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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD-FRL]

RIN XXXX-XXXX

Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action EPA is promulgating (adopting) a Federal plan to implement emission guideline requirements for existing municipal solid waste (MSW) landfills located in States and Indian country where State plans or Tribal plans are not currently in effect. For most areas, the Federal plan is an interim action because, on the effective date of an approved State or Tribal plan, the Federal plan will no longer apply to MSW landfills covered by the State or Tribal plan. This MSW landfills Federal plan includes the same required elements specified in 40 CFR part 60, subparts B, Cc, and WWW for a State plan: identification of legal authority and mechanisms for implementation; inventory of affected facilities; emissions inventory; emission limits; compliance schedules; a process for EPA or State

review of design plans for site-specific gas collection and control systems; testing, monitoring, reporting and recordkeeping requirements; public hearing requirements; and progress reporting requirements. This Federal plan will most likely affect the industry sectors Air and Water Resource and Solid Waste Management, and Refuse Systems -- Solid Waste Landfills, which are North American Industrial Classification System Codes 92411 and 562212 and Standard Industrial Classification Codes 9511 and 4953.

EFFECTIVE DATE: The effective date of this MSW landfills Federal plan is [insert the date 60 days after publication in the FEDERAL REGISTER.]

ADDRESSES: Docket. Docket numbers A-98-03 and A-88-09 contain the supporting information for this promulgated rule and EPA's promulgation of standards of performance for new MSW landfills and emission guidelines for existing MSW landfills, respectively. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, D.C. 20460, or by calling (202) 260-7548. The fax number for the Center is (202) 260-4000 and the e-mail address is "A-and-R-Docket@epamail.epa.gov". The docket is located at the above

address in Room M-1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For procedural and implementation information regarding this Federal plan, contact Ms. Mary Ann Warner at (919) 541-1192, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For technical information, contact Ms. Michele Laur at (919) 541-5256, Waste & Chemical Processes Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 3) as shown in section J of Supplementary Information.

SUPPLEMENTARY INFORMATION:

Judicial Review. The EPA proposed this section 111(d) rule for MSW landfills on December 16, 1998 (63 FR 69364). This notice adopting a rule for MSW landfills constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the Clean Air Act (Act), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the

District of Columbia Circuit by [insert the date 60 days after date of publication in the FEDERAL REGISTER]. Under section 307(d)(7)(B) of the Act, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

Electronic Copy. In addition to being available in the docket, an electronic copy of today's document that includes the regulatory text is available through the EPA Technology Transfer Network Website (TTN Web) recent actions page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/ramain.html). The TTN Web provides information and technology exchange in various areas of air pollution control. For TTN help information, call the TTN Web helpline at (919) 541-5384.

Regulated Entities. Entities regulated by this action are all existing MSW landfills unless the landfill is covered by an EPA-approved section 111(d) State or Tribal plan that is currently effective. Existing landfills are those that:

(i) commenced construction, modification, or reconstruction prior to May 30, 1991;

(ii) have not been modified or reconstructed since May 30, 1991; and

(iii) have accepted waste since November 8, 1987 or have additional capacity for future waste deposition. Regulated categories and entities include the following North American Industrial Classification System (NAICS) and Standard Industrial Classification System (SIC) codes:

Category	NAICS Code	SIC Code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management	92411	9511	Municipal solid waste landfills that commenced construction, modification, or reconstruction before May 30, 1991
Industry: Refuse systems - solid waste landfills	562212	4953	
State, local, and Tribal government agencies			

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine

whether a facility, company, or business organization is regulated by this action, carefully examine the applicability criteria in §§ 62.14350 and 62.14352 of subpart GGG.

Based on the status of State plans as of June 14, 1999 (A-98-03, IV-J-20) and the MSW landfills inventory (A-98-03, IV-B-3), EPA projects that the MSW landfills Federal plan could initially affect more than 3,800 MSW landfills in approximately 28 States, protectorates, and municipalities. However, EPA expects many State plans to be approved and become effective in the next few months; therefore, the number of landfills affected by this Federal plan will continue to decrease as State and Tribal plans are approved and become effective.[1]

Outline. The following outline shows the organization of the remainder of the SUPPLEMENTARY INFORMATION section of this preamble.

I. BACKGROUND OF LANDFILLS REGULATIONS AND AFFECTED FACILITIES

A. Background of MSW Landfills Regulations

B. MSW Landfills Federal Plan and Affected Facilities

[1]While the inventory was completed June 14, 1999, table 2 in the preamble and tables 1 and 2 in the regulation were updated as of October 19, 1999 and reflect more current information.

I. BACKGROUND OF LANDFILLS REGULATION AND AFFECTED FACILITIES

A. Background of MSW Landfills Regulations

On March 12, 1996 the EPA promulgated in the Federal Register emission guidelines (61 FR 9905) for existing MSW landfills (40 CFR part 60, subpart Cc) under authority of

section 111 of the Act. The guidelines apply to existing MSW landfills, i.e., those that:

(i) commenced construction, modification, or reconstruction before May 30, 1991;

(ii) have not been modified or reconstructed since May 30, 1991; and

(iii) have accepted waste since November 8, 1987 or have additional capacity for future waste deposition.

On June 16, 1998 and February 24, 1999, EPA published notices to amend, correct errors, and clarify regulatory text for 40 CFR part 60, subpart Cc (63 FR 32743 and 64 FR 9258). These clarifications and amendments did not affect the due date or the required content of State plans for existing MSW landfills which were originally due on December 12, 1996. They did, however, trigger a requirement under 40 CFR 60.23(a)(2) for States, territories, localities, and Tribes to submit proposed revisions to State or Tribal plans to EPA. These plans would incorporate the requirements of the clarifications and amendments.

To make the guidelines enforceable, States with existing MSW landfills subject to the guidelines were required to submit to EPA a State plan that implements and enforces the emission guidelines within 9 months of promulgation of the guidelines (December 12, 1996). States

without existing landfills or without existing landfills that require control must submit a negative declaration letter. Following receipt of the State plan, EPA has up to 4 months to approve or disapprove the plan. In appropriate circumstances, case-by-case extensions can be granted (40 CFR 60.27(a)). In some cases, local agencies or protectorates of the United States submit plans for landfills in their jurisdictions. As discussed in section I.F. of this preamble, Indian Tribes may, but are not required to, submit Tribal plans.

