

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 62**

[WY-001-0001a; FRL-6104-7]

**Approval and Promulgation of State  
Plans for Designated Facilities and  
Pollutants; Wyoming; 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 Wyoming plan and associated regulations for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which were required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan was submitted to EPA on February 13, 1998, in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. The State's plan establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. EPA finds that Wyoming's plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans.

**DATES:** This direct final rule is effective on July 31, 1998, unless EPA receives adverse comment by July 1, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to Vicki Stamper, 8P2-A, at the EPA Region VIII Office listed. Copies of the documents relative to this action are available for inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Division, Wyoming Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming 82002.

**FOR FURTHER INFORMATION CONTACT:** Vicki Stamper, EPA Region VIII, (303) 312-6445.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under section 111(d) of the Act, 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 (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes emissions guidelines 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 emission guideline for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published Emission Guidelines (EG) for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c-60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750-60.759). (See 61 FR 9905-29.) The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) 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 either (1) submit a plan for the control of the designated pollutant to which the EG applies or (2) submit a negative declaration if there

were no designated facilities in the State within nine months after publication of the EG, or by December 12, 1996.

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association v. Browner, et. al.*, No. 96-1152 (D.C. Cir), in accordance with section 113(g) of the Act. (See 62 FR 60898.) It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Accordingly, the currently-promulgated MSW landfill EG was used as a basis for EPA's review of Wyoming's submittal.

**II. Analysis of State's Submittal**

On February 13, 1998, the State of Wyoming submitted its plan and regulations (hereafter referred to as the "State Plan") for implementing EPA's MSW landfill EG. The Wyoming State Plan includes the State's implementing regulations in Section 35 of the Wyoming Air Quality Standards and Regulations (WAQSR) and supporting documentation for the other requirements of 40 CFR part 60, subpart B.

Wyoming has adopted provisions in Section 35 of the WAQSR which incorporate all of the requirements of the EG. Wyoming has also adopted compliance timelines in Section 35(b)(iv) and (e) of the WAQSR to address the compliance timelines of the EG and the increments of progress requirements of 40 CFR part 60, subpart B. Thus, the State's regulations adequately address the requirements of the EG, including the required applicability provisions, emission limitations, test methods and procedures, reporting and recordkeeping requirements, and compliance times. Specifically, Wyoming's regulation requires that existing MSW landfills that: (1) accepted waste since November 8, 1987; (2) have a design capacity equal to or greater than 2.5 million megagrams (Mg) or 2.5 million m<sup>3</sup>; and (3) have a NMOC emission rate, calculated in accordance with the procedures of 40 CFR 60.754, equal to or greater than 50 Mg/year to install a gas collection and control system meeting the requirements of 40 CFR 60.33c(b) and (c) within thirty months from the effective date of the State regulation (or, for those existing MSW landfills whose initial NMOC emission rate is less than 50 Mg/yr on the effective date of the State regulation, within thirty months after the landfill's

NMOC emission rate equals or exceeds 50 Mg/yr).

The State Plan also includes documentation showing that all requirements of 40 CFR part 60, subpart B have been met. Specifically, the State Plan includes a demonstration of legal authority to adopt and implement the plan, an emissions inventory, increments of progress compliance deadlines, a commitment to submit to EPA annual State progress reports on plan implementation and enforcement, and documentation that the State addressed the public participation requirements of 40 CFR 60.23. In addition, as stated above, the State has adopted emission standards and compliance schedules as an enforceable State regulation that is no less stringent than the EG.

Consequently, EPA finds that the State Plan and implementing regulations meet all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The State did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country as defined in 18 U.S.C. 1151. Therefore, EPA is not approving this State Plan as it relates to those sources.

More detailed information on the requirements for an approvable plan and Wyoming's submittal can be found in the Technical Support Document (TSD) accompanying this notice, which is available upon request.

### III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving Wyoming's plan and associated regulations, as submitted on February 13, 1998, for the control of landfill gas from existing MSW landfills, except for those existing MSW landfills located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to Wyoming's State Plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and approved by EPA in accordance with 40 CFR part 60, subpart B.

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

EPA is publishing this action 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, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should adverse comments be filed. This rule will be effective July 31, 1998 without further notice unless the Agency receives adverse comments by July 1, 1998.

If the EPA receives such comments, then EPA will publish a notice 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. Any 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 July 31, 1998 and no further action will be taken on the proposed rule.

### IV. Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

#### B. Executive Order 13045

The [proposed/final] rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

#### C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, 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, 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, the Administrator certifies 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 regulatory 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. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

#### D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, 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 the private sector, of \$100 million or more. Under section 205, 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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 pre-existing 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.

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

The Congressional Review Act, 5 U.S.C. section 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. 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. section 804(2).

### F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 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 must 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)).

### G. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks. Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that is (1) likely to be "economically significant" as defined under Executive Order 12866, and (2) the Agency has reason to believe that the environmental health or safety risk addressed by the rule may have a disproportionate effect on children. If a regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045, "Protection of Children from Environmental Health Risks and Safety Risks" because this is not an "economically significant" regulatory action as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

### 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: May 21, 1998.

**Carol Rushin,**

*Acting Regional Administrator, Region VIII.*

40 CFR part 62 is amended as follows:

### PART 62—[AMENDED]

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

**Authority:** 42 U.S.C. 7401-7642.

2. Subpart ZZ is added to read as follows:

### Subpart ZZ—Wyoming

Sec.

- 62.12600 Identification of plan.
- 62.12601 Identification of sources.
- 62.12602 Effective date.

### Subpart ZZ—Wyoming

#### Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

##### § 62.12600 Identification of plan.

Section 35, "Municipal Solid Waste Landfills," of the Wyoming Air Quality Standards and Regulations and associated documentation submitted by the State on February 13, 1998.

##### § 62.12601 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, as described in 40 CFR part 60, subpart CC.

##### § 62.12602 Effective date.

The effective date of the plan for municipal solid waste landfills is July 31, 1998.

[FR Doc. 98-14435 Filed 5-29-98; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

[OPPTS-50630A; FRL-5789-5]

RIN 2070-AB27

#### Sinorhizobium meliloti strain RMBPC-2; Significant New Use Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the microorganism described as *Sinorhizobium meliloti* strain RMBPC-2 which is the subject of premanufacture notice (PMN) P-92-403. This rule will require persons who intend to manufacture, import, or process this microorganism for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to

prohibit or limit that activity before it can occur.

**DATES:** This rule is effective July 1, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-531, 401 M St., SW., Washington, DC 20460, telephone: (202) 554-1404, TDD: (202) 554-0551; e-mail: TSCA-Hotline@epamail.epa.gov.

#### SUPPLEMENTARY INFORMATION:

**Electronic Availability:** Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (<http://www.epa.gov/fedrgrstr/>).

This SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of the microorganism identified in PMN P-92-403 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

### I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) of TSCA with respect to a category of chemical substances. EPA interprets the definition of "chemical substance" under TSCA to include microorganisms as stated in the **Federal Register** of April 11, 1997 (62 FR 17910) (FRL-5577-2), June 26, 1986 (51 FR 23324), and December 31, 1984 (49 FR 50886).

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and (d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the