



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R01-OAR-2023-0305; FRL-11112-01-R1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; New Hampshire; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to publish its approval of delegation of authority to the New Hampshire Department of Environmental Services (NHDES) for implementing and enforcing the Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014 under the Clean Air Act (CAA). On February 6, 2023, the NHDES Commissioner signed a memorandum of agreement (MoA) concerning the delegation of authority of the Federal Plan for existing municipal solid waste landfills to NHDES by EPA. Subsequently, the MoA became effective upon signature of the EPA Region 1 Deputy Regional Administrator on June 27, 2023. This notice informs the public of the MoA, provides a copy of the signed document, and proposes amending regulatory text to acknowledge the delegation of authority.

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-R01-OAR-2023-0305 at <https://www.regulations.gov>, or via email to kilpatrick.jessica@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, 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 <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, and Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 5-MI, Boston, MA, 02109-0287. Telephone: 617-918-1652. Fax: 617-918-0652 Email: kilpatrick.jessica@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

On May 21, 2021, EPA published a final rule in the **Federal Register** at 86 FR 27756¹ for Federal Plan Requirements for Municipal Solid Waste (MSW) Landfills That Commenced Construction On or Before July 17, 2014, and Have Not Been Modified or Reconstructed Since July 17, 2014, pursuant to section 111(d) of the CAA. This Federal Plan implements the 2016 Emission Guidelines, 40 CFR Part 60, Subpart XXX, Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014, in areas without an approved state plan by requiring existing MSW landfills that reach a landfill gas emissions threshold of 34 metric tons of nonmethane organic compounds (NMOC) or more per year to install a system to collect and control landfill gas. Other requirements for applicable sources include emission limits, compliance schedules, testing, monitoring, reporting, and recordkeeping. The final rule established how a state can receive delegation of the MSW Landfills Federal Plan for implementation and enforcement authority on behalf of EPA. This procedure requires the state to submit a letter to EPA that 1) demonstrates that the State has adequate resources, as well as the legal and enforcement authority, to administer and enforce the program; 2) includes an inventory of designated MSW landfills, which includes those that have ceased operation, but have not been dismantled or rendered inoperable, and an inventory of the designated units' air emissions; 3) certifies that a public hearing was held on the state delegation request; and 4) includes an MoA between the State and the EPA that sets forth the terms and conditions of the delegation, the effective date of the agreement, and the mechanism to transfer authority.

As a result of EPA's rulemaking, in July 2021 NHDES Air Resources Division staff expressed interest in acquiring delegation of authority to implement and enforce the Federal Plan for MSW landfills located in New Hampshire, in accordance with CAA section 112(l) and 40 CFR 63.91. On December 14, 2021 NHDES submitted to EPA Region 1 Air and Radiation Division staff a preliminary draft of an MoA between the State and EPA concerning this

¹ <https://www.govinfo.gov/content/pkg/FR-2021-05-21/pdf/2021-10109.pdf>

delegation. EPA and NHDES staff coordinated final edits to the document until an agreement was met between the parties. NHDES incorporated 40 CFR Part 62, Subpart OOO (Subpart OOO) Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014 into the New Hampshire Code of Administrative Rules, Chapter Env-A 500, Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Air Pollutants; State Plan for Designated Facilities and Pollutants, Part Env-A 506, State Plans for Designated Facilities and Pollutants. NHDES held a public hearing regarding the proposed rulemaking in accordance with 40 CFR 51.102 on February 22, 2022 in Concord, New Hampshire as well as virtually through WebEx software. The comment period lasted until March 4, 2022. That amendment became effective on May 25, 2022.

On February 6, 2023 NHDES submitted to EPA a formal written request for delegation of authority to implement and enforce the Federal Plan for MSW landfills located in New Hampshire. The letter attached the following documents, Attachment 1: State Resources, Legal and Enforcement Authority, Attachment 2: Inventory of Designated MSW Landfills and Emission Summary, Attachment 3: Public Hearing Certification, Attachment 4: Public Hearing Certification, Attachment 4: MoA between EPA and NHDES, and Attachment 5: Env-A 500, Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Air Pollutants; State Plans for Designated Facilities and Pollutants.