If a State does not have an approved State plan, section 111 of the Act and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan for existing MSW landfills located in that State. In addition, section 301(d)(2) authorizes the Administrator to treat an Indian tribe in the same manner as a State for this MSW landfill requirement. (See section 49.3 of "Indian Tribes: Air Quality Planning and Management," hereafter "Tribal Authority Rule," 63 FR 7254, February 12, 1998.) For Indian tribes that do not have an approved MSW landfills Tribal plan, EPA must develop, implement and enforce a Federal plan for them.

Today's action, which will be codified as subpart GGG of 40 CFR part 62, adopts a MSW landfills Federal plan that

includes the elements described in section II of this preamble.

B. MSW Landfills Federal Plan and Affected Facilities

This final MSW landfills Federal plan affects existing MSW landfills that:

(i) commenced construction, reconstruction or modification prior to May 30, 1991;

(ii) have not been modified or reconstructed since May 30, 1991; and

(iii) have accepted waste since November 8, 1987 or have capacity for future waste deposition.

The MSW landfills Federal plan applies to existing MSW landfills located in: (1) Any State or portion of Indian country for which a State or Tribal plan has not become effective; (2) any State or portion of Indian country for which the State or Tribe submitted a negative declaration; (3) any State or portion of Indian country with an effective State or Tribal plan that subsequently is vacated in whole or in part; or (4) any State or portion of Indian country with an effective plan that subsequently revises any component of the plan (e.g., the underlying legal authority or enforceable mechanism) such that the State or Tribal plan is no longer as stringent as the emission guidelines. A landfill that meets any of these criteria is covered by the

Federal plan until an applicable State or Tribal plan is approved and becomes effective. An approved State or Tribal plan is a plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. The State plan becomes effective on the date specified in the notice published in the Federal Register announcing EPA's approval.

The effective date of this Federal plan is [insert the date 60 days after publication in the Federal Register]. The effective date is 60 days after the date of this publication, rather than 30 days after publication as proposed. This extra 30 days will allow EPA to approve additional State plans. The EPA does not expect the delay to affect the environmental benefits of this regulation.

C. MSW Landfills Federal Plan and Negative Declaration Letters

A negative declaration is a letter to EPA declaring that either there are no existing MSW landfills in the State or portion of Indian country or there are no existing MSW landfills in the State or portion of Indian country that must install collection and control systems according to the requirements of the emission guidelines. States or Indian tribes that submit negative declarations are not expected to submit State or Tribal plans, but existing MSW landfills

with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) in the State or portion of Indian country are subject to the MSW landfills Federal plan. Existing MSW landfills with a design capacity less than 2.5 million Mg or 2.5 million m^3 that are located in States or portion of Indian country that submitted a negative declaration letter are not required to submit an initial design capacity report if the negative declaration letter includes the design capacity for the landfills.

The preamble to the proposed rule incorrectly indicated that submission of the initial design capacity report was the only requirement applicable to a MSW landfill with a design capacity below 2.5 million Mg and 2.5 million m^3. Such MSW landfills, however, continue to be subject to the requirements in the definition of design capacity in § 62.14351 to recalculate the site-specific density annually and in § 62.14355 to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million m^3. Section 62.14355 as proposed and as finalized herein, accurately states that these landfills are only exempt from the requirement to submit an initial design capacity report. The EPA has added language to § 62.14352(c) to make it

clearer that a MSW landfill located in a State, locality or portion of Indian country that submitted a negative declaration remains subject to the requirements to recalculate site-specific density annually and to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million m^3.

Existing MSW landfills overlooked by a State or Indian tribe that submitted a negative declaration letter and existing landfills not included in a State or Tribal plan are subject to the Federal plan until a State or Tribal plan that includes these sources is approved and effective. For instance, in the event that an existing MSW landfill that must install a collection and control system according to the emission guidelines is subsequently identified where a negative declaration has been submitted, the Federal plan requirement to install a collection and control system would apply. As discussed in section I.F. of this preamble, the Federal plan applies throughout Indian country until an approved State or Tribal plan becomes effective. As discussed in section I.H. of this preamble, the Federal plan, by its own terms, no longer applies to a MSW landfill appropriately covered by an approved State or Tribal plan that becomes effective after promulgation of the Federal

plan. The specific applicability of this plan is described in §§ 62.14350 and 62.14352 of subpart GGG.

D. MSW Landfills Federal Plan and the New Source Performance Standards

An existing MSW landfill that increases its permitted volume design capacity through vertical or horizontal expansion (i.e., is modified) on or after May 30, 1991, is subject to the New Source Performance Standards (NSPS), 40 CFR part 60, subpart WWW (see 63 FR 32743, June 16, 1998). Existing MSW landfills that make operational changes without increasing the horizontal or vertical dimensions of the landfill continue to be subject to the Federal or State plan that implements the emission guidelines, rather than the NSPS. Examples of such operational changes at a MSW landfill include changing the moisture content of the waste, increasing the physical compaction on the surface, changing the cover material or thickness of the daily cover, and changing baling or compaction practices. This interpretation is consistent with the amendments to the landfills emission guidelines and NSPS, which are consistent with the landfill litigation settlement agreement. A MSW landfill that has been reconstructed on or after May 30, 1991 would also be subject to the NSPS, not the Federal or State plan that implements the emission guidelines.

Reconstructions are unlikely for landfills. As specified in the NSPS General Provisions, reconstructions are “the replacement of components of an existing facility [landfill] to such an extent that: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new facility [landfill].” The EPA knows of no situation where this would occur at a landfill.

E. Implementing Authority

The EPA Regional Administrators are the delegated authority for implementing the MSW landfills Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Administrator. Table 1 lists the States located in each region and the addresses of the EPA Regional Administrators.

