



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R01-OAR-2020-0593; FRL-10017-79-Region 1]

#### **Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Maine and Rhode Island**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking a direct final action to approve negative declarations submitted in lieu of State plans to satisfy the requirements of the Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills for the State of Maine and the State of Rhode Island. The negative declarations certify that there are no existing facilities in the States that must comply with this rule.

**DATES:** This direct final rule will be effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless the EPA receives adverse comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the EPA receives adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2020-0593 at <https://www.regulations.gov>, or via email to [kilpatrick.jessica@epa.gov](mailto:kilpatrick.jessica@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comments 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 <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Jessica Kilpatrick, Air Permits, Toxics, & Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 05-2, Boston, MA, 02109-0287. Telephone: 617-918-1652. Fax: 617-918-0652 Email: [kilpatrick.jessica@epa.gov](mailto:kilpatrick.jessica@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### Table of Contents

- I. Background
- II. Municipal Solid Waste Landfill Regulations

III. Final Action

IV. Statutory and Executive Order Reviews

## **I. Background**

Section 111(d) of the Clean Air Act (CAA) establishes standards of performance for existing sources, specifically pertaining to the remaining useful life of a source. Air pollutants included under this section are those which have not already been established as air quality criteria pollutants via 42 U.S.C. 7408(a) or hazardous air pollutants via 42 U.S.C. 7412. Section 111(d)(1) requires states to submit to the EPA for approval a plan that establishes standards of performance. The plan must provide that the state will implement and enforce the standards of performance. A Federal plan is prescribed if a state does not submit a state-specific plan or the submitted plan is disapproved. If a state has no designated facilities for a standards of performance source category, it may submit a negative declaration in lieu of a state plan for that source category according to 40 CFR 60.23a(b) and 62.06.

## **II. Municipal Solid Waste Landfill Regulations**

A municipal solid waste (MSW) landfill is defined in 40 CFR 60.41(f) as, “an entire disposal facility in a contiguous geographical space where household waste is placed in or on land.” Other substances may be placed in the landfill which are regulated under Subtitle D of the Resource Conservation and Recovery Act (RCRA), 40 CFR 257.2. MSW landfills emit gases generated by the decomposition of organic compounds or evolution of new organic compounds from the deposited waste. The EPA regulations specifically delineate measures to control methane and nonmethane organic compound (NMOC) emissions, which can adversely impact public health.

Standards of Performance for *new* MSW landfills, as codified at 40 CFR part 60, subpart XXX (subpart XXX), set standards for air emissions, operating standards for collection and control

systems, test methods and procedures, compliance provisions, monitoring of operations, reporting requirements, recordkeeping requirements, and specifications for active collection systems. Subpart XXX applies to facilities that commenced construction, reconstruction, or modification *after* July 17, 2014. The Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, as codified at 40 CFR Part 60, subpart Cf (subpart Cf, or Emission Guidelines), apply to states with MSW landfills that accepted waste after November 8, 1987 and commenced construction, reconstruction, or modification *before* July 17, 2014. Such landfills are considered to be “existing” landfills. In states with facilities meeting the applicability criteria of an existing MSW landfill, the Administrator of an air quality program must submit a state plan to the EPA that implements the Emission Guidelines. According to 40 CFR 60.33f(d)(1), if the design capacity increase of a facility subject to subpart Cf is the result of a modification, as defined in subpart Cf, that was commenced after July 17, 2014, then the landfill becomes subject to subpart XXX instead of subpart Cf.

The Maine Department of Environmental Protection (ME DEP) submitted a negative declaration to the EPA on March 11, 2020 pursuant to the requirements at 40 CFR 60.23a(b) and 62.06, certifying that there are no existing source MSW landfills in the state subject to the requirements of 40 CFR part 60, subpart Cf. ME DEP stated that its three landfills potentially subject to subpart Cf have made operational or physical changes such that the state is no longer required to develop a state plan to regulate these landfills as existing sources. One landfill closed in late 2009 and pre-control emissions of NMOC are less than 34 megagrams per year, meeting removal criteria via 40 CFR 60.33f(f). The other two landfills have recently expanded their capacity and satisfy the definition of modification by commencing construction after July 17, 2014 and are therefore subject to Federal CAA landfill regulations pursuant to subpart XXX.

The Rhode Island Department of Environmental Management (RI DEM) submitted a negative declaration to the EPA on July 28, 2020 pursuant to the requirements at 40 CFR 60.23a(b) and 62.06, certifying that there are no existing source MSW landfills in the state subject to the requirements of 40 CFR part 60, subpart Cf. RI DEM stated it only has one operating landfill, which expanded its capacity and commenced construction on the new phase in September 2014. The landfill satisfies the definition of modification by commencing construction after July 17, 2014 and is therefore subject to Federal CAA landfill regulations pursuant to subpart XXX.

### **III. Final Action**

The EPA is approving the Maine and Rhode Island negative declarations. These negative declarations satisfy the requirements of 40 CFR 60.23a(b) and 62.06, serving in lieu of a CAA 111(d) state plan for existing source MSW landfills.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the negative declarations should relevant adverse comments be filed. This rule will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless the Agency receives relevant adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

If the EPA receives such comments, we will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a

second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and no further action will be taken on the proposed rule. Please note that if the EPA receives adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of adverse comments.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a 111(d) plan submission that complies with the provisions of the CAA and applicable Federal regulations (40 CFR 62.04). Thus, in reviewing 111(d) 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 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 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 Clean Air Act; 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 is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule 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).

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. The 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)).

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address comment(s) in the final rulemaking.

#### **List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 3, 2021.

Deborah Szaro,  
Acting Regional Administrator,  
EPA Region 1.

Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 62 - APPROVAL AND PROMULGATION OF STATE PLAN 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 U – Maine**

2. Add an undesignated center heading and § 62.4995 to read as follows:

**Emissions from Existing Solid Waste Landfills**

**§ 62.4995 Identification of plan – negative declaration.**

On March 11, 2020, the Maine Department of Environmental Protection submitted a letter certifying no existing source Municipal Solid Waste Landfills subject to 40 CFR part 60, subpart Cf, operate within the State’s jurisdiction.

**Subpart OO – Rhode Island**

3. Revise § 62.9985 to read as follows:

**§ 62.9985 Identification of plan – negative declaration.**

On July 28, 2020, the Rhode Island Department of Environmental Management submitted a letter certifying no existing source Municipal Solid Waste Landfills subject to 40 CFR part 60, subpart Cf, operate within the State’s jurisdiction.