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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[CA-035-MSWa; FRL-7058-5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the California State Plan for implementing the emissions guidelines applicable to existing municipal solid waste landfills. The Plan was submitted by the California Air Resources Board for the State of California to satisfy requirements of section 111(d) of the Clean Air Act.

DATES: This direct final rule is effective on November 19, 2001 without further notice, unless EPA receives relevant adverse comments by October 22, 2001. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the submitted revision and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted revision are available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901
 California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

FOR FURTHER INFORMATION CONTACT: Mae Wang, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1200.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (CAA or 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 new source performance standards (NSPS) that control a designated pollutant, EPA establishes emission 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 (40 CFR 60.23 through 60.26).

On March 12, 1996, EPA promulgated NSPS for new municipal solid waste (MSW) landfills at 40 CFR part 60, subpart WWW (Standards of Performance for Municipal Solid Waste Landfills) and EG for existing MSW landfills at 40 CFR part 60, subpart Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) (see 61 FR 9905). The pollutants regulated by the NSPS and

EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOC), other organic compounds, methane, and HAPs.

VOC emissions 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 (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 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

On September 26, 1997, the California Air Resources Board (CARB) submitted to EPA the California State Plan for implementing 40 CFR part 60, subpart Cc. CARB submitted amendments to the California State Plan on June 26, 1998; November 9, 1998; and July 14, 1999. The submitted Plan controls existing MSW landfills in sixteen (16) air districts. EPA approved the California State Plan on September 23, 1999 (see 64 FR 51447).

II. Revision to the California State Plan

On December 20, 2000, CARB submitted a revision to the approved California State Plan. The revision adds landfill regulations for Mojave Desert Air Quality Management District (MDAQMD) and Bay Area Air Quality Management District (BAAQMD), and amends landfill regulations for South Coast Air Quality Management District (SCAQMD) and Ventura County Air Pollution Control District (VCAPCD). The submitted revision to the EPA-approved State Plan contains the following landfill regulations:

District	Rule Number and Name	Adoption date
BAAQMD	8-34 Solid Waste Disposal Sites	10/6/99
MDAQMD	1126 Municipal Solid Waste Landfills	8/28/00
SCAQMD	1150.1 Control of Gaseous Emissions from Municipal Solid Waste Landfills	3/17/00
VCAPCD	74.17.1 Municipal Solid Waste Landfills	2/9/99

EPA has evaluated each of these regulations and has determined that they meet the federal guidelines for controlling existing MSW landfills, as

set forth in 40 CFR part 60, subpart Cc. The submitted revision to the California 111(d) Plan for controlling MSW landfill

gas emissions meets all applicable requirements for approval.

III. Final Action

EPA is approving the revision to the State of California section 111(d) plan for the control of landfill gas emissions from existing MSW landfills.¹ As provided by 40 CFR 60.28(c), any revisions to the California State Plan or associated regulations will not be considered part of the applicable plan until submitted by CARB 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. Upon the effective date of this approval, the submitted revision will update the State Plan with the current versions of SCAQMD and VCAPCD regulations and add regulations for BAAQMD and MDAQMD. Moreover, MSW landfills located in BAAQMD and MDAQMD will no longer be subject to the Federal Plan (40 CFR part 62, subpart GGG) upon the effective date of this approval.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action 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 111(d) plan revision should relevant adverse or critical comments be filed. This rule will be effective November 19, 2001 without further notice unless the Agency receives relevant adverse comments by October 22, 2001.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will be addressed in a subsequent final rule based on the proposed rule. 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 on November 19, 2001 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 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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State Plan submissions under section 111(d) of the Clean Air Act, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 November 19, 2001. 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, Reporting and recordkeeping requirements.

Dated: August 2, 2001.

Jane Diamond,
Acting Regional Administrator, Region IX.

Title 40, chapter I, 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. 7401–7671q.

Subpart F—California

2. Section 62.1100 is amended by adding paragraph (b)(5)(i) to read as follows:

§ 62.1100 Identification of plan.

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(b) * * *

(5) * * *

(i) Revision to the State of California’s Section 111(d) Plan for Existing Municipal Solid Waste Landfills, submitted by the California Air Resources Board on December 20, 2000.

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¹ The State did not 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.