TABLE 1. EPA REGIONAL ADMINISTRATORS

Regional Contact	State or Protectorate
EPA Region I One Congress Street John F. Kennedy Federal Bldg. Boston, MA 02203-0001	CT, MA, ME, NH, RI, VT
EPA Region II 290 Broadway New York, NY 10007-1866	NJ, NY, PR, VI
EPA Region III 1650 Arch Street Philadelphia, PA 19106	DC, DE, MD, PA, VA, WV
EPA Region IV 61 Forsyth Street, SW Atlanta, GA 30303	AL, FL, GA, KY, MS, NC, SC, TN
EPA Region V 77 W. Jackson Blvd. Chicago, IL 60604-3507	IL, IN, MI, MN, OH, WI
EPA Region VI Fountain Place, 12th Floor Suite 1200 1445 Ross Avenue Dallas, TX 75202-2733	AR, LA, NM, OK, TX
EPA Region VII 726 Minnesota Avenue Kansas City, KS 66101	IA, KS, MO, NE
EPA Region VIII 999 18th Street, Suite 500 Denver, CO 80202-2466	CO, MT, ND, SD, UT, WY
EPA Region IX 75 Hawthorne Street San Francisco, CA 94105	AS, AZ, CA, GU, HI, NMI, NV
EPA Region X 1200 Sixth Avenue Seattle, WA 98101	AK, ID, OR, WA

F. MSW Landfills Federal Plan and Indian Country

The MSW landfills Federal plan applies throughout Indian country to ensure that there is not a regulatory gap for existing MSW landfills in Indian country. The EPA requested comments, but received none, on its proposed approach to applying the landfills Federal plan in Indian country; therefore, the proposed approach, which is repeated here, is final.

Indian tribes have the authority under the Act to develop Tribal plans in the same manner States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the Act for which EPA is authorized to treat Tribes in the same manner as States (see 63 FR 7254, Tribal Authority Rule; codified at 40 CFR part 49). Upon the effective date of the Tribal Authority Rule, March 16, 1998, EPA has the authority to approve Tribal programs, such as Tribal plans or programs to implement and enforce MSW landfill emission guidelines, under the Act. Section 301(d)(2) authorizes the Administrator to treat an Indian tribe in the same manner as a State for the Clean Air Act provisions identified in 40 CFR section 49.3 if the Indian tribe meets the following criteria:

(a) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe’s jurisdiction; and

(d) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator’s judgement, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations (see section 49.6 of the Tribal Authority Rule, 63 FR 7272). In addition, if a Tribe meets these criteria, the EPA can delegate authority to implement the Federal plan to an Indian tribe the same way it can delegate authority to the State.

In addition to giving Indian tribes authority to develop Tribal plans, the Act also provides EPA with the authority to administer Federal programs in Indian country. This interpretation of EPA's authority under the Act is based in part on the general purpose of the Act, which is national in scope. In addition, section 301(a) of the Act provides EPA broad authority to issue regulations that are

necessary to carry out the functions of the Act. The EPA believes that Congress intended for EPA to have the authority to operate a Federal program in instances when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the Act. Finally, section 301(d)(4) of the Act authorizes the Administrator to directly administer provisions of the Act to achieve the appropriate purpose, where Tribal implementation of those provisions is not appropriate or administratively feasible. The EPA's interpretation of its authority to directly implement Clean Air Act programs in Indian county is discussed in more detail in the final Federal Operating Permits Program, 64 FR 8247, (February 19, 1999) and in the Tribal Authority Rule.

Many Tribes may have delayed development of air quality regulations and programs pending promulgation of the Tribal Authority Rule. As mentioned previously, Tribes may, but are not required to, submit a MSW landfills plan or negative declaration letter under section 111(d) of the Act. The EPA is not aware of any Tribes that have developed plans to implement the MSW emission guidelines or submitted negative declaration letters.

The impact of this Federal plan on Indian tribes is not expected to be significant. There are very few existing MSW landfills in Indian country large enough to require the installation of a collection and control system. For most existing MSW landfills in Indian country, the only requirements this Federal plan imposes are to submit an initial design capacity report and to recalculate the site-specific density and design capacity annually and to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million m^3.

The Federal plan will apply throughout Indian country except where a State or Tribal plan has been explicitly approved by EPA to cover an area of Indian country. The EPA will administer the plan in Indian country without requiring any jurisdictional showing on the part of the Tribe. To assure there are no gaps in coverage, EPA will treat disputed areas, i.e., areas for which EPA believes the Indian country status may be in question, as Indian country. The EPA will continue to implement the Federal plan in these areas until a Tribal plan covering an area of Indian country becomes effective, or the area is determined not to be Indian country and the source is subject to an effective

State plan. This approach is consistent with the final Federal Operating Permits Program cited above.

The term “Indian country,” as used in this MSW landfills Federal plan, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition is consistent with the final Federal Operating Permits Program.

G. MSW Landfills Federal Plan and Compliance Schedules

The emission guidelines require the owner or operator of a MSW landfill to submit a design capacity report within 90 days after the effective date of the State or Tribal plan (or within 90 days after the effective date of the promulgated Federal plan). An emission rate report showing nonmethane organic compounds (NMOC) emissions from the landfill must also be submitted within the same time period if the landfill has a design capacity of 2.5 million Mg and

2.5 million m^3 or more. Both of the requirements have been incorporated in the Federal plan. The emission guidelines and this Federal plan further require the owner or operator of a MSW landfill with a design capacity greater than or equal to 2.5 million Mg and 2.5 million m^3 to submit a collection and control system design plan within 1 year of first reporting NMOC emissions of 50 Mg per year or more. The collection and control system must be installed and operating within 30 months of first reporting NMOC emissions of 50 Mg per year or more. The compliance schedule in this Federal plan also sets the dates for awarding contracts and beginning construction, however, States, Tribes, and owners or operators have the option of setting these two dates (see option 3 below), which are not specifically defined in the emission guidelines. (See the discussion in section II.E of the proposal preamble (63 FR 69373).)

As discussed in the proposal preamble, the EPA believes that it would be inappropriate for the owner or operator of a MSW landfill who is subject to the requirements of this Federal plan to install a collection and control system to obtain additional time for achieving final compliance by virtue of the subsequent approval of a State or Tribal plan. The EPA did not receive any adverse comments regarding this interpretation. Therefore, to guard against this occurring,

the EPA has added a sentence to § 62.14356(c)(1) to make it clear that once the Federal plan becomes effective, any designated facility to which the Federal plan applies will remain subject to the schedule in the Federal plan if a subsequently approved State or Tribal plan contains a less stringent schedule (i.e., a schedule that provides more time to comply with increments 1, 4 and/or 5 as specified in § 62.14356(a) than does this Federal plan).

