ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SC–36–1–9932a ; FRL–6426–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the South Carolina Department of Health and Environmental Control (DHEC) for the State of South Carolina on April 12, 1999, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills. *See* 40 CFR part 60, subpart Cc.

DATES: This final rule is effective on October 25, 1999 unless significant, material, and adverse comments are received by September 23, 1999. If adverse comments are received, timely notice of withdrawal will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Gregory Crawford, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; and at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at (404) 562–9046 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (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 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, local, or tribal agency'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, EPA published 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). (*See* 61 FR 9905–9944.) The pollutants regulated by the NSPS and EG are 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 60.32c) 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 (by December 12, 1996).

EPA was involved in litigation over the requirements of the MSW landfill EG and NSPS beginning in 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 settlement did not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA amended 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. *See* 63 FR 32743–32753, 32783–32784. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. The State of South Carolina has amended their rules for MSW landfills in Regulation 61–62.60 (effective dates of February 26, 1999), to reflect the June 16, 1998, amendments to subparts Cc and WWW. Accordingly, the MSW landfill EG published on March 12, 1996, and amended on June 16, 1998, was used as the basis by EPA for review of this section 111(d) Plan submittal.

This action approves the section 111(d) Plan submitted by the South Carolina DHEC for the State of South Carolina to implement and enforce Subpart Cc.

II. Discussion

The South Carolina DHEC submitted to EPA on April 12, 1999, and in supplemental information submitted on July 14, 1999, the following in their section 111(d) Plan for implementing and enforcing the emission guidelines for existing MSW landfills in the State of South Carolina: Legal Authority; Enforceable Mechanisms; MSW Landfill Source and Emission Inventory; Emission Limits; Review and Approval Process for Collection and Control System Design Plans; Compliance Schedules; Testing, Monitoring, Recordkeeping and Reporting Requirements; Demonstration That the Public Had Adequate Notice and Public Hearing Record; Submittal of Progress Reports to EPA; and applicable State of South Carolina statutes and rules of the South Carolina DHEC.

The approval of the South Carolina State Plan is based on finding that: (1) the South Carolina DHEC provided adequate public notice of public hearings for the proposed rulemaking which allows the South Carolina DHEC to implement and enforce the EG for MSW landfills; and (2) the South Carolina DHEC also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek

injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In the Plan submittal, the South Carolina DHEC cites the following references for the legal authority: State of South Carolina's Attorney General's Opinion Regarding State Authority to Operate the Title V Operating Permit Program; the South Carolina Pollution Control Act (South Carolina Code Sections 48–1–10 through 48–1–350); and Regulation 61–62.60 of the South Carolina DHEC Air Pollution Control Regulations and Standards. On the basis of the Attorney General's Opinion, the statutes, and rules of the State of South Carolina, the State Plan is approved as being at least as protective as the Federal requirements for existing MSW landfills.

In the Plan submittal, the South Carolina DHEC cites the enforceable mechanisms for implementing the EG for existing MSW landfills. The enforceable mechanisms are the state regulations adopted by the State of South Carolina in Regulation 61–62.60, ''South Carolina Designated Facility Plan and New Source Performance Standards.'' The State's regulations meet the Federal requirements for an enforceable mechanism and are approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In the Plan submittal, the South Carolina DHEC cites all emission limitations for the major pollutant categories related to the designated sites and facilities. These limitations in Reguation 61–62.60 are approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In the Plan submittal and the supplemental information, the South Carolina DHEC submitted a source and emission inventory of all designated pollutants for each MSW landfill in the State of South Carolina. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing MSW landfills.

The Plan submittal and the supplemental information describes the process the South Carolina DHEC will utilize for the review of site-specific design plans for gas collection and control systems. The process outlined in the Plan meets the Federal requirements contained in Subpart Cc for existing MSW landfills.

In the Plan submittal and the supplemental information, the South Carolina DHEC cites the compliance schedules and increments of progress adopted in Regulation 61–62.60 for each existing MSW landfill to be in compliance within 30 months of the approval date of the State Plan. These compliance times for affected MSW landfills address the required compliance time lines of the EG. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

The South Carolina State Plan submittal includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities. The South Carolina DHEC also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MSW landfill emissions data, correlated with emission standards that apply, available to the general public. The South Carolina DHEC submitted regulations to support the requirements of monitoring, recordkeeping, reporting, and compliance assurance in the Plan submittal. These South Carolina rules have been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

The Plan submittal and the supplemental information outlines how the South Carolina DHEC will provide progress reports of Plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for Plan reporting.

