



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R04-OAR-2024-0171, FRL-11883-02-R4]

Delegation of Authority to North Carolina and Forsyth County of the Federal Plan for Existing Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is providing notification that it has approved requests from the state of North Carolina, submitted through the North Carolina Department of Environmental Quality (NCDEQ), and the Forsyth County Office of Environmental Assistance and Protection (FCOEAP or District) for the delegation of authority to implement and enforce the 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 (Federal Plan). The memorandum of agreement (MOA) between NCDEQ and EPA took effect on September 30, 2024, upon the signature of the EPA Region 4 Acting Regional Administrator. Similarly, the MOA between FCOEAP and EPA became effective on July 19, 2024, upon the same signature. The Federal Plan addresses the implementation and enforcement of the emission guidelines (EG) applicable to existing MSW landfills located in areas not covered by an approved and currently effective state plan. The Federal Plan imposes emission limits and other control requirements which will reduce designated pollutants for existing affected MSW landfills. The purpose of these delegations is to transfer primary implementation and enforcement responsibilities from EPA to NCDEQ and FCOEAP for existing affected MSW landfills. This document informs the public of the MOAs and amends regulatory text at 40 CFR subpart 62 to reflect these delegations.

DATES: This final rule is effective on [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-R04-OAR-2024-0171 at <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Controlled Unclassified Information (CUI) (formally referred to as 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 electronically through <https://www.regulations.gov>. If alternative means of reviewing the documents are required, please contact the person identified in the **For Further Information Contact** section for additionally available information.

FOR FURTHER INFORMATION CONTACT: Tamara Hayes, Regulatory and Community Air Toxics Section, Air Analysis and Support Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth St., SW, Atlanta, Georgia 30303. The telephone number is (404) 562-9582. Ms. Hayes can also be reached via electronic mail at hayes.tamara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 21, 2021, EPA published a final rule in the *Federal Register* at 86 FR 27756 to promulgate the Federal Plan Requirements for MSW landfills that commenced construction on or before July 17, 2014, and have not been modified or reconstructed since July 17, 2014. This Federal Plan is codified at 40 CFR part 62, subpart OOO. The Federal Plan in subpart OOO implements EG and Compliance Times for Municipal MSW Landfills (2016 MSW Landfills EG). EPA finalized the 2016 MSW Landfills EG on August 29, 2016. 81 FR 59276. The 2016 MSW Landfills EG is codified at 40 CFR part 60, subpart Cf. The Federal Plan applicability criteria in subpart OOO, at 40 CFR 62.16711, reflect those established by the 2016 MSW Landfills EG at 40 CFR 60.31f. *See* 86 FR 27756, 27762. The 2016 MSW Landfills EG and the

Federal Plan apply 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.

The Clean Air Act (CAA or Act), 42 U.S.C. §7401, *et seq.*, requires states with existing MSW landfills subject to the 2016 MSW Landfills EG to submit state plans to EPA in order to implement and enforce the EG. For states without an approved plan, CAA section 111 and 40 CFR 60.27(c) and (d) direct EPA to develop, implement, and enforce a Federal Plan for existing MSW landfills. The Federal Plan applies in areas without an approved state plan by requiring existing MSW landfills that reach a landfill gas emission threshold of 34 megagrams (Mg) of nonmethane organic compounds (NMOC) or more per year to install a system to collect and control landfill gas. Other requirements include but are not limited to, presumptive emission limits, compliance schedules, testing, monitoring, reporting, and recordkeeping.

The final rule promulgating the Federal Plan established how a state can request delegation of the Federal Plan for implementation and enforcement authority on behalf of EPA. *See* at 86 FR 27756, 27766.

II. Submittal and EPA Approval of Requests for Delegation of the Federal Plan

EPA evaluates requests for delegation of the MSW Federal Plan pursuant to the provisions of the MSW Federal Plan and the EPA's Delegations Manual. Pursuant to the MSW Federal Plan, a state may meet its CAA section 111(d)/129 obligations by submitting an acceptable written request for delegation of the Federal Plan that includes the following elements: (1) a demonstration of adequate resources and legal authority to administer and enforce the Federal Plan; (2) an inventory of affected MSW units, an inventory of emissions from affected MSW units, and provisions for state progress reports; (3) certification that the state held a hearing on the state delegation request; and (4) a commitment to enter into a MOA with the Regional Administrator that sets forth the terms, conditions, and effective date of the

delegation and that serves as the mechanism for the transfer of authority. *See* at 78 FR 28052. Both NCDEQ and FCOEAP documented that they met delegation requirements (1) through (3) in letters to EPA dated November 28, 2023, and April 2, 2024, respectively, which are included in the docket for this action, as well as requirement (4), which is addressed in the following paragraphs of this preamble.

