

facility, payments for services in the hospital outpatient department or hospital-based facility are subject to the payment window provisions applicable to PPS hospitals and to hospitals and units excluded from PPS set forth at 42 CFR 412.2(c)(5) and at 42 CFR 413.40(c)(2), respectively.

(vi) The hospital outpatient department must meet applicable VA policies pertaining to hospital health and safety programs.

(vii) VA must treat any facility that is located on the main hospital campus as a department of the hospital.

(6) *Operation under the control of the main provider.* The facility seeking provider-based status is operated under the control of the main provider.

Control of the main provider requires:

(i) The main provider and the facility seeking provider-based status have the same governing body.

(ii) The facility seeking provider-based status is operated under the same organizational documents as the main provider. For example, the facility seeking provider-based status must be subject to common bylaws and operating decisions of the governing body of the main provider.

(iii) The main provider has final responsibility for administrative decisions, final approval for contracts with outside parties, final approval for personnel actions, final responsibility for personnel policies (such as code of conduct), and final approval for medical staff appointments in the facility seeking provider-based status.

(7) *Administration and Supervision.* The reporting relationship between the facility seeking provider-based status and the main provider must have the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and one of its existing departments, as evidenced by compliance with all of the following requirements:

(i) The facility seeking provider-based status is under the direct supervision of the main provider.

(ii) The facility seeking provider-based status is operated under the same monitoring and oversight by the main provider as any other department of the provider, and is operated just as any other department of the provider with regard to supervision and accountability. The facility director or individual responsible for daily operations at the facility:

(A) Maintains a reporting relationship with a manager at the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the main

provider and its existing departments; and

(B) Is accountable to the governing body of the main provider, in the same manner as any department head of the provider.

(iii) The following administrative functions of the facility seeking provider-based status are integrated with those of the main provider where the facility is based: Billing services, records, human resources, payroll, employee benefit package, salary structure, and purchasing services. Either the same employees or group of employees handle these administrative functions for the facility and the main provider, or the administrative functions for both the facility and the main provider are contracted out under the same contract agreement; or are handled under different contract agreements, with the contract of the facility or organization being managed by the main provider.

(d) *Illustrations of how the criteria are applied.* (1) A VA facility that is seeking provider-based status that exists under contract arrangements, where only VA patients are seen, may be designated as provider-based if the provider-based requirements in this section are met.

(2) A VA facility seeking provider-based status that exists under contract arrangements, where VA patients and non-VA patients are seen at the same non-VA owned facility, will have the same provider-based status as the non-VA owned facility that is hosting the VA facility.

(3) A VA owned and operated facility seeking provider-based status, where some or all of the staff are contracted employees, may be designated as provider-based if the provider-based requirements in this section are met.

■ 2. Amend § 17.101 by:

■ a. Revising the section heading;

■ b. In paragraph (a)(5), removing the definitions “Non-provider-based” and “Provider-based” from; and

■ 3. Revising paragraph (a)(6).

The revisions read as follows:

**§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a non-service connected disability.**

(a) \* \* \*

(6) *Provider-based status and charges.* Facilities that have provider-based status by meeting the criteria in § 17.100 are entitled to bill outpatient facility charges and professional charges. The professional charges for these facilities are produced by the methodologies set forth in this section based on facility expense RVUs. Facilities that do not have provider-based status because they

do not meet the criteria in § 17.100 are not permitted to bill outpatient facility charges and can only bill a professional charge. The professional charges for these facilities are produced by the methodologies set forth in this section based on non-facility practice expense RVUs.

\* \* \* \* \*

■ 4. Amend § 17.106 by adding paragraph (f)(2)(viii) to read as follows:

**§ 17.106 VA collection rules; third-party payers.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(viii) A third party may not reduce or refuse payment if the facility where the medical treatment was furnished is designated by VA as provider-based, but the facility does not meet the provider-based status requirements under 42 CFR 413.65.

\* \* \* \* \*

[FR Doc. 2020–17042 Filed 8–27–20; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 258

[EPA–R09–RCRA–2018–0568; FRL–10011–63–Region 9]

### Final Determination To Approve Site Specific Flexibility for the Cocopah Landfill

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is making a final determination to approve two Site Specific Flexibility Requests (SSFRs) from Cocopah Landfill, Inc. (CLI), a subsidiary of Republic Services, Inc. (Republic), to close and monitor the Cocopah Landfill. The Cocopah Landfill is located within Indian Country on the Cocopah Indian Reservation near Somerton, Arizona and was operated by Republic and its predecessors from the 1960's to the present. EPA is promulgating a site-specific rule proposed on May 6, 2020, that approves an alternative final cover and an alternative location for the storage of facility records.