Also discussed in the proposal preamble were three options for establishing dates for the increments of progress that make up the compliance schedule. They are: 1) comply with the generic compliance schedule in the landfill Federal plan (table 2 of subpart GGG of the proposed Federal plan and table 3 of subpart GGG of this final Federal plan), 2) States or Tribes submit compliance schedules to the EPA before the end of the comment period of the proposed Federal plan, and 3) landfill owners or operators or the State or Tribe submit a compliance schedule for increments 2 and 3 to the EPA at the time the final control plan is due. The EPA requested and received no comments on these options. Although the time period for submitting increments of progress under option 2 has passed, options 1 and 3 will remain available in this final Federal plan. This will allow for increased regulatory efficiency and flexibility.

H. MSW Landfills Excluded from Federal Plan Applicability

The MSW landfills Federal plan does not apply to landfills appropriately covered by an approved and effective State or Tribal plan or to landfills in a State or portion of Indian country that has submitted a negative declaration as long as the landfills in fact have a design capacity less than 2.5 million Mg or 2.5 million m^3. If a State or Tribal plan becomes effective before this Federal plan becomes effective, this Federal plan will not apply to landfills appropriately covered by that State or Tribal plan. Promulgation of this MSW landfills Federal plan does not preclude a State or Tribe from submitting a plan later. If a State or Tribe submits a plan after the effective date of this Federal plan, EPA will review and approve or disapprove the plan. Upon the effective date of the State or Tribal plan, the Federal plan no longer applies. States are, therefore, encouraged to continue their efforts to develop and submit State plans to EPA for approval. Similarly, EPA encourages Tribes to develop and submit Tribal plans.

I. Status of State Plan Submittals

The following States have EPA approved and effective State plans: Alabama, Allegheny County (Pennsylvania), Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nashville

(Tennessee), Nebraska, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, and Wyoming.

The following States have EPA approved State plans that are approved but not yet effective: Arizona[2], California[3], Delaware[4], Maryland[5], Nevada[6], South Carolina[7], and Tennessee[8]. States that have approved or approved and effective State plans are listed in table 1 of subpart GGG. (MSW landfills located in those States would become subject to the Federal plan in the event that the State plan is subsequently disapproved, in whole or in part.) States that submitted negative declaration letters are listed in table 2 of subpart GGG.

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[2]The Arizona State plan is scheduled to become effective on November 19, 1999 (64 FR 50768, September 20, 1999).

[3]The California State plan is scheduled to become effective on November 22, 1999 (64 FR 51447, September 23, 1999).

[4]The Delaware State plan is scheduled to become effective on November 16, 1999 (64 FR 50453, September 17, 1999).

[5]The Maryland State plan is scheduled to become effective on November 8, 1999 (64 FR 48714, September 8, 1999).

[6]The Nevada State plan is scheduled to become effective on November 19, 1999 (64 FR 50764, September 20, 1999).

[7]The South Carolina State plan is scheduled to become effective on October 25, 1999 (64 FR 46148, August 24, 1999).

[8]The Tennessee State plan is scheduled to become effective on November 29, 1999 (64 FR 52660, September 30, 1999).

States without approved plans are making significant progress on their State plans and EPA expects many State plans to be approved in the next few months. (The EPA is not aware of any Indian tribes that are developing Tribal plans.) Table 2 of this preamble summarizes the status of States without approved and effective State plans and those that have submitted negative declarations as of October 19, 1999. The table is based on information from EPA Regional Offices (Docket No. A-98-03, Item No. IV-J-23). Copies of Federal Register notices of approvals and negative declaration letters are located in Docket No. A-98-03.

TABLE 2. STATUS OF STATES WITHOUT AN APPROVED STATE PLAN[a]

State
I. Negative declaration submitted to EPA and no State plan is expected. (See discussion in section I.C of this preamble.)
Region I
New Hampshire
Rhode Island
Vermont
Region III
District of Columbia
Philadelphia, PA
II. State plan submitted and is being reviewed by EPA. The promulgated Federal plan will cover existing MSW landfills in these States until the State plan is approved and becomes effective.
Region III
Pennsylvania
West Virginia
Region IV
Knox County, Tennessee
North Carolina

TABLE 2. STATUS OF STATES WITHOUT AN APPROVED STATE PLAN (Continued)

State
III. State plan or negative declaration not submitted. The existing MSW landfills in these States will be subject to the promulgated Federal plan unless a State plan applicable to existing landfills is approved by EPA and becomes effective.
Region I
Connecticut
Maine
Massachusetts
Region II
New Jersey
Puerto Rico
Virgin Islands
Region III
Virginia
Region IV
Chattanooga, Tennessee
Mississippi
Region V
Indiana
Michigan
Wisconsin
Region VI
Albuquerque, New Mexico
Arkansas
Region IX
American Samoa
Clark County, Nevada
Guam
Hawaii
Northern Mariana Islands
Region X
Alaska
Idaho
Washington

[a]Current as of October 19, 1999. See Docket No. A-98-03; Item No. IV-J-23.

To assist in identifying which MSW landfills are and are not covered by the Federal plan, table 1 of subpart GGG lists States and Indian tribes that have approved and effective plans as of October 19, 1999 that cover MSW landfills in the State or Indian country. MSW landfills not appropriately covered by an effective plan are covered by the Federal plan. For example, if a landfill is located in a State that is listed in table 1 of subpart GGG and the State plan does not apply to the landfill, then the landfill is subject to the Federal plan. As stated above, EPA expects additional State plans to become effective prior to the effective date of this Federal plan. The EPA will periodically amend table 1 of subpart GGG to identify States with approved and effective State plans. These amendments will be published in the Federal Register and codified in the CFR. The inclusion or the failure to include a State in table 1 of subpart GGG is not controlling in determining whether a MSW landfill is subject to the MSW landfill Federal plan. Any MSW landfill not covered by an approved and currently effective State or Tribal plan, or any MSW landfill with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 located in a State that submitted a negative declaration, is subject to the MSW landfill Federal plan.

The EPA will keep an up-to-date list of State plan submittals and approvals on the EPA TTN Web at http://www.epa.gov/ttn/oarpg and http://www.epa.gov/ttn/uatw/landfill/landflpg.html. The list will help landfill owners or operators determine whether their landfill is affected by a State or Tribal plan or the Federal plan.

J. Regional Office Contacts

For information regarding the implementation of the MSW landfills Federal plan, contact the appropriate EPA Regional Office as shown in table 3.

