



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R02-OAR-2020-0431, FRL-10016-26-Region 2]

#### **Approval and Promulgation of State Plans for Designated Facilities; New York; Section 111(d) State Plan for MSW Landfills**

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

**ACTION:** Proposed rule

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to New York's section 111(d) state plan (the "State Plan") for Municipal Solid Waste (MSW) landfills, pursuant to the Clean Air Act ("CAA" or the "Act"). The proposed State Plan revision consists of amendments to New York's "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills," as well as attendant revisions to "General Provisions." The primary goal of this regulation is to implement and enforce the Emission Guidelines (EG) promulgated by the EPA for MSW landfills on August 29, 2016. The goal of the revised federal EG is to reduce emissions of landfill gas containing Non-methane Organic Compounds (NMOC) and methane by lowering the emissions threshold at which an existing MSW landfill must install and operate a Gas Collection and Control System (GCCS). The emission threshold reduction will address air emissions from all affected MSW landfills, including NMOC and methane. The reduction of emissions will improve air quality and protect the public health from exposure to landfill gas emissions.

**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 Number EPA-R02-OAR-2020-0431 at <http://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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Fausto Taveras, Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866, at (212) 637-3378, or by email at [Taveras.Fausto@epa.gov](mailto:Taveras.Fausto@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Supplementary Information section is arranged as follows:

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- C. What are the requirements for a revised MSW landfill state plan?
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##### **I. EPA Action**

###### *A. What action is the EPA proposing today?*

The EPA is proposing to approve the State of New York's revised section 111(d) state plan for MSW landfills, for the purpose of incorporating the adoption of Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 208. In a letter dated December 11, 2019, the New York State Department of Environmental Conservation (NYSDEC), on behalf of the State of New York, submitted to the EPA a state plan entitled, "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills," which contains a New York State-approved regulation for the purpose of lowering the emissions threshold within MSW landfills through the installation of Gas Collection and Control Systems (GCCS). The State Plan incorporates by reference the revised EG codified at 40 CFR part 60 subpart Cf, which applies to MSW landfills that have accepted waste at any time since November 8, 1987, and commenced construction, reconstruction, or modification on or before July 17, 2014.

In accordance with the CAA, New York previously submitted a state plan on October 8, 1998, which was approved by the EPA on July 19, 1999. (*See* 64 FR 38582). New York submitted a revised State Plan dated December 11, 2019 to fulfill the requirements of section 111(d) of the Act. The EPA is proposing to approve New York's State Plan revision since it applies to major sources of NMOC and methane emissions. This proposed approval, once finalized and effective, will render New York's revised MSW rule federally enforceable.

###### *B. Who is affected by New York's revised State Plan?*

New York's revised State Plan applies to existing MSW landfills with a design capacity threshold of 2.5 million megagrams (Mg) and 2.5 million cubic meters of waste. Existing MSW landfills are landfills that have accepted waste after November 8, 1987, and began construction, reconstruction, or modification on or prior to July 17, 2014.

## **II. Background**

### *A. What is a state plan?*

Section 111 of the CAA, "Standards of Performance for New Stationary Sources," directs the EPA to establish emission standards for stationary sources of air pollution that could potentially endanger the public health or welfare. These standards are referred to as New Source Performance Standards (NSPS). Section 111(d) addresses the process by which the EPA and states regulate standards of performance for existing sources. When NSPS are promulgated for new sources, section 111(d) and EPA regulations require that the EPA publish an Emission Guideline (EG) to regulate the same pollutants from existing facilities. States in which existing facilities are found must develop a state plan to adopt the requirements of the EG into the state's body of regulations. States must also include in their state plans other requirements, such as inventories, legal authority, reporting and recordkeeping, and public participation documentation, to demonstrate their ability to enforce the state plans. State plan submittal and revisions under CAA section 111(d) must be consistent with the applicable EG, in this case 40 CFR part 60 subpart Cf, and the requirements of 40 CFR part 60 subpart B, and part 62 subpart A. Under CAA section 111(d), states are required to submit state plan revisions within three years after promulgation of the EPA's emission guidelines in order to incorporate the federal provisions, unless otherwise specified within the emission guidelines. The original deadline specified within 40 CFR part 60 subpart Cf for a state plan to be submitted to the EPA was May 30, 2017; as amended on August 26, 2019, the new deadline to submit a state plan became August 29, 2019. *See* 40 CFR 60.30f(b); 84 FR 44547, 44556 (Aug. 26, 2019).

