980 A.

#### **§ 62.11661 Identification of sources.**

The plan in § 62.11640(b) applies to all existing municipal solid waste landfills under the jurisdiction of the Virginia Department of Environmental Quality for which construction, reconstruction, or modification was commenced on or before July 17, 2014.

#### **§ 62.11662 Effective date.**

The effective date of the plan submitted on August 29, 2019 by the Virginia Department of Environmental Quality for municipal solid waste landfills is **[insert date 30 days after date of publication in the Federal Register]**.

[FR Doc. 2020-12001 Filed: 6/22/2020 8:45 am; Publication Date: 6/23/2020]