TABLE 3. EPA REGIONAL CONTACTS FOR MUNICIPAL SOLID WASTE LANDFILLS

Regional Contact	Phone Number	Fax Number
Region I (CT, MA, ME, NH, RI, VT)		
Jeanne Cosgrove U.S. EPA/CAQ John F. Kennedy Federal Bldg. Boston, MA 02203-0001	(617) 918-1669	(617) 918-1505
Region II (NJ, NY, PR, VI)		
Craig Flamm U.S. EPA/25th Floor 290 Broadway New York, NY 10007-1866	(212) 637-4021	(212) 637-3901
Region III (DC, DE, MD, PA, VA, WV)		
James B. Topsale U.S. EPA/Region 3 1650 Arch Street Philadelphia, PA 19103-2029	(215) 814-2190	(215) 814-2114
Region IV (AL, FL, GA, KY, MS, NC, SC, TN)		
Scott Davis U.S. EPA/APTMD 61 Forsyth Street, SW Atlanta, GA 30303	(404) 562-9127	(404) 562-9095
Region V (IL, IN, MI, MN, OH, WI)		
Charles Hatten U.S. EPA 77 W. Jackson Blvd. Chicago, IL 60604	(312) 886-6031	(312) 886-0617
Region VI (AR, LA, NM, OK, TX)		
Mick Cote U.S. EPA 1445 Ross Ave., Suite 1200 Dallas, TX 75202-2733	(214) 665-7219	(214) 665-7263

TABLE 3. EPA REGIONAL CONTACTS FOR MUNICIPAL SOLID WASTE LANDFILLS (CONTINUED)

Regional Contact	Phone Number	Fax Number
Region VII (IA, KS, MO, NE)		
Ward Burns U.S. EPA/RME 726 Minnesota Ave./ARTDAPCO Kansas City, KS 66101-2728	(913) 551-7960	(913) 551-7065
Region VIII (CO, MT, ND, SD, UT, WY)		
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II. REQUIRED ELEMENTS OF THIS MUNICIPAL SOLID WASTE LANDFILLS FEDERAL PLAN

Section 111(d) of the Act, 42 U.S.C. 7411(d), requires States to develop and implement State plans for MSW landfills that implement and enforce the published emission guidelines. Subparts B and Cc of 40 CFR part 60 require States to submit State plans that include specified elements. Because the Federal plan is being adopted for areas where State plans are not yet in effect, the Federal plan includes the same essential elements as required for State plans: (1) Identification of legal authority and mechanisms for implementation, (2) inventory of affected facilities, (3) emissions inventory, (4) emission limits, (5) compliance schedules, (6) a process for EPA or State review of design plans for site-specific gas collection and control systems, (7) testing, monitoring, reporting and recordkeeping requirements, (8) public hearing requirements, and (9) progress reporting requirements. Each State plan element was discussed in detail as it relates to the MSW landfills Federal plan in the preamble to the proposed rule (63 FR 69370-69375). Table 4 identifies each element and indicates where it is located or codified.

TABLE 4. REQUIRED ELEMENTS AND LOCATION

Required Element of the Landfills Federal Plan	Where located or codified
1. Identification of legal authority and mechanisms for implementation	Section 111(d)(2) of the Act and Sections II.A and III.A of the proposal preamble (63 FR 69370)
2. Inventory of affected facilities	Docket No. A-98-03, Item No. IV-B-3
3. Emission inventory	Docket No. A-98-03, Item No. IV-B-3
4. Emission limits	40 CFR 62.14353
5. Compliance schedules	40 CFR 62.14356
6. Process for review of site-specific gas collection and control system design plans	Section II.F of the proposal preamble (63 FR 69375)
7. Testing, monitoring, reporting and recordkeeping requirements	40 CFR 62.14354 and 62.14355
8. Public hearing requirements	Section II.I of the proposal preamble (63 FR 69375)
9. Progress reports	Section II.H of proposal preamble (63 FR 69375)

III. SUMMARY OF COMMENTS AND CHANGES SINCE PROPOSAL

In this section of the preamble, the EPA presents a brief summary of its responses to the public comments it received on the MSW landfills Federal plan. The full comment summaries and responses are documented in the promulgation background information document (EPA-456/R-99-001, Docket No. A-98-03, item III-B-1). The document addresses additional comments that are not summarized in this preamble.

The EPA requested comments on the proposed options for establishing the incremental compliance dates. The EPA received no comments on the proposed options for establishing the incremental compliance dates, nor did it receive site-specific compliance schedules to be included in the final rule. The EPA did receive comments on its approval of State plans, design capacity estimates and reports, the inventory, calculating the emissions rate for control applicability, the final control plan, and delegation. The EPA also received one comment on the Information Collection Request. That comment is discussed in section VII.B of this preamble.

A. State Plan Interim Approval

Commenters suggested that EPA issue a final rulemaking to provide interim approval of State plans that have been

submitted to EPA but have not yet been approved or disapproved. These commenters suggested that if EPA approved State plans on an interim basis, the landfill owner or operator would be subject to only the State regulations without duplication of Federal requirements. One commenter suggested that EPA should defer to the provisions of State plans that have been submitted in order to avoid the costs and other burdens of duplicate or inconsistent regulation during the review period.

The EPA will not approve State plans on an interim basis for two reasons: (1) there is no legal basis for interim approval and (2) overlapping requirements are not likely. The EPA only has the authority to approve or disapprove a State plan, or any portion thereof, based on whether it is consistent with 40 CFR part 60, subparts B and Cc. While section 502 of the Act and 40 CFR 70.4(d) specifically authorize interim approval for title V permit programs, neither subpart B nor section 111(d) of the Act authorizes EPA to grant similar interim approval of State or Tribal plans. The EPA will continue to accept and review State plans according to the criteria for State plans that are described in “Municipal Solid Waste Landfill, Volume 2: Summary of the Requirements for Section 111(d) State Plans

for Implementing the Municipal Solid Waste Emission Guidelines" (guidance document).

In addition, the EPA does not expect landfill owners or operators to be subject to duplicate or inconsistent regulation. The EPA expects that State plans that were submitted by December 1998 (when the Federal plan was proposed) will be approved or disapproved before the landfills Federal plan becomes effective. Once the State plan is approved and becomes effective, the owner or operator of a landfill covered by the State plan will not be subject to the Federal plan. If, as expected, State plans become effective prior to promulgation of the Federal plan, landfill owners or operators of landfills covered in those State plans will have to comply only with the State plans and will not be subject to two different time lines or other inconsistent requirements.