*B. Why is the EPA requiring New York to submit a revised MSW landfill state plan?*

On March 12, 1996, the EPA promulgated federal Emission Guidelines (EG), codified at 40 CFR part 60 subpart Cc, “Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills.” 61 FR 9905 (Mar. 12, 1996).

Under this EG, a state plan must include the installation of a gas collection and control system at each MSW landfill that accepted waste after November 8, 1987, has a design capacity greater than or equal to 2.5 million Mg and 2.5 million cubic meters, and that emits NMOC at a rate of 50 Mg per year or more. *See* 40 CFR 60.33c(b). In accordance with section 111 of the CAA, on September 24, 2001, the NYSDEC promulgated 6 NYCRR Part 208, “Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills,” in compliance with the EPA’s federal EG for MSW landfills 40 CFR part 60 subpart Cc.

Due to the significant changes within the landfill industry, such as increased scientific understanding of landfill gas emissions, and changes in operation practices, as well as increase in landfill size and age, the EPA determined that it was appropriate to update the 1996 EG. As a result, on August 29, 2016, the EPA promulgated a revised EG, codified at 40 CFR part 60 subpart Cf, entitled, “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.” *See* 81 FR 59275 (Aug. 29, 2016). The revised EG updated the control requirements, monitoring, reporting, and recordkeeping provisions for existing MSW landfill sources. The revised EG is designed to significantly reduce emissions of landfill gas containing NMOC and methane by further reducing the emissions threshold at which a landfill must install and operate a GCCS. In order to continue complying with the Act and the newly adopted EG, on August 5, 2019, New York adopted its revised 6 NYCRR Part 208, “Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills,” and amended Part 200, “General Provisions,” with an effective date of September 4, 2019. The purpose of the revisions was to incorporate by reference the revised EG for MSW landfills promulgated at 40 CFR part 60

subpart Cf.

On August 26, 2019, the EPA finalized a rule (referred to as the “Ba Rule”) that amended the revised EG codified at 40 CFR part 60 subpart Cf. *See* 84 FR 44547 (Aug. 26, 2019). In a separate regulatory action, entitled, “Revisions to Emission Guidelines Implementing Regulations,” the EPA finalized revisions to the old implementing regulations for EG. *See* 84 FR 32520 (Jul. 8, 2019). Specifically, the new implementing regulations at 40 CFR part 60 subpart Ba amended the timing requirements in 40 CFR 60.23 and 60.27 for the submission of state plans, the EPA’s review of state plans, and the issuance of federal plans. *See* 40 CFR 60.23a and 60.27a. Since New York’s revised State Plan was submitted after the final Ba rule amendments, the plan was evaluated in accordance with the new implementing regulations. The EPA is proposing to approve New York’s State Plan since it is at least as protective as the standards set forth in the EG, as amended on August 29, 2016, and is in accordance with the new Ba implementing regulations.

*C. What are the requirements for a revised MSW landfill state plan?*

Under the new Ba implementing regulations, a section 111(d) state plan submittal must meet the completeness requirements of 40 CFR part 60 subpart Ba, sections 60.23a and 60.27a(g).

Section 60.27a(g) states in relevant part, “Any plan or plan revision that a State submits to the EPA, and that has not been determined by the EPA by the date 6 months after receipt of the submission to have failed to meet the minimum criteria, shall on that date be deemed by operation of law to meet such minimum criteria.” *See* 40 CFR 60.27a(g)(1). New York submitted its plan to the EPA on December 11, 2019. Since more than six months have passed since the date of the plan submission, the plan is deemed to have met the completeness criteria contained in 40 CFR 60.27a(g).

The EPA has reviewed the substance of New York's revised State Plan in accordance with the EG at 40 CFR part 60 subpart Cf, as amended on August 29, 2016. Subpart Cf establishes EG and compliance times for the control of designated pollutants from certain designated MSW landfills. Subpart Cf requires that MSW landfills that have a design capacity of greater than or equal to 2.5 Mg by mass and 2.5 million cubic meters by volume incorporate a GCCS if they exceed the emission threshold. The amended EG apply to landfills that commenced construction, reconstruction, or modification on or before July 17, 2014, and have accepted waste at any time since November 8, 1987. States with affected facilities are required to submit a section 111(d) state plan to implement and enforce all provisions of the EG, as amended on August 29, 2016, and codified at subpart Cf.

