

matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act 5 U.S.C. 600 *et seq.* generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. 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 annual costs to State, local, or tribal governments in the aggregate; or to 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.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual 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.

#### G. 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).

#### H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999.

Filing a petition for reconsideration with 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).)

#### Lists of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 14, 1999.

**Sammuel Coleman**,

*Acting Regional Administrator, Region 6.*

40 CFR Part 52 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

#### Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (116) to read as follows:

#### § 52.2270 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(116) A revision to the Texas State Implementation Plan (SIP) to include two modified Agreed Orders limiting sulfur dioxide (SO<sub>2</sub>) allowable emissions at two facilities in Harris County, submitted by the Governor by cover letter dated May 29, 1997.

(i) Incorporation by reference.

(A) TNRCC Docket No. 96-1188-AIR Order Modifying Commission Order No. 94-15 for Lyondel-Citgo Refining Company, LTD., as adopted by the TNRCC on June 29, 1994, and modified on July 31, 1996;

(B) TNRCC Docket No. 96-1187-AIR, Order Modifying Commission Order No. 94-22 for Simpson Pasadena Paper Company, as adopted by the TNRCC on June 29, 1994, and modified on July 31, 1996.

(ii) Additional material.

TNRCC submittal to the EPA dated May 29, 1997, entitled, "Revisions to the SIP Concerning Sulfur Dioxide in Harris County."

[FR Doc. 99-13800 Filed 6-2-99; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 62

[SD-001-0003a and SD-001-0004a; FRL-6351-8]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA approves the South Dakota plan and regulations for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. South Dakota's regulations require existing MSW landfills to install a landfill gas collection and control system, if the MSW landfill's design capacity and non-methane organic compound (NMOC) emissions are above certain thresholds. South Dakota submitted its original plan to EPA on May 2, 1997 and then submitted revisions to the plan on May 6, 1999.

South Dakota submitted this plan to meet section 111(d) of the Clean Air Act (Act) and EPA's Emission Guidelines for existing MSW landfills at 40 CFR part 60, subpart Cc. We approve South Dakota's plan because the State has met these requirements.

**DATES:** This rule is effective on August 2, 1999 without further notice, unless we receive adverse comment by July 6, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation 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 Department of Environmental and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501-3181.

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

**SUPPLEMENTARY INFORMATION:**

**I. EPA Action**

*A. What Action Is EPA Taking Today?*

We approve the South Dakota plan and regulations for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills, except for those landfills located in Indian Country<sup>1</sup>. South Dakota submitted its original plan to us on May 2, 1997 and then submitted revisions to the plan on May 6, 1999. South Dakota's Plan includes the "Section 111(d) State Plan for Municipal Solid Waste Landfills" and the State's regulations in Sections 74:36:07:34 through 74:36:07:42 of the Administrative Rules of South Dakota (ARSD).

We are publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are

filed. This rule will be effective August 2, 1999 without further notice unless we receive adverse comments by July 6, 1999. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

*B. Why Is EPA Approving South Dakota's Plan for MSW Landfills?*

We reviewed South Dakota's plan, as revised by the State, and found that it meets the general requirements for section 111(d) plans in 40 CFR part 60, subpart B, and the specific requirements for existing MSW landfills in 40 CFR part 60, subpart Cc (as revised on June 16, 1998, 63 FR 32743-53).

*C. What Does the South Dakota Plan Contain?*

South Dakota's plan includes:

1. A demonstration that South Dakota has adequate legal authority to adopt and implement the plan;
2. Sections 74:36:07:34 through 74:36:07:42 of the ARSD as the enforceable mechanism for implementing the Emission Guidelines;
3. An inventory of all existing MSW landfills subject to the State Plan, including an estimation of NMOC emissions and design capacity of each landfill;
4. Emission limits that are no less stringent than the Emission Guidelines;
5. A process for the State's review and approval of the design plan for a landfill's gas collection and control system;
6. A final compliance date of thirty months from the date of the first NMOC emission rate report showing emissions equal to or greater than 50 megagrams per year (Mg/yr);
7. "Increments of progress" deadlines to ensure the landfills are on track to meet the final compliance date;
8. Testing, monitoring, recordkeeping and reporting requirements for existing MSW landfills that are no less stringent than the Emission Guidelines;
9. A commitment to submit annual progress reports to EPA on implementation of the State Plan; and
10. Documentation that the State met all public participation requirements for its two rulemaking hearings. Further details of the State's Plan can be found in the Technical Support Document for this action, which you can obtain by contacting the Regional Office contact listed above. The specific requirements

of the State's Plan as it applies to MSW landfills are described below.

*D. What MSW Landfills Are Subject to South Dakota's Plan?*

If you are the owner or operator of a MSW landfill in South Dakota, then you are subject to South Dakota's plan if

1. The landfill accepted waste since November 8, 1987;
2. The landfill was constructed, reconstructed, or modified before May 30, 1991; and
3. The landfill's design capacity is greater than or equal to 2.5 million Mg and 2.5 million m<sup>3</sup>.

If your landfill was constructed, reconstructed, or modified after May 30, 1991, then you are subject to the New Source Performance Standard in 40 CFR part 60, subpart WWW (incorporated into the ARSD in section 74:36:07:43), rather than South Dakota's plan for "existing landfills." If you have questions on how a MSW landfill is defined, refer to the definitions in 40 CFR part 60, subparts Cc and WWW.

