



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2023-0230; FRL-9329-01-R3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to a Clean Air Act (CAA) section 111(d) plan (plan) submitted by the West Virginia Department of Environmental Protection (WVDEP). This revision updates the plan to include changes made to Emissions Guidelines and Compliance Times for municipal solid waste (MSW) landfills. This action is being taken under the Clean Air Act (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 ID No. EPA-R03-OAR-2023-0230 at *Regulations.gov*, or via email to *Supplee.Gwendolyn@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 www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Krystal Stankunas, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5271. Ms. Stankunas can also be reached via electronic mail at *Stankunas.Krystal@epa.gov*.

I. Background

On March 26, 2020 (85 FR 17244), the EPA finalized the residual risk and technology review conducted for the MSW Landfills source category regulated under national emission standards for hazardous air pollutants which included changes to the standards of performance for new MSW landfills, and emission guidelines and compliance times for existing MSW landfills published at 40 Code of Federal Regulations (CFR) 60, subparts XXX, and Cf respectively. This action was taken under section 111 of the CAA.

Section 111(d) of the CAA requires the EPA to establish a procedure for a state to submit a plan to the EPA which establishes standards of performance for any air pollutant: 1) for which air quality criteria have not been issued or which is not included on a list published under CAA section 108 or emitted from a source category which is regulated under CAA section 112 but; 2) to which a standard of performance under CAA section 111 would apply if such existing source were a new source. The EPA established these requirements for state plan submittals in 40 CFR part 60, subpart B and later in subpart Ba. State submittals under CAA section 111(d) must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cf, and the requirements of 40 CFR part 60, subpart B, subpart Ba where applicable,¹ and part 62,

¹Section 60.30f, Scope and delegated authorities, was amended on August 26, 2019 (84 CF 44555), subsequent to the promulgation of subpart Ba. As amended, § 60.30f indicates that for state plans submitted after September 6, 2019, §§ 60.23a and 60.27a of subpart Ba will apply instead of §§ 60.23 and 60.27 of subpart B.

subpart A.

On November 18, 2021, WVDEP submitted to the EPA a formal section 111(d) revision for existing MSW landfills. The submitted revision to the plan was in response to the EPA's March 26, 2020 (85 FR 17244) final residual risk and technology review for the MSW Landfills source category. The EPA originally approved West Virginia's MSW 111(d) plan effective July 23, 2001 (66 FR 28375), and it was subsequently revised and approved on November 22, 2019 (84 FR 64430).

II. Summary of Plan Revision and EPA Analysis

The EPA has reviewed the West Virginia section 111(d) plan revision in the context of the requirements of 40 CFR part 60, subparts B, Ba (where applicable), and Cf, and part 62, subpart A. In this action, the EPA has determined that the submitted section 111(d) plan revision meets the above-cited requirements. Included within the section 111(d) plan are regulations under the West Virginia Code, specifically, West Virginia legislative rule 45 Code of State Rule (C.S.R.) 23, entitled "Control of Air Pollution from Municipal Solid Waste Landfills." A detailed explanation of the rationale behind this approval is available in the technical support document (TSD), located in the docket for this rulemaking.

III. Proposed Action

The EPA is proposing to approve the revision to the West Virginia section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. The EPA is also proposing to amend 40 CFR part 62, subpart XX to reflect this action, including replacing both existing 40 CFR 62.12125(b) and 40 CFR 62.12125(c) with new 40 CFR 62.12125(b) and 40 CFR 62.12125(c), respectively, and adding new 40 CFR 62.12125(d) and 40 CFR 62.12127(c). This approval will update the rule to include references and dates relevant to the November 18, 2021 submittal. The scope of the approval of the section 111(d) plan revision is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, subpart Cf.

The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR 60.30f(c), as well as section 4.8.b, “Implementation of Emission Guidelines for Existing MSW Landfills,” of West Virginia's 111(d) plan submittal.

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference West Virginia legislative rule 45CSR23, Control of Air Pollution from Municipal Solid Waste Landfills, effective June 1, 2021, which provides emissions guidelines and compliance times for MSW landfills. The EPA has made, and will continue to make, these documents generally available through *Regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the EPA is required to approve a CAA section 111(d) submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR part 60, subparts B, Ba, and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. 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 proposed action:

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not expected to be 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 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.*). This action merely delegates to the local agency the authority to implement the already applicable requirements of the Federal Plan.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) and does not significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because 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 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant

regulatory action under section 3(f)(1) of Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. This action is not subject to the 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.

J. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Amy Van Blarcom-Lackey,
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