*D. What revisions did the EPA make to the EG, as amended on August 29, 2016, and codified at 40 CFR part 60 subpart Cf?*

Landfills are the third largest source of human-related methane emissions in the United States.<sup>1</sup> Methane is a potent greenhouse gas that is 28 to 36 times more effective than carbon dioxide at trapping heat in the atmosphere over a 100-year period.<sup>2</sup> For these reasons, and due to significant changes within the landfill industry that allowed for additional reduction of emissions at a reasonable cost, the EPA updated its emission guidelines that were adopted in 1996 on August 29, 2016. In addition to revisions to the EG and compliance times for existing MSW landfills, the control requirements, monitoring, reporting, and record-keeping provisions were also updated.

The revised EG is designed to further reduce emissions of landfill gas containing NMOC and methane. The revised EG lowers the emission threshold at which a landfill must install and

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<sup>1</sup> “[MSW] landfills are the third-largest source of human-related methane emissions in the United States, accounting for approximately 15.1 percent of these emissions in 2018.” See <https://www.epa.gov/lmop/basic-information-about-landfill-gas>.

<sup>2</sup> *Id.*

operate a GCCS. Under the 1996 EG, the emission threshold at which MSW landfills were required to install and operate a GCCS was 50 Mg/year of NMOC. By contrast the revised EG reduces the threshold for installing a GCCS to 34 Mg/year for active MSW landfills. Closed MSW landfills will retain the threshold of 50 Mg/year of NMOC for installing a GCCS. Other major revisions to the EG include revisions to surface emissions monitoring, wellhead monitoring, and address the definition of landfill gas treatment system.

A summary of major provisions in the revised EG include the following:

- Retention of the design capacity threshold of 2.5 million Mg and 2.5 million cubic meters of waste in order for the rule to apply.
- A new alternative modeling procedure, referred to as “Tier 4,” used to determine when to install a GCCS.
- Clarification of the definition of Landfill Gas Treatment and use of treated landfill gas.
- Removal of wellhead oxygen/nitrogen operational standards and corresponding corrective action for their exceedances.
- Addition of an electronic reporting requirement using the EPA’s electronic reporting tool (ERT).
- Updated criteria for capping, removing, or decommissioning a portion of the GCCS in low-producing landfill gas areas.
- Addition of a requirement that landfills must conduct surface emission monitoring (SEM) at all cover penetrations and openings within the area of the landfill in which the waste has been placed and where a GCCS is required.
- New provisions for startup, shutdown, and malfunction periods.

New York’s revised State Plan, dated December 11, 2019, for existing MSW landfills, incorporates by reference all the revisions to the EG as of August 29, 2016, codified at 40 CFR part 60 subpart Cf.

### **III. New York's State Plan**

#### *A. What is contained in the New York revised State Plan?*

In order to implement the 2016 amended EG for existing MSW landfills located in New York state, NYSDEC submitted its revised section 111(d) state plan for existing MSW landfills, dated December 11, 2019, which made revisions to Title 6 of the NYCRR, at Parts 200 and 208.

On August 5, 2019, New York repealed previously enacted 6 NYCRR Part 208, and replaced it with a newly adopted Part 208, “Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills,” and simultaneously revised Part 200, “General Provisions.”<sup>3</sup> The majority of MSW landfills that are regulated by Part 208 are located in rural communities throughout New York state. The revised rule is designed to reduce emissions of NMOC and methane from these landfills by lowering the emission threshold at which the owners and operators of these landfills must install a GCCS. The emission guidelines and revised Part 208 retain the formal design capacity threshold of 2.5 Mg and 2.5 million cubic meters of waste for MSW landfills. Part 208 defines existing MSW landfills as landfills that accepted waste after November 8, 1987 and began construction, reconstruction, or modification prior to July 17, 2014. Consistent with the revised EG promulgated at 40 CFR part 60 subpart Cf, the trigger threshold for installing a GCCS in Part 208 is reduced from 50 Mg/year to 34 Mg/year of NMOC for active MSW landfills. Since closed landfills do not produce as much landfill gas as an active landfill, the trigger threshold for installing a GCCS remains at 50 Mg/year of NMOC for closed MSW landfills. Landfill operators and owners had thirty days from the adoption date of the revised Parts 200 and 208 to comply with the revised regulation, or until September 4, 2019. In

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<sup>3</sup> New York previously codified landfill regulations at NYCRR Part 360, “Municipal Solid Waste Landfill Permitting,” which were included in New York’s section 111(d) state plan that was submitted on October 8, 1998 and approved by the EPA on July 19, 1999. (*See* 64 FR 38582, 38585). To avoid duplication between NYSDEC’s Division of Air Resources and Division of Solid and Hazardous Materials, and to add compliance milestones pursuant to 40 CFR 60.23, NYSDEC transferred the EG requirements from NYCRR Part 360 to Part 208 in 2001. No revisions to the State Plan were made at that time to reflect the regulatory transfer within NYSDEC.

