



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R06-OAR-2023-0478; FRL-12671-01-R6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Texas; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the CAA section 111(d) state plan submitted by the State of Texas for sources subject to the Municipal Solid Waste (MSW) Landfills Emission Guidelines (EG). The Texas MSW landfills plan was submitted to fulfill the state's obligations under CAA section 111(d) to implement and enforce the requirements under the MSW Landfills EG. The EPA is proposing to approve the state plan and amend the agency regulations in accordance with the requirements of the CAA.

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 No. EPA-R06-OAR-2023-0478, at <https://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, please contact Matthew Gesualdo, (214)-665-6530, gesualdo.matthew@epa.gov. 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>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Matthew Gesualdo, EPA Region 6 Office, Regional Haze and SO₂ Section, 214-665-6530, gesualdo.matthew@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

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 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. While NSPS are directly applicable to new sources, EG for existing sources (designated facilities) are intended for states to use to develop a state plan to submit to the EPA.

State plan submittal and revisions under CAA section 111(d) must be consistent with the applicable EG and the requirements of 40 CFR part 60, subpart B, and part 62, subpart A. The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans under CAA section 111(d). Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which the EPA will approve or disapprove such plans submitted by a state. Once approved by the EPA, the state plan becomes federally enforceable. If a state does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a federal plan.

The MSW landfills NSPS for new landfills and EG for existing landfills were first promulgated by EPA on March 12, 1996, in 40 CFR part 60, subparts WWW and Cc, respectively (61 FR 9905). On August 29, 2016, the EPA finalized revisions to the MSW landfills NSPS and EG in 40 CFR part 60, subparts XXX and Cf, respectively (81 FR 59332; 81 FR 59313). The 2016 EG revision updates the control requirements and monitoring, reporting, and recordkeeping provisions for existing MSW landfill sources.

The current MSW landfills EG, found at 40 CFR part 60, subpart Cf, concerns the regulation of landfill gas and its components, including methane, from MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014. The deadline to submit a state plan to the EPA was May 30, 2017. On May 21, 2021, EPA finalized the MSW landfills federal plan in 40 CFR part 62, subpart OOO (86 FR 27756). The MSW landfills federal plan at 40 CFR part 62, subpart OOO, applies to states that do not have an EPA-approved state plan. The MSW landfills federal plan is currently in effect in Texas.

In order to fulfill obligations under CAA section 111(d), the Texas Commission on Environmental Quality (TCEQ) submitted a revised state plan for the control of emissions from existing MSW landfills for the State of Texas on September 15, 2023. The Texas MSW landfills plan implements and enforces the applicable provisions under the MSW landfills EG at 40 CFR part 60, subpart Cf, and additionally meets the relevant requirements of the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B. The Texas submittal and the supplements are included in the public docket for this rulemaking (Docket No. EPA-R06-OAR-2023-0478).

II. The EPA's Evaluation

The EPA has evaluated the Texas MSW landfills plan to determine whether the plan meets applicable requirements from the MSW landfills EG at 40 CFR part 60, subpart Cf, and the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B. The EPA's detailed rationale and discussion on the Texas MSW landfills plan can be found in the EPA Technical Support Document (TSD), located in the docket for this rulemaking.

The state plan submittal package includes all materials necessary to be deemed administratively and technically complete according to the criteria of 40 CFR part 60, subpart B. The state plan document (the "Texas State Plan for the Control of Designated Facilities and Pollutants") includes all the necessary authority for the implementation and enforcement of the MSW landfill Emission Guidelines in the State. Specifically, the State met applicable Federal requirements while incorporating the EG at 40 CFR part 60, subpart Cf, into the Texas Administrative Code (TAC) Title 30, Part 1, Chapter 113, Subchapter D, Division 6, 2016 Emission Guidelines for Existing Municipal Solid Waste Landfills (30 TAC § 113.2400 - 30 TAC § 113.2412). Both the adopted state plan document and the relevant TAC regulations, as well as all other relevant plan submittal materials may be found in the docket for this action. Necessary State legal and enforcement authorities required for plan approval are located elsewhere in Texas's

statute, rules and regulations and have been reviewed and approved of by the EPA in the course of prior state implementation plan as well as section 111(d) and/or 129 state plan approvals. See 40 CFR part 52, subpart SS, and 40 CFR part 62, subpart SS.

The Texas MSW landfills plan has been evaluated in detail in the TSD. Our evaluation demonstrates that the Texas MSW landfills plan meets the requirements in 40 CFR part 60, subpart Cf and subpart B, and is consistent with the requirements for an approvable section 111(d) state plans for MSW landfills.

Under 40 CFR part 60, subpart B, section 60.24(f) allows for less stringent regulations in a state's CAA section 111(d) plan if a technical or economic justification supports it. The Texas MSW landfills plan includes two provisions which differ from the EG. First, Texas used an alternative date range for determining applicability of EG requirements in its previous 1998 MSW landfills plan and its current 2023 MSW landfills plan. The MSW landfills EG contains gas collection and control system requirements for designated facilities (as defined in the EG) that have accepted waste after November 8, 1987, that meet specific design capacity and NMOC (nonmethane organic compound) emission rate thresholds (50 megagrams per year (Mg/yr) for closed landfills). In the previous Texas MSW landfills plan submitted in 1998 and approved by EPA in 1999,¹ TCEQ² provided a detailed technical analysis indicating that no designated landfills that closed between November 8, 1987, and October 9, 1993, would have estimated NMOC emission rates above the 50 Mg/yr control threshold by 2004. In the 1999 approval,³ the EPA concurred with TCEQ that controlling these closed landfills would not result in a significant reduction in NMOC emissions compared to the cost of installing gas collection systems at these sites. In the previous state plan, TCEQ adjusted its definition

¹ Texas's 1998 MSW landfill plan implemented the 1996 MSW landfill EG requirements under 40 CFR part 60, subpart WWW, was approved by EPA on June 17, 1999 (64 FR 32427).