Consequently, EPA finds that the South Carolina State Plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The South Carolina DHEC did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this Plan as it relates to those sources.

III. Final Action

Based on the rationale discussed above, EPA is approving the State of South Carolina section 111(d) Plan, as submitted on April 12, 1999, 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 the South Carolina State Plan or associated regulations will not be considered part of the applicable plan until submitted by the South Carolina DHEC in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the revision should significant, material, and adverse comments be filed. This action will be effective October 25, 1999 unless by September 23, 1999, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 25, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any section 111(d) plan. Each request for revision to the section 111(d) plan 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 (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 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. If EPA complies by consulting, E.O. 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 E.O. 12875 do not apply to this rule.

C. 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

Under E.O. 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. If EPA complies by consulting, E.O. 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 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

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 SIP approvals under section 110 and subchapter I, part D 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 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 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. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding South Carolina's audit privilege and penalty immunity law or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of South Carolina's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

G. 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 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.

H. 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. 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).

J. 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 October 25, 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: August 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR Part 62 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. 7401–7642.

Subpart PP—South Carolina

2. Part 62.10100 is amended by adding paragraphs (b)(4) and (c)(4) to read as follows:

§ 62.10100 Identification of plan.

* * * * *

(b) * * *

(4) South Carolina Implementation Plan for Existing Municipal Solid Waste Landfills, submitted on April 12, 1999, by the South Carolina Department of Health and Environmental Control.

(c) * * *

(4) Existing municipal solid waste landfills.

Subpart PP—[Amended]

3. Subpart PP is amended by adding a new § 62.10160 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.10160 Identification of sources.

The plan applies to 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.

[FR Doc. 99–21823 Filed 8–23–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090–AA70

Indian Affairs Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule and request for comments.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending its regulations concerning certain hearings and appeals procedures. The regulations govern who has the authority to make summary distributions in Indian trust estates, and when this authority can be exercised. Under the existing regulation, Bureau of Indian Affairs (BIA) Superintendents can make distribution determinations whenever an Indian dies intestate leaving only trust personal property or cash valued at less than $1,000. The jurisdictional amount of $1,000 was established in 1971. This rule clarifies the BIA Superintendents' authority to make summary distributions, and increases, from $1,000 to $5,000, the amount of trust personal property or cash which the BIA Superintendent has jurisdiction to distribute. In addition, this rule clarifies that a party has the right to appeal the distribution decision of the BIA Superintendent.

DATES: Final rule is effective on August 24, 1999. OHA must receive comments on or before September 23, 1999.

ADDRESSES: Comments should be mailed to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., 11th Floor, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Charles E. Breece, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd, 11th Floor, Arlington, Virginia 22203. Telephone: (703) 235–3810.

SUPPLEMENTARY INFORMATION: Under 25 U.S.C. 372, the Secretary of the Interior may establish regulations to implement his authority to make heirship determinations in Indian trust estates. Under this authority, the OHA's regulations at 43 CFR 4.271 set forth the rules and procedures governing the summary distribution of trust estates, which is invoked when an Indian dies intestate leaving only trust personal property or cash. Under the current regulations, a Superintendent can assemble the heirs, hold an informal hearing and make a summary distribution of the estate when the cash or trust personal property is valued at less than $1,000 and no real property interests are involved. The regulation also allows the Superintendent or the administrative law judge to dispose of claims of creditors during the summary distribution process. The current language is unclear about when an administrative law judge can be substituted for a Superintendent to make distribution determinations in these estates. OHA is amending the current regulation at 43 CFR 4.271 to clarify that, absent exceptional circumstances, the BIA Superintendent will assemble heirs, hold informal hearings, make distribution determinations and dispose of claims of creditors. The BIA Superintendent will request that an administrative law judge assume jurisdiction only in cases involving exceptional circumstances, real property or wills. The general authority of administrative law judges is set forth at 43 CFR 4.202.

The threshold amount of cash and trust personal property in Indian estates appropriate for summary disposition by a Superintendent must be adjusted to account for inflation and other economic changes. The current $1,000 amount was established in December 1971 and is no longer appropriate. OHA is amending the regulation to increase the amount of trust personal property or cash which the BIA Superintendent has jurisdiction to distribute from $1,000 to $5,000, not including any interest which may have accrued after the death of decedent. This action is intended to further the original purpose of the rules for summary distribution.

The current regulations at 43 CFR 4.320 are unclear about an interested party's right to appeal a Superintendent's decision under 43 CFR 4.271. Under 43 CFR 4.1(b)(2)(ii), the Interior Board of Indian Appeals (IBIA) has jurisdiction to exercise the review authority of the Secretary and decide