B. Design Capacity Estimates and Reports

One commenter contended that it is a meaningless task for towns (the owners or operators of the landfills) to create design capacity reports based on uncertain data and where the landfills are no longer operating. According to the commenter, many of the small towns in the State do not know and cannot determine the design capacity of their landfills. The height and density, which would be used to

calculate the design capacity, are not available. The commenter further stated that there is no way to recreate the history needed to get the height or density. Many of the State's landfills have been closed and have no additional capacity for future waste disposal. The commenter also stated that most of the landfills in the State are much smaller than the design capacity cutoff.

The emission guidelines require owners and operators subject to the Federal plan to submit design capacity reports regardless of the size of the landfill. The Federal plan must be as stringent as the emission guidelines, therefore, the requirement to submit a design capacity report remains in the final Federal plan. The purpose of the design capacity report is to help determine which landfills may be subject to the requirement to install a collection and control system. Closed landfills that accepted waste since 1987 are included because landfills continue to emit nonmethane organic compounds (NMOC) years after they have closed and they are subject to the emission guidelines that are implemented by the Federal plan.

If data are not available on waste acceptance rates, then owners and operators should estimate their landfill's design capacity based on the best information available. For example, if owners or operators know the acreage of

their landfills (the commenter provided the acreage for 396 landfills in the State), they could estimate the depth of waste based on available information, and document their assumption on depth. Then they could calculate the approximate volumetric design capacity of the landfill and submit the report. If capacity is clearly below 2.5 million cubic meters (or 2.5 million megagrams) no further action is required.

C. Inventory of Landfills

One commenter stated that one purpose of the Federal plan appears to be to create a database of MSW landfills in order to estimate emissions. The commenter stated that the vast majority of small, closed landfills will never be able to be assessed due to lack of information. Two commenters provided information on landfills in their States. The information was submitted in response to EPA's request for supplemental information on the landfills inventory that EPA prepared as part of the Federal plan (Docket no. A-98-03, Item no. II-B-2). The EPA appreciates the commenters' information on landfills. The information provided by the commenters is a useful supplement to EPA's inventory and will help in determining which landfills may be affected by the landfills Federal plan.

The EPA revised the Federal plan inventory since proposal to remove States that it no longer expects to be covered by the landfills Federal plan. The updated inventory can be found in Docket No. A-98-03, Item No. IV-B-3.

The EPA will continue to require States that develop State plans to submit an inventory of existing landfills that accepted waste after November 8, 1987, consistent with 40 CFR 60.25. The purpose of the inventory is to provide a record to the public of existing MSW landfills in a State or Indian country. The EPA is encouraging States to continue work on State plans, including inventories. Where inventory data is lacking, States should use whatever information is available to develop a reasonable estimate of emissions.

D. Calculating Emissions Rate For Control Applicability

One commenter recommended that the landfills Federal plan defer to alternative emission estimation methods, particularly State-approved methods. This would ensure that consistent and accurate emissions estimates are used in determining actions under the emission guidelines and new source performance standards (40 CFR part 60, subparts Cc and WWW) and related State programs, such as Title V permitting and New Source Review. The commenter stated that facilities should be allowed to employ the most accurate

emissions estimates. The commenter also expressed concern that EPA may rely on default estimates based on AP-42 estimation methodology while States are using more recent and sophisticated emission methods that are proving more accurate.

The emission guidelines do not allow the use of AP-42 emission factors to determine whether a landfill must install controls; they require the MSW landfill owner or operator to use the tiered calculation procedure described in 40 CFR 60.754 of subpart WWW to determine the eventual need for controls. The Federal plan implements the emission guidelines and must, therefore, require the use of the same procedure. (The appropriate time to comment on the procedure was during the public comment periods for these regulations.) The procedure involves the calculation of the NMOC emission rate from a landfill. If the emission rate equals or exceeds a specified threshold (50 Mg NMOC/yr), the landfill owner or operator must install a gas collection and control system.

The first tier of the tiered calculation procedure is purposefully conservative to ensure that landfill emissions are controlled. Tiers 2 and 3 allow site-specific measurements to determine emissions more accurately. However, if the landfill owner or operator wants to use an

alternative more accurate method, they can seek approval from the Administrator. Section 60.754(b)(3) of subpart WWW (which is cross-referenced to § 62.14354 of subpart GGG) allows landfill owners or operators to use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the Administrator. The landfill owner or operator can use the approved alternative methods to provide a better estimate of emissions for a particular landfill.

To ensure national consistency, the Administrator is retaining the authority to approve alternative methods to determine site-specific NMOC concentrations and methane generation rate constants and is not transferring this authority to the State or Tribe upon delegation of authority to implement and enforce the Federal plan. The EPA will review and consider any applications for site-specific methods that it receives.

To estimate emissions for State inventories and related State programs such as Title V permitting and New Source Review, a State may use its own procedures. Tier 1 default values are not recommended for inventories because they tend to overestimate emissions from many landfills. As mentioned previously, the default values are purposefully conservative because they serve as an indicator of the need to install a

collection and control system. The Federal plan, the emission guidelines, and the guidance document recommend using AP-42 unless site-specific information is available or can be developed. AP-42 has values that are more typical than Tier 1 defaults, for permitting and inventories. Other procedures approved by the State may also be used for permitting and inventory purposes.

E. Final Control Plan

One commenter suggested that the final control plan (design plan) should be consistent with the new source performance standards. The commenter noted that the last sentence of the definition of final control plan in § 62.14351 of subpart GGG could be deleted without consequence. That sentence reads: “The final control plan also must include the same information that will be used to solicit bids to install the collection and control system.” The commenter believes the requirement is more stringent than the new source performance standards’ requirement and that bid information in the design plan would not be practical for sites that will install collection and control systems in multiple phases. The commenter contended that the purpose of the design plan is to demonstrate that the landfill gas collection system planned for the facility will

meet the control requirements of the regulations, not as a tool for bidding purposes.

The EPA agrees that it is appropriate to delete the last sentence from the proposed definition of final control plan. This change makes the definition consistent with the emission guidelines and the guidance document. However, other requirements for submitting the final control plan remain the same. The owner or operator must submit the final control plan within 1 year after the NMOC emission rate first equals or exceeds 50 megagrams per year.