If your landfill is located in Indian Country, then you will be subject to the Federal Plan which was proposed on December 16, 1998 (63 FR 69634-69684) and which will be finalized in the near future. We are not approving South Dakota's plan for landfills located in Indian Country. Note that we are currently discussing with the State and the Tribes how to describe Indian Country in South Dakota. A more specific description of Indian Country will be published in a future **Federal Register** notice concerning approval of the State's New Source Performance Standard for MSW landfills.

*E. What Requirements Apply to MSW Landfills in South Dakota That Are Subject to the State's Plan?*

If you are the owner or operator of an existing MSW landfill that South Dakota determined has a design capacity of 2.5 million Mg or 2.5 million m<sup>3</sup>, then you must submit an initial report of your landfill's NMOC emission rate to the State by November 1, 1999. You must also submit updated NMOC emission rate reports annually or every five years as required by ARSD 74:36:07:42.01. The landfill's NMOC emission rate must be calculated in accordance with 40 CFR 60.754.

Once the landfill's NMOC emission rate is equal to or greater than 50 Mg/yr, then you must install a landfill gas collection and control system that meets the specifications of ARSD 74:36:07:36-37. You must also comply with the operational standards, compliance provisions, monitoring provisions, and recordkeeping and reporting

<sup>1</sup> See further discussion in Section I.D. of this preamble.

requirements in sections 74:36:07:39–42 of the ARSD.

*F. By What Date Are Existing MSW Landfills Required To Comply With South Dakota's Plan?*

If you are required to install a gas collection and control system, then you must complete construction of that system within thirty months of your first annual NMOC emission rate report showing emissions equal to or greater than 50 Mg/yr. You must also meet the interim deadlines specified in sections 74:36:07:35 and 38 for submitting your design plan, awarding contracts, beginning construction, and demonstrating compliance.

*G. What Is a Section 111(d) State Plan?*

Whenever we issue a New Source Performance Standard for a source category controlling a pollutant which is not a "criteria pollutant" regulated under section 110 of the Act or a hazardous air pollutant (HAP) regulated under section 112 of the Act, EPA must issue guidelines for controlling that pollutant at existing sources of the same source category. Criteria pollutants are pollutants for which EPA has issued national ambient air quality standards (NAAQS) (see 40 CFR part 50).

A section 111(d) State Plan must meet the Emission Guidelines which we issued for that source category, as well as the general requirements that apply to all section 111(d) plans in 40 CFR part 60, subpart B. States are required to submit plans meeting those requirements within nine months after publication of Emission Guidelines.

*H. Why Did EPA Regulate Landfill Gas Emissions?*

Landfill gas emissions 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. NMOC emissions are measured as a surrogate for MSW landfill emissions. We issued New Source Performance Standards to control landfill gas emissions from new, modified, or reconstructed MSW landfills on March 12, 1996. (See 40 CFR part 60, subpart WWW.) Since NMOCs are not a criteria pollutant or a HAP, we also issued Emission Guidelines for existing MSW landfills

on March 12, 1996. (See 40 CFR part 60, subpart Cc.)

Note that we revised the Emission Guidelines and New Source Performance Standards for MSW landfills on June 16, 1998, in response to our proposed settlement in *National Solid Wastes Management Association v. Browner, et. al.*, No. 96–1152 (D.C. Cir). (See 63 FR 32743–32784). In addition, we issued technical amendments to the Emission Guidelines and New Source Performance Standard on February 24, 1999 (64 FR 9258–9262).

**IV. What Are the Administrative Requirements Associated With This Action?**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 12875*

*Enhancing the Intergovernmental Partnership*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA consults with those governments, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

*C. Executive Order 13045*

Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the 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 because it does not involve decisions intended to mitigate environmental health or safety risks.

*D. Executive Order 13084 Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA consults with those governments, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the

agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under section 111 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval of the State Plan does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. 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 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 here 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.

#### G. 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 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. 804(2).

#### H. 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 August 2, 1999. 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: May 21, 1999.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

40 CFR part 62, subpart QQ, of chapter I, title 40 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 QQ is added to read as follows:

#### Subpart QQ—South Dakota

Sec.

62.10350 Identification of plan.

62.10351 Identification of sources.

62.10352 Effective date.

#### Subpart QQ—South Dakota

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

###### § 62.10350 Identification of plan.

"Section 111(d) State Plan for Municipal Solid Waste Landfills" and the State's implementing regulations in Sections 74:36:07:34 through 74:36:07:42 of the Administrative Rules of South Dakota (ARSD), submitted by the State on May 2, 1997 with amendments to the plan submitted on May 6, 1999.

###### § 62.10351 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.

###### § 62.10352 Effective date.

The effective date of the plan for municipal solid waste landfills is August 2, 1999.

[FR Doc. 99-13797 Filed 6-2-99; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

#### RIN 1018-AD74

#### Migratory Bird Hunting: Regulations Regarding Baiting and Baited Areas

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, amend the baiting regulations that apply to any person taking migratory game birds in the United States and/or preparing areas where migratory game birds are hunted. We include new definitions for "baiting," "baited areas," "normal agricultural planting, harvesting, and post-harvest manipulation", "normal agricultural operation," "normal soil stabilization practice," "natural vegetation" and "manipulation," and use these terms to identify allowable hunting methods.

**EFFECTIVE DATE:** This rule is effective July 6, 1999.

**ADDRESSES:** You may inspect public written comments by appointment between the hours of 8:00 a.m. and 4:30