Pursuant to EPA's Delegations Manual, item 7-139, Implementation and Enforcement of 111(d)(2) and 111(d)(2)/129(b)(3) Federal plans, a copy of which is included in the docket for this action, the Regional Administrator is authorized to delegate authority to implement and enforce section 111(d)/129 Federal plans to states. The requirements and limitations of a delegation agreement are set forth in item 7-139 of the Delegations Manual. Consistent with those requirements, both NCDEQ and FCOEAP entered into separate MOAs with EPA which set forth the terms, conditions, and effective date of the delegation and that serve as the mechanism for the transfer of authority. For the state of North Carolina, the MOA was signed by the NCDEQ Secretary on August 2, 2024, and became effective upon signature of EPA Region 4 Acting Regional Administrator on September 30, 2024. FCOEAP's MOA was signed by FCOEAP's Director on June 26, 2024, and became effective upon signature of EPA Region 4 Acting Regional Administrator on July 19, 2024. Thus, both entities agree to the terms and conditions of the MOA and accept responsibility for implementation and enforcement of the policies and procedures of the Federal Plan, except for certain authorities that are retained by EPA (authority to approve major alternatives to test methods or monitoring, authority to approve alternative methods to determine the site-specific NMOC concentration or a site-specific methane generation rate constant, etc.). EPA continues to retain concurrent enforcement authority. Both MOAs are included in the docket for this action.

EPA evaluates requests for delegation of the MSW Federal Plan for consistency with the CAA, EPA regulations, and EPA policy. The State of North Carolina and FCOEAP met all the requirements for the delegation of authority to implement and enforce the Federal Plan for

existing MSW Landfills. Accordingly, EPA is codifying approval of both North Carolina’s request dated November 28, 2023, and FCOEAP’s request dated April 2, 2024, for the delegation of authority of the Federal Plan.

III. EPA Action

In this action, EPA is amending the regulatory text at 40 CFR part 62, subpart II – North Carolina, to reflect the approved delegations of authority for implementing and enforcing the Federal Plan through MOAs with the NCDEQ and the FCOEAP, respectively.

IV. Good Cause Finding

Section 553(b) of the Administrative Procedure Act (APA) requires publication of notice of proposed rulemaking and specifies what the notice shall include. *See* 5 U.S.C. 553(b). However, the APA provides an exception from this requirement “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” *See* 5 U.S.C. 553(b)(B).

EPA finds good cause for making this action final without prior proposal and opportunity for comment because this action merely amends 40 CFR part 62 to reflect that EPA previously signed MOAs delegating authority to NCDEQ and FCOEAP. The MOAs delegating authority to implement and enforce the Federal Plan became effective on the dates they were signed by the EPA Region 4 Acting Regional Administrator — on September 30, 2024, for NCDEQ and July 19, 2024, for FCOEAP. This action does not alter the universe of sources regulated under the Federal Plan, nor does it change the regulatory requirements applicable to those sources nor EPA’s authority to enforce such requirements. In these circumstances, notice and comment procedures are “unnecessary” under 5 U.S.C. 553(b)(B).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission

that complies with the provisions of the CAA and applicable Federal regulations. CAA sections 111(d) and 129(b); 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A; and 40 CFR 62.04. In reviewing 111(d)/129 Federal Plan delegation requests, EPA's role is to approve state choices, provided that they meet the criteria of the CAA and of EPA's implementing regulations. Accordingly, this action merely codifies in the Code of Federal Regulations EPA's delegation of authority to implement the Federal Plan and does not impose additional requirements beyond those imposed by the already-applicable Federal Plan. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993).
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because approvals of NSPS delegations are exempt from review 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 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;

- 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.

In addition, this proposed rulemaking action, pertaining to NCDEQ's and FCOEAP's submissions, is not approved to apply on any Indian reservation land or in any other area where 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 any 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, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

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

Date: November 6, 2025.

Kevin McOmer,
Regional Administrator.

For the reasons stated in the preamble, EPA amends 40 CFR part 62 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 II – North Carolina

2. Add an undesignated center heading and § 62.8364 and § 62.8365 to subpart II to read as follows:

Air Emissions From Municipal Solid Waste Landfills (MSW)—Section 111(d)/129 Plan

§ 62.8364 Identification of plans—North Carolina Department of Environmental Quality (NCDEQ).

(a) *Delegation of authority.* On August 2, 2024, NCDEQ signed a Memorandum of Agreement (MOA) with the EPA, defining policies, responsibilities, and procedures pursuant to subpart OOO of this part (the “Federal Plan”) by which the Federal Plan will be administered by the North Carolina Department of Environmental Quality.

(b) *Identification of sources.* The MOA and related Federal Plan 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.

(c) *Effective date of delegation.* The delegation became fully effective on September 30, 2024, the effective date of the MOA between EPA and the NCDEQ.

§ 62.8365 Identification of plans — Forsyth County Office of Environmental Assistance and Protection (FCOEAP).

(a) *Delegation of authority.* On June 26, 2024, FCOEAP signed a Memorandum of Agreement (MOA) with EPA, defining policies, responsibilities, and procedures pursuant to

subpart OOO of this part (the “Federal Plan”) by which the Federal Plan will be administered by the Forsyth County Office of Environmental Assistance and Protection.

(b) *Identification of sources.* The MOA and related Federal Plan 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.

(c) Effective date of delegation. The delegation became fully effective on July 19, 2024, the effective date of the MOA between EPA and the Forsyth County Office of Environmental Assistance and Protection.

[FR Doc. 2025-21306 Filed: 11/25/2025 8:45 am; Publication Date: 11/26/2025]