F. Increments of Progress

One commenter stated that the proposed Federal plan increments of progress are more stringent than the emission guidelines for existing landfills and the new source performance standards for new landfills. The commenter contended that the proposed Federal plan would impose a more burdensome regulatory requirement on existing landfills above and beyond that which is included in the emission guidelines. The commenter recommended eliminating the increments of progress and in their place requiring owners or operators to comply with the recordkeeping and reporting provisions of the new source performance standards. The commenter stated that existing landfills should be given the

same flexibility for achieving compliance with Federal plan emission guidelines as are new landfills under the new source performance standards.

The requirements for existing landfills under the emission guidelines and the Federal plan are essentially the same as the requirements for new landfills under the new source performance standards. For existing MSW landfills, five increments of progress are required by 40 CFR part 60, subpart B. These five increments of progress are:

(1) Submit final control plan;

(2) Award contracts;

(3) Begin construction;

(4) Complete construction, and

(5) Reach final compliance.

Increments 1, 4, and 5 are also required by the emission guidelines for existing landfills. For new MSW landfills, three increments of progress are required by the new source performance standards. These three increments of progress are:

- Submit final control plan (collection and control system design plan),
- Complete construction (install collection and control system; and
- Reach final compliance.

Subpart B does not apply to new landfills, thus, the increments to award contracts and begin construction are not required for new landfills.[9] Although these two increments of progress do apply to existing landfills, there is flexibility in the dates for meeting them. Unlike the compliance time periods for increments 1, 4, and 5, which are specified in the emission guidelines, no time periods are specified for increments 2 and 3 in either subpart B or the emission guidelines. Thus, the Federal plan allows the State, local or Tribal authority, or the landfill owner or operator, to request different time periods for these increments versus the generic time periods specified in the Federal plan.

G. Delegation

One commenter from a State environmental protection agency recommended that States should not be the enforcement agent under the Federal plan. The commenter noted that it did not want to take delegation of the Federal plan, especially if it requires collection of design capacity

[9]While subpart B does not apply to new MSW landfills, the general provisions (40 CFR 60.7) do and they require that owners or operators of affected facilities (which include new MSW landfills) provide notification to EPA of certain actions they plan to take or have taken. One of these actions is when they begin construction. This notification requirement for new MSW landfills is not altered by EPA's promulgation of the MSW landfills Federal plan.

reports from hundreds of rural towns with small, closed landfills.

Although a State is not obligated to take delegation of the Federal plan, the EPA believes that the State, Tribal, and local agencies are in the best position to design, adopt, and implement the control programs needed to meet the requirements of the MSW landfills Federal plan in their jurisdictions. This is consistent with Congress' overarching intent that the primary responsibility for air pollution control rests with State and local agencies. See 63 FR 69375, December 16, 1998 and the Act section 101(a)(3).

The EPA continues to strongly encourage States, Tribes, and local agencies to submit approvable State plans. For States that are unable to submit plans, the EPA strongly encourages them to request delegation of the Federal plan, if feasible.

IV. IMPLEMENTATION OF FEDERAL PLAN AND DELEGATION

The EPA designed the landfills Federal plan to facilitate the transfer of authority from EPA to States, Tribes, and local agencies. The EPA believes that it is advantageous and the best use of resources for State, local, or Tribal agencies to undertake roles in implementing this Federal plan. Such roles could include development of a

process for reviewing collection and control system design plans, administrating reporting and recordkeeping requirements, and conducting source inspections.

A. Background of Authority

The EPA is required to adopt emission guidelines that are applicable to existing MSW landfills under section 111(d) of the Act. The emission guidelines are not enforceable, however, until EPA approves a State or Tribal plan or adopts a Federal plan. In cases where a State or Tribe does not have an EPA approved plan, the EPA must adopt a Federal plan for MSW landfills in the State or in Indian country as an interim measure to implement the emission guidelines until the State or Tribal plan is approved. A few States may not submit a State plan and EPA is not aware of any Tribes that are developing Tribal plans.

Congress has determined that the primary responsibility for air pollution control rests with State and local agencies. See the Act 101(a)(3). Consistent with that overall determination, Congress established section 111 of the Act with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Congress explicitly required that EPA establish procedures under section 111(d) that are

similar to those under section 110 for State Implementation Plans. The section 110 procedures are based on States having the primary responsibility. Congress has shown a consistent intent for the States and local agencies to have the primary responsibility, but also included the requirement for EPA to promulgate a Federal plan for States that fail to submit approvable State plans. Accordingly, EPA has strongly encouraged the States to submit approvable State plans, and for those States that are unable to submit approvable State plans, EPA is strongly encouraging them to request delegation of the Federal plan so that they can have the primary responsibility in their State, consistent with Congress' overarching intent.

The EPA also believes that Indian tribes are the primary parties responsible for regulating air quality within Indian country. See EPA's Indian Policy ("Policy for Administration of Environmental Programs on Indian Reservations," signed by William D. Ruckelshaus, Administrator of EPA dated November 4, 1984), which was reaffirmed by EPA Administrator Browner in 1994 (memorandum entitled, "EPA Indian Policy" signed by Carol M. Browner, Administrator of EPA on March 14, 1994).

The EPA believes, more specifically, that the State, Tribal and local agencies have the responsibility to design,

adopt, and implement the control programs needed to meet the requirements of the MSW landfills Federal plan. The EPA also believes that if these agencies have appropriate enforcement resources, they can achieve the highest rates of actual compliance in the field. For these reasons, EPA seeks to employ all available mechanisms to expedite program transfer to State, Tribal and local agencies, where requests for delegations can be granted. For example, EPA encouraged States to help determine compliance schedules for this MSW landfills Federal plan.

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian tribe intends to take delegation of the Federal plan, the State or Indian tribe must submit a letter to EPA stating their intent on behalf of the State or Tribe. In order to obtain delegation, an Indian tribe must also establish its eligibility to be treated in the same manner as a State (see section I.F of the preamble). The letter requesting delegation of authority to implement the Federal plan must, at a minimum, demonstrate that the State or Tribe has adequate resources and the legal and enforcement authority to administer and enforce the program. If the State or Tribe makes such a demonstration, EPA will approve the delegation of the Federal plan. A memorandum of agreement between the State or Tribe and the EPA setting

forth the terms and conditions of the delegation, including the effective date of the agreement, would be used to transfer authority. The EPA will publish an approval notice in the Federal Register and incorporate it into 40 CFR part 62. The EPA will, in conjunction with the State or Tribe, make additional efforts to ensure that affected sources are aware that the State or Tribe has assumed responsibility for implementation.