**DATES:** This final rule is effective on August 28, 2020.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R09–RCRA–2018–0568 at <http://www.regulations.gov>. Publicly

available docket materials are available electronically in <http://www.regulations.gov>, or via email to [R9LandSubmit@epa.gov](mailto:R9LandSubmit@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Steve Wall, EPA Region IX, (415) 972-3381, [wall.steve@epa.gov](mailto:wall.steve@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we,” “us,” or “our” refer to the EPA.

**Table of Contents**

- I. Legal Authority for This Action
- II. Background
- III. Basis for Final Determination
  - A. Alternative Final Cover SSFR: Alternative Final Cover System
  - B. Records Storage SSFR: Alternative Location for the Storage of Facility Records
- IV. Summary of Public Comments Received and Response to Comments
- V. Additional Findings

**I. Legal Authority for This Action**

Under sections 1008, 2002, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6901 *et seq.*, Congress required EPA to establish revised minimum federal criteria for Municipal Solid Waste Landfills (MSWLFs), including landfill location restrictions, operating standards, design standards, and requirements for ground water monitoring, corrective action, closure and post-closure care, and financial assurance. Under RCRA section 4005, states are to develop permit programs for facilities that may receive household hazardous waste or waste from conditionally exempt small quantity generators of hazardous waste, and EPA is to determine whether the state’s program is adequate to ensure that facilities will comply with the revised federal criteria.

The MSWLF criteria are in the Code of Federal Regulations at 40 CFR part 258. These regulations are prescriptive, self-implementing and apply directly to owners and operators of MSWLFs. Many of these criteria include a flexible performance standard as an alternative to the prescriptive, self-implementing regulation. The flexible standard is not self-implementing and requires approval by the Director of an EPA-approved state MSWLF permitting program.

However, EPA’s approval of a state program generally does not extend to Indian Country because states do not have authority over Indian Country. For this reason, owners and operators of MSWLF units located in Indian Country cannot take advantage of the flexibilities

available to those facilities that are within the jurisdiction of an EPA-approved state program. However, the EPA has the authority under sections 2002, 4004, and 4010 of RCRA to promulgate site-specific rules to enable such owners and operators to use the flexible standards. See *Yankton Sioux Tribe v. EPA*, 950 F. Supp. 1471 (D.S.D. 1996); *Backcountry Against Dumps v. EPA*, 100 F.3d 147 (D.C. Cir. 1996). EPA refers to such rules as “Site Specific Flexibility Determinations” and has developed draft guidance for owners and operators on preparing a request for such a site-specific rule, entitled “Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country Draft Guidance,” EPA530-R-97-016 (August 1997) (Draft Guidance).

**II. Background**

The Cocopah Landfill is located on the Cocopah Indian Reservation on property owned by the Cocopah Indian Tribe (Tribe) and is located near Somerton, Arizona. The Cocopah Landfill is a commercial MSWLF operated by Republic and its predecessors from the 1960’s to the present. Waste was last received at the site on June 30, 2000 and interim closure construction was completed in 2003 with an interim 3-foot-thick monolithic soil cover. The Cocopah Landfill property encompasses an area of 192 acres of which approximately 138 acres were used for placement of waste materials. Disposal operations were restricted to two separate units of 105 acres and 33 acres each, designated as the North Fill Area and the South Fill Area, respectively. A combined total of approximately 2.5 million tons of waste are known to have been deposited in the two disposal units.

Between 2010 and 2016, EPA worked with the Tribe and Republic to develop and reach agreement on an overall landfill closure plan. During this time, EPA also reviewed the SSFRs to determine whether they met technical and regulatory requirements. On September 5, 2017, the Tribe submitted Republic’s “Final Closure and Post-Closure Maintenance Plan and Site-Specific Flexibility Requests for the Cocopah Landfill” (Final Closure Plan) to EPA, requesting that EPA take appropriate action to ensure that the Final Closure Plan and accompanying SSFRs satisfy EPA’s requirements. EPA provided final comments on the Plan on April 26, 2019, which Republic addressed in an updated Final Closure Plan dated November 2019. The Final Closure Plan submitted to EPA includes two SSFRs. The requests seek EPA

approval to use an alternative final cover meeting the performance requirements of 40 CFR 258.60(a), and approval to use an alternative location for the storage of facility records pursuant to 40 CFR 258.29(a).

**III. Basis for Final Determination**

EPA is basing its final determination to approve the SSFRs on the Tribe’s concurrence, dated September 5, 2017, on the SSFRs as included in the Closure Plan, as well as EPA’s determination that the SSFRs meet the requirements in 40 CFR part 258, and on EPA’s independent review of the Final Closure Plan.