² At the time the Texas 1998 MSW landfill plan was submitted, TCEQ was called the Texas Natural Resource Conservation Commission (TNRCC).

³ See 64 FR 32427 (June 17, 1999).

to reflect actual conditions in Texas based on section 60.24(f). As part of this state plan, 30 TAC §113.2406(a) explicitly exempts MSW landfills that have not accepted waste since October 9, 1993, and do not have additional design capacity available for future waste deposition. In its current submittal, Texas states that none of the landfills which stopped accepting waste during the relevant 1987-1993 time period would have current NMOC emissions above the 50 Mg/year threshold. Therefore, these closed landfills in Texas (which stopped accepting waste during the applicable 1987-1993 time period) would not be subject to gas collection and control system requirements nor likely result in a reduction in NMOC or landfill emissions even if Texas did not exempt these landfills as part of its current MSW landfills plan. EPA proposes to find that the state's use of section 60.24(f), to exempt certain MSW landfills from the requirements of 40 CFR part 60, subpart Cf, is reasonable and proposes to approve the Texas MSW landfill plan's alternative date range for determining applicability of requirements.

Under the adopted 30 TAC 113.2404(b), landfill gas collection and control systems that have been approved by the TCEQ and installed in accordance with 30 TAC §115.152 are considered to meet certain technical requirements of the emission guidelines, specifically 40 CFR 60.33f(b) and (c). TCEQ has identified that the purpose of this state regulation is to minimize redundant and duplicative requirements for landfill gas collection and control systems that fall under both 30 TAC Chapter 115 and 40 CFR part 60, subpart Cf. Table C.5.1 in the Texas submission compares 30 TAC §115.152 with 40 CFR part 60, subpart Cf, and outlines which state rules correspond to each federal requirement for the regulatory changes TCEQ intends to implement. The EPA is proposing to approve this aspect of Texas's state plan, proposing to find that MSW landfills in compliance with 30 TAC §115.152 satisfy the requirements of the EG. The EPA's detailed rationale and discussion on the Texas MSW landfills plan can be found in the EPA Technical Support Document (TSD), located in the docket for this rulemaking.

III. Proposed Action

The EPA is proposing to approve the Texas MSW landfill plan submitted by TCEQ in accordance with the requirements of section 111(d) of the CAA and to amend 40 CFR part 62, subpart SS, to codify EPA's approval. The EPA is proposing to find that the Texas MSW landfill plan meets the Federal requirements provided under CAA section 111(d), the MSW landfills EG codified at 40 CFR part 60, subpart Cf, and the CAA section 111(d) implementing regulations at 40 CFR part 60, subpart B. Once approved by the EPA, the Texas MSW landfills plan will become federally enforceable.

IV. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, we are finalizing regulatory text that includes the incorporation by reference of Texas Administrative Code (TAC) Title 30, Part 1, Chapter 113, Subchapter D, Division 6, adopted July 14, 2023, and effective July 19, 2023, which is part of the CAA section 111(d) Plan applicable to existing MSW landfills subject to the MSW Landfills Emission Guidelines, at 40 CFR part 60, subpart Cf, within TCEQ's jurisdiction in the State of Texas. The regulatory provisions of TAC Title 30, Part 1, Chapter 113, Subchapter D, Division 6, incorporate the MSW Landfills Emissions Guidelines promulgated by the EPA at 40 CFR part 60, subpart Cf, and establish emission standards and compliance times for the control of municipal solid waste landfills, as defined in subpart Cf, that commenced construction, modification, or reconstruction on or before July 17, 2014. The EPA has made and will continue to make TAC Title 30, Part 1, Chapter 113, Subchapter D, Division 6, generally available at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). They are also available at: <https://www.regulations.gov>. This incorporation by reference has been approved by the Office of the *Federal Register* and the state plan is federally enforceable under the CAA as of the effective date of this final rulemaking.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. § 7411(d); 42 U.S.C. § 7429; 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d)/129 state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason:

A. Executive Order 12866: Regulatory Planning and Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993) and was therefore not subject to a requirement for Executive Order 12866 review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not an Executive Order 14192 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA (44 U.S.C. 3501 *et seq.*) because it does not contain any information collection activities.

D. Regulatory Flexibility Act (RFA)

This action is certified to not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action will approve a state plan pursuant to CAA section 111(d) and will therefore have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action will not apply to areas of Indian country within Texas and therefore does not have tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). This action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Texas tribe implements a regulatory program under the CAA and thus does not have applicable or related tribal laws.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it approves a state program.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply,
Distribution and Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. This action 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 23, 2026.

Walter Mason,
Regional Administrator, Region 6.

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