order to be considered for the “closed landfill subcategory,” MSW landfills had to submit a closure report within one year after the revised Part 208 became effective, *i.e.*, by September 4, 2020. New York’s revised rule also includes the alternative site-specific emission threshold determination methodology to determine when a landfill must install a GCCS, referred to as Tier 4. Tier 4 is based on SEM and requires four consecutive quarters of surface emissions below 500 parts per million (ppm) of methane, followed by quarterly SEM reports for active landfills and annual SEM reports for closed landfills. Both active and closed landfills are required to notify delegated authorities thirty days prior to conducting the Tier 4 test so that officials can be present to observe the SEM, keep up-to-date records of the SEM readily accessible for at least five years, and send annual reports to NYSDEC of the SEM monitoring results.

NYSDEC’s revised Part 208 also incorporates the removal of certain wellhead oxygen/nitrogen operational standards in 40 CFR part 60 subpart Cf. Owners and operators are no longer required to report or take corrective action based on exceedances of specified operational standards for nitrogen/oxygen levels at wellheads. However, landfill owners or operators must continue to monitor and maintain records of nitrogen/oxygen levels on a monthly basis, in order to make any necessary adjustments to the GCCS. New York’s revised Part 208 adopts the federally mandated electronic reporting requirements, including, certain performance test reports, NMOC emission rate reports, annual reports, Tier 4 emission rate reports, and wet landfilling practices. The test reports are submitted through the EPA web portal, known as the Central Data Exchange (CDX), using the Compliance and Emissions Data Reporting Interface (CEDRI, or the ERT). New requirements for landfill gas treatment were developed within the revised Part 208 in compliance with the federal EG. Landfills are required to develop a site-specific treatment system monitoring plan, and keep records demonstrating effective monitoring of filtration, dewatering, and compression system performance. The treatment system monitoring plan must be submitted as part of a Title V permit application, and the monitoring parameters would be included in the

permit as applicable enforceable conditions. Accordingly, the EPA proposes to approve New York's revised State Plan for existing MSW landfills, since it includes all elements required by the amended EG in 40 CFR part 60 subpart Cf.

*B. What approval criteria did we use to evaluate New York's revised State Plan?*

The EPA reviewed the substance of New York's revised State Plan for approval based on the requirements set forth in 40 CFR 60.24 through 60.26, "Subpart B-Adoption and Submittal of State Plans for Designated Facilities;" 40 CFR 60.23a, "Adoption and submittal of State plans; public hearings;" 40 CFR 60.27a, "Actions by the Administrator;" 40 CFR part 60 subpart Cf, "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills;" and 40 CFR part 62 subpart A, "General Provisions" for "Approval and Promulgation of State Plans for Designated Facilities and Pollutants."

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

In this document, the EPA is also proposing to incorporate by reference NYSDEC rules discussed in section III of this preamble in accordance with the requirements of 1 CFR 51.5. The EPA has made, and will continue to make, these materials available through the docket for this action, EPA-R02\_OAR-2020-0431, at <http://www.regulations.gov>, and at the EPA Region II Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. What is the EPA's Conclusion?**

The EPA has determined that New York's revised State Plan meets all the applicable approval criteria in 40 CFR part 60 subpart Cf, 40 CFR 60.24 through 60.26, 40 CFR 60.23a; 40 CFR 60.27a, and 40 CFR part 62 subpart A. Therefore, the EPA is proposing to approve New York State's section 111(d) revised State Plan for existing MSW landfills, which includes revisions to

6 NYCRR Part 208, “Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills,” and Part 200, “General Provisions,” with an effective date of September 4, 2019.

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

Pursuant to EPA regulations, the Administrator may approve a plan or any portion thereof upon a determination that it meets sections 111(d) and 129 of the Act and applicable regulations. *See* 40 CFR 62.02.

Accordingly, this action, if finalized, would merely approve state law that meets federal requirements, and would not impose additional requirements beyond those imposed by state law. For that reason, this action, if finalized:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)); and Executive Order 13563 (76 FR 3821 (Jan. 21, 2011));

- 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 (Aug. 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 (Public Law 104-113) 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 (Feb. 16, 1994)).

In addition, this proposed 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 compliance costs on tribal governments, or preempt tribal law, as specified by Executive Order 13175 (65 FR 67249 (Nov. 9, 2000)).

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

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

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

Dated: February 10, 2021.

Walter Mugdan,  
Acting Regional Administrator,  
Region 2.

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