After consideration of these materials, EPA determined that the request letter and attached documents adequately fulfilled the state delegation criteria provided in the final rulemaking notice. NHDES demonstrated that its air agency has the requisite authority and resources to administer and enforce the Federal Plan, via New Hampshire's Revised Statutes Annotated (RSA) 125-C:6 Powers and Duties of the Commissioner, 125-C:12 RSA Administrative Requirements, and RSA 125-C:15 Enforcement. According to the submitted inventory, the State of New Hampshire currently has four active MSW landfills that are subject

to Subpart OOO: Mount Carberry Secure Landfill (Success), Four Hills Solid Waste Landfill (Nashua), City of Lebanon Solid Waste Facility (Lebanon), and Lower Mount Washington Valley Secure Solid Waste Facility (Conway). NHDES provided a table of the reported NMOC annual emissions from these landfills from 2015 through 2021. The Certification of Public Process document, signed by Commissioner Scott on February 6, 2023, confirms the public hearing was held on February 22, 2022 for “Revision to Env-A 500, *Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Air Pollutants; State Plans for Designated Facilities and Pollutants* and request for delegation of the following standards: 40 CFR Part 62 Subpart OOO, *Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014.*”

The Memorandum of Agreement Concerning the Delegation of Authority of the Federal Plan for Existing Municipal Solid Waste Landfills to the New Hampshire Department of Environmental Services by the United States Environmental Protection Agency includes the delegation conditions established, the authorities which NHDES assumes and EPA retains, a policy statement defining the responsibilities of both parties, program implementation procedures, reporting and transmittal of information requirements, and contact information. It states that the MoA is effective upon authorized signature by both NHDES and EPA and shall have an effective date of the last date on which it is signed. The mechanism to transfer authority is explicitly identified to be upon signature of both parties. Subsequently, EPA will publish a Federal Register action delegating NHDES the authority to implement and enforce the Federal Plan.

The MoA was signed by the NHDES Commissioner on February 6, 2023 and became effective upon signature of the EPA Region 1 Deputy Regional Administrator on June 27, 2023. The Federal Plan is codified at Title 40 Code of Federal Regulations, Part 62, Subpart OOO. The

text of EPA's and NHDES's MoA, effective June 27, 2023, is incorporated by reference in this docket.

II. Proposed Action

EPA is proposing to amend regulatory text at 40 CFR Part 62, Subpart EE – New Hampshire to promulgate the approved delegation of authority to the NHDES for implementing and enforcing the Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014 at 40 CFR Part 62, Subpart OOO. The proposed regulatory text is included in this proposed rule.

EPA is soliciting public comments on the proposed regulatory text or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed action by following the instructions listed in the **ADDRESSES** section of this *Federal Register*.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a State Plan submittal that complies with the provisions of the Act and applicable Federal regulations. CAA sections 111(d) and 129(b); 40 CFR part 60, Subparts Ba and Cf; and 40 CFR part 62, Subpart A; and 40 CFR 62.04. Thus, in reviewing state plan submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this proposed 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);

- 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); and
- 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.
- 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 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.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Industrial facilities, Intergovernmental relations, Methane, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: June 27, 2023.

Karen McGuire,
Deputy Regional Administrator,
EPA Region 1.

Part 62 of chapter I, title 40 of the Code of Federal Regulations is proposed to be 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.

2. Revise § 62.7405 to read as follows:

§ 62.7405 Identification of plan—delegation of authority.

(a) Letter from the New Hampshire Department of Environmental Services (NHDES), submitted February 6, 2023, requested delegation of authority from the EPA to implement

and enforce the Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014 (Existing MSW Landfills Federal Plan) at Subpart OOO of this part.

(b) Identification of sources. The Existing MSW Landfills Federal Plan applies each municipal solid waste landfill that meets the following criteria:

(1) Commenced construction, reconstruction, or modification on or before July 17, 2014.

(2) Accepted waste at any time since November 8, 1987, or has additional capacity for future waste deposition.

(c) On February 6, 2023, NHDES Commissioner Robert R. Scott signed the Memorandum of Agreement Concerning the Delegation of Authority of the Federal Plan for Existing Municipal Solid Waste Landfills to the New Hampshire Department of Environmental Services by the United States Environmental Protection Agency. On June 27, 2023, Region 1 Deputy Regional Administrator Karen McGuire signed the MoA.

(d) The delegation became fully effective as of June 27, 2023.