

(2) Rule 102 amended on November 17, 1995.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[KS 044-1044a; FRL-5979-7]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Kansas; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** The EPA is approving the Kansas plan for implementing the Municipal Solid Waste (MSW) Landfill Emission Guideline (EG) at 40 CFR part 60, subpart Cc, which was required pursuant to section 111(d) of the Clean Air Act (Act). The state's plan was submitted to the EPA on December 1, 1997, in accordance with the requirements for adoption and submittal of state plans for designated facilities in 40 CFR part 60, subpart B. The plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

**DATES:** This action is effective May 19, 1998, unless by April 20, 1998, relevant adverse comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Under section 111(d) of the Act, the EPA has established procedures whereby states submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a

standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards are set pursuant to sections 108 and 109 of the Act). As required by section 111(d) of the Act, the EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which states must follow in adopting and submitting a section 111(d) plan. Whenever the EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, the EPA establishes emissions guidelines (EG) in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a state's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, the EPA published an EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW landfills at 40 CFR part 60 subpart WWW (40 CFR 60.750 through 60.759). The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds, other organic compounds, methane, and hazardous air pollutants. To determine whether control is required, nonmethane organic compounds (NMOC) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), states were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG, or by December 12, 1996. If there were no designated facilities in the state, then the state was required to submit a negative declaration by December 12, 1996.

#### II. Analysis of State Submittal

The official procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B, §§ 60.23 through 60.26. Subpart B addresses public participation, legal authority, emission standards and other emission

limitations, compliance schedules, emission inventories, source surveillance, compliance assurance and enforcement requirements, and cross references to the MSW landfill EG.

On December 1, 1997, the state of Kansas submitted its section 111(d) plan for MSW landfills for implementing the EPA's MSW landfill EG.

The Kansas plan includes documentation that all applicable subpart B requirements have been met. More detailed information on the requirements for an approvable plan and Kansas' submittal can be found in the Technical Support Document (TSD) accompanying this action, which is available on request.

The Kansas plan cross-referenced both the NSPS subpart WWW and EG subpart Cc to adopt the requirements of the Federal rule. The state has ensured, through this cross-reference process, that all the applicable requirements of the Federal rule have been adopted into the state plan. The emission limits, testing, monitoring, reporting and recordkeeping requirements, and other aspects of the Federal rule have been adopted. Kansas rules K.A.R. 28-19-721 through K.A.R. 28-19-727 contain the applicable requirements.

Kansas demonstrated that it has the legal authority to implement and enforce the applicable requirements. The state provided evidence that it complied with the public notice and comment requirements of 40 CFR part 60, subpart B.

#### III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, the EPA is approving Kansas' December 1, 1997, submittal of its section 111(d) plan for the control of landfill gas from existing MSW landfills, except those located in Indian Country.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 19, 1998 without further notice unless the Agency receives relevant adverse comments by April 20, 1998.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a

subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 19, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

#### IV. Administrative Requirements

##### A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State plan approvals under section 111 of the Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal state plan approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning state plans on such grounds. See *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

##### C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995

("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

##### D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: February 24, 1998.

**Diane K. Callier,**

*Acting Regional Administrator, Region VII.*

Part 62, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

#### Subpart R—Kansas

2. Subpart R is amended by adding § 62.4178 and an undesignated center heading to read as follows:

Air Emissions From Existing Municipal Solid Waste Landfills

##### § 62.4178 Identification of plan.

(a) *Identification of plan.* Kansas plan for control of landfill gas emissions from existing municipal solid waste landfills and associated state regulations submitted on December 1, 1997.

(b) *Identification of sources.* The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, and have design capacities greater than 2.5 million megagrams and nonmethane organic emissions greater than 50 megagrams per year, as described in 40 CFR part 60, subpart Cc.

(c) *Effective date.* The effective date of the plan for municipal solid waste landfills is May 19, 1998.

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