**A. Alternative Final Cover SSFR: Alternative Final Cover System**

The regulations require the installation of a final cover system as specified in 40 CFR 258.60(a), which consists of an infiltration layer with a minimum of 18 inches of compacted clay with a permeability of  $1 \times 10^{-5}$  cm/sec, covered by an erosion layer with a minimum six inches of topsoil. Republic sought approval for an alternative final cover designed to satisfy the performance criteria specified in 40 CFR 258.60(b); Republic proposed an alternative cover, called an evapotranspiration cover, which would consist of two and a half feet of native soil to control infiltration, covered by six inches of a soil gravel mixture to control erosion.

EPA is basing its final determination on a number of factors, including: (1) Research showing that the prescriptive, self-implementing requirements for final covers, comprised of low permeability compacted clay, do not perform well in the arid west. The clay dries out and cracks, which allows increased infiltration along the cracks; (2) Research showing that in arid environments thick soil covers comprised of native soil can perform as well or better than the prescriptive cover; and (3) Republic’s analysis demonstrating, based on site-specific climatic conditions and soil properties, that the proposed alternative soil final cover will achieve equivalent reduction in infiltration as the prescriptive cover design and that the proposed erosion layer provides equivalent protection from wind and water erosion. This analysis is provided in Appendices A, B, C and M of the Final Closure Plan for the Cocopah Landfill dated November 2019.

*B. Records Storage SSFR: Alternative Location for the Storage of Facility Records*

The regulations at 40 CFR 258.29(a) require that the owner or operator of a MSWLF unit must record and retain operating records at or near the facility or at an approved alternative location. Republic does not have administrative facilities at the Cocopah Landfill where records can be maintained. As a result, Republic requested approval to store all required documentation relating to the operating record of the Cocopah Landfill at the Copper Mountain Landfill (CML), which is Republic's closest operating facility to the Cocopah Landfill. The address of Copper Mountain Landfill is 34853 East County 12th Street, Wellton, Arizona 85356, which is 36 miles from the Cocopah Landfill.

EPA is basing its final determination on factors including: (1) The Cocopah Landfill is no longer operational, and Republic does not have administrative facilities there; and (2) Republic's proposed alternative records storage location, the Copper Mountain Landfill, is only 36 miles away.

**IV. Summary of Public Comments Received and Response to Comments**

EPA received no comments on the tentative determination.

**V. Additional Findings**

In order to comply with the National Historic Preservation Act, 54 U.S.C. 100101 *et seq.*, Republic will coordinate with the Tribe to arrange for a qualified Native American monitor to be present during any work. If buried or previously unidentified cultural resources are encountered during project activities, all work within the vicinity of the find will cease, and the provisions pursuant to 36 CFR 800.13(b) will be implemented. If, during the Landfill closure activities, previously undocumented archaeological material or human remains are encountered, all work shall cease in the immediate area and a qualified archaeologist shall be retained to evaluate the significance of the find and recommend further management actions.

Though no known threatened or endangered species or their habitat exist on the site, a preconstruction survey will be conducted prior to cover installation to ensure no threatened or endangered species are present. Following closure and vegetation restoration activities, the site may become suitable for threatened and endangered species. This would be a beneficial effect.

Under Executive Order 12866, "Regulatory Planning and Review" (58

FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB).

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.*) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in Section 203 of UMRA.

Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not 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, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is EPA's conservative analysis of the potential risks posed by Republic's proposal and the controls and standards set forth in the application.

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

As required by section three of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Executive Order 13175, entitled "Consultation and Coordination with

Indian Tribal Governments," (65 FR 67249, November 9, 2000), calls for EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." See also "EPA Policy for the Administration of Environmental Programs on Indian Reservations," (November 8, 1984) and "EPA Policy on Consultation and Coordination with Indian Tribes," (May 4, 2011). EPA consulted with the Tribe throughout Republic's development of its Final Closure Plan for the Cocopah Landfill.

**List of Subjects in 40 CFR Part 258**

Environmental protection, Municipal landfills, Final Cover, Post-closure Care, Groundwater Monitoring, Reporting and Recordkeeping Requirements, Waste Treatment and Disposal, Water Pollution Control.

Dated: July 27, 2020.

**Jeffrey Scott,**

*Director, Land, Chemicals and Redevelopment Division, Region IX.*

For the reasons stated in the preamble, 40 CFR part 258, is amended as follows:

**PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS**

■ 1. The authority citation continues to read as follows:

**Authority:** 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

**Subpart F—Closure and Post-Closure Care**

■ 2. Section 258.62 is amended by adding paragraph (d) to read as follows:

**§ 258.62 Approval of Site-specific Flexibility Requests in Indian Country.**

\* \* \* \* \*

(d) *Cocopah Municipal Solid Waste Landfill—Alternative final cover and alternative location for the storage of facility records.* This paragraph (d) applies to the Cocopah Landfill, a Municipal Solid Waste landfill operated by Republic on the Cocopah Indian Reservation near Somerton, Arizona.

(1) In accordance with § 258.60(b), the owner or operator may replace the prescriptive final cover set forth in § 258.60(a), with an alternative final cover as follows:

(i) The owner or operator may install an evapotranspiration cover system as an alternative final cover for the 135-acre site.

(ii) The alternative final cover system shall be constructed to achieve an equivalent reduction in infiltration as

the infiltration layer specified in § 258.60(a)(1) and (2) and provide an equivalent protection from wind and water erosion as the erosion layer specified in § 258.60(a)(3). Top-deck cover slopes shall have a minimum slope of 2%. All side slopes in the South Fill Area shall be regraded to a maximum 3 horizontal to 1 vertical (3H:1V). The existing side slope of 2.5H:1V in the North Fill Area will remain; however, drainage benches shall be installed on portions of the slope where the vertical height exceeds 50 feet.

(iii) The final cover system shall consist of a minimum three-foot-thick multi-layer cover system comprised, from bottom to top, of:

(A) A minimum 30-inch thick infiltration layer consisting of:

(1) Existing intermediate cover; and  
(2) Additional cover soil from on-site sources, which, prior to placement, shall be wetted to optimal moisture and thoroughly mixed to near uniform condition, and the material shall then be placed in lifts with an uncompacted thickness of six to eight inches, spread evenly and compacted to 90 percent of the maximum dry density, and shall:

(i) Exhibit a grain size distribution that excludes particles in excess of three inches in diameter;

(ii) Have a minimum fines content (percent by weight passing U.S. No. 200 Sieve) of 12 percent for the average of ten consecutive tests; and

(iii) Have a grain size distribution with a minimum of six percent finer than five microns for the average of ten consecutive tests; and

(B) A surface erosion layer comprised of a rock/soil admixture for top deck slopes and rock armoring for side slopes. The surface erosion layer requirements for top-deck slopes and side slopes are detailed below:

(1) Top deck slope surface erosion layer requirements: The top deck slope surface erosion layer shall be a minimum six-inch surface erosion layer comprised of a rock/soil admixture. The top deck surface erosion layer shall achieve the following gradation specification:

(i) Exclude particles in excess of three inches in diameter;

(ii) 40% to 75% passing No. 4 sieve

(iii) 10% to 50% passing No. 40 sieve

(iv) Less than or equal to 15% passing No. 200 sieve

(2) Side slope surface erosion layer: The side slope surfaces erosion layer shall consist of a 4-inch thick rock armor underlain by an 8 ounce per square yard (oz/sy) non-woven geotextile filter fabric. The side slope surface erosion rock armor layer shall

achieve the following gradation specification:

(i) Exclude particles in excess of three inches in diameter;

(ii) 10% to 40% passing No. 4 sieve

(iii) 0% to 10% passing No. 40 sieve

(2) In accordance with 40 CFR

258.29(a), the owner operator may retain all required documentation relating to the operating record of the Cocopah Landfill at the administrative offices of Copper Mountain Landfill. The address of Copper Mountain Landfill is 34853 East County 12th Street, Wellton, Arizona 85356.

(3) The owner or operator shall place documentation demonstrating compliance with the provisions of this Section in the operating record.

(4) All other applicable provisions of 40 CFR part 258 remain in effect.

[FR Doc. 2020-16586 Filed 8-27-20; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 282

[EPA-R06-UST-2018-0703; FRL-10011-49-Region 6]

### New Mexico: Final Approval of State Underground Storage Tank Program Revisions and Incorporation by Reference

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

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of New Mexico's Underground Storage Tank (UST) program submitted by the State. EPA has determined that these revisions satisfy all requirements needed for program approval. This action also codifies EPA's approval of New Mexico's State program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under Subtitle I of RCRA sections 9005 and 9006 and other applicable statutory and regulatory provisions.

**DATES:** This rule is effective October 27, 2020, unless EPA receives adverse comment by September 28, 2020. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The

incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of October 27, 2020, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:*

<https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Email:* [lincoln.audray@epa.gov](mailto:lincoln.audray@epa.gov).

*Instructions:* Direct your comments to Docket ID No. EPA-R06-UST-2018-0703. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The Federal <https://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

The index to the docket for this action is available electronically at <https://www.regulations.gov>. You can view and copy the documents that form the basis for this codification and associated publicly available docket materials are available either through <https://www.regulations.gov> or at the Environmental Protection Agency, Region 6, 1201 Elm Street, Suite #500, Dallas, Texas 75270. This facility is open from 8:30 a.m. to 4:00 p.m. Monday through Friday excluding