The EPA will keep an up-to-date list of State and Tribal plan submittals on the EPA TTN Web (http://www.epa.gov/ttn/oarpg). The list will also show whether the State or Tribe has taken delegation of the Federal plan. It is important to note, however, that while the EPA will endeavor to keep the listing updated, the list is not controlling regarding whether a State or Tribal plan has been approved or whether authority to implement and enforce the MSW landfills Federal plan has been delegated.

The EPA will implement the Federal plan unless authority to implement the Federal plan is delegated to a State or Indian tribe. If a State or Tribe fails to implement the delegated portion of the Federal plan, EPA will assume direct implementation.

In delegating implementation and enforcement authority to a State or Tribe under sections 101(a)(3) and 111 of the

Act, the EPA Administrator will retain the authority to approve the following items and not transfer them to a State or Tribe:

- Alternative site-specific NMOC concentration (C_{NMOC}) or site-specific methane generation rate constant (k) used in calculating the annual NMOC emission rate,
- Alternative emission standard,
- Major alternatives[1] to test methods,
- Major alternatives[1] to monitoring, or
- Waivers of recordkeeping.

If landfill owners or operators would like to avail themselves of the items listed above and specified in this Federal plan, they should submit a request to the Regional Office Administrator with a copy to the State. It should be noted that the EPA does not relinquish enforcement authority even when a State or Tribe has received delegation.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation responsibility to States, Tribes, and local

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[1] Major changes to test methods or to monitoring are modifications made to a federally enforceable test method or to a federal monitoring requirement. These changes would involve the use of unproven technology or procedures or an entirely new method (which is sometimes necessary when the required test method or monitoring requirement is unsuitable).

agencies: (1) If EPA approves a State or Tribal plan submitted to EPA after the Federal plan is promulgated, the State or Tribe would have authority to enforce and implement the State or Tribal plan upon the effective date of EPA's approval; and (2) if a State or Tribe does not submit or obtain approval of a State or Tribal plan, EPA can delegate the authority to the State, Tribe, or local agencies to perform certain implementation responsibilities for this Federal plan to the extent appropriate and allowed by State or Tribal law.

1. A State or Tribal Plan is Submitted After Landfills are Subject to the Federal Plan

After a landfill in a State or in a portion of Indian country becomes subject to the Federal plan, the State, Tribe or local agency may still adopt and submit to EPA for approval a plan (i.e., a plan containing a State or Tribal rule or other enforceable mechanism, inventories, records of public hearings, and all other required elements of a State plan). The EPA will determine if the State or Tribal plan is as stringent as the emission guidelines. If EPA determines that the State or Tribal plan is as stringent as the emission guidelines, EPA will approve the State or Tribal plan. If, however, EPA determines that the State or Tribal plan is not as stringent as the guidelines, EPA will

disapprove the plan. MSW landfills covered by State or Tribal plans that become effective after the Federal plan is in place are subject to the compliance schedule of the Federal plan if the compliance schedule of the State or Tribal plan is less stringent.

Note that 40 CFR 60.24(f) allows some flexibility on a case-by-case basis for a less stringent rule or compliance schedule if specific criteria are met, sufficient justification is provided by the State or Tribe, and EPA approves the plan. States and Tribes may make their plans more stringent than the emission guidelines.

Landfills covered in the State or Tribal plan are subject to the Federal plan until the State or Tribal plan is approved and becomes effective. Upon the effective date of the State or Tribal plan, the Federal plan no longer applies to landfills covered by the State or Tribal plan and the State, Tribe or local agency will implement and enforce the State or Tribal plan in lieu of the Federal plan. (The EPA will periodically amend the Federal plan to identify States or Tribes that have State or Tribal plans covering landfills in their jurisdiction. Such landfills are not subject to the Federal plan.) Making the State or Tribal plan effective in this manner expedites a State’s or Tribe’s

responsibility for implementing the emission guidelines as intended by Congress.

2. State Takes Delegation of the Federal Plan

The State, Tribal or local agency may request Federal implementation responsibilities even if there is no State or Tribal plan in effect. The EPA believes that it is advantageous and the best use of resources for State, Tribal or local agencies to agree to undertake, on the EPA's behalf, administrative and substantive roles in implementing the Federal plan, to the extent appropriate and where authorized by State or Tribal law. These roles could include as a minimum: development of a process for review of site-specific gas collection and control system design plans, administration and oversight of compliance reporting and recordkeeping requirements, conduct of source inspections, and preparation of draft notices of violation. As stated previously, the EPA does not relinquish the authority to bring enforcement actions against sources violating Federal plan provisions.

V. TITLE V OPERATING PERMITS

Title V of the Clean Air Act and EPA's implementing regulations set minimum standards for State and local air pollution control agencies to adopt and submit for EPA approval a regulatory program for issuing operating permits

to specific sources. These sources include, but are not limited to the following: major sources under title I or section 112 of the Act; affected sources under title IV of the Act (acid rain sources); solid waste incineration units required to obtain a permit under section 129 of the Act; and sources subject to standards under section 111 or 112 of the Act that are not area sources exempted or deferred from permitting requirements under title V.

As clarified in the landfill amendments (63 FR 32743), all existing MSW landfills with design capacities equal to or greater than 2.5 million Mg and 2.5 million m^3 must have a title V operating permit. Existing landfills with design capacities less than 2.5 million megagrams or 2.5 million m^3 are not required to have a title V operating permit, unless they are a major source or are subject to title V for some other reason (e.g., subject to a section 112 National Emission Standard for Hazardous Air Pollutants (NESHAP) or to another section 111 NSPS).

The owner or operator of an existing MSW landfill with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 is subject to this MSW landfills Federal plan, and as a result, must obtain a title V operating permit (40 CFR part 70 or part 71). Such sources, if not already subject to title V permitting for another reason or

reasons (see sections 70.3 and 71.3), become subject to the requirement to obtain an operating permit ninety days after the effective date of this Federal plan, even if the design capacity report is submitted prior to that date. The requirement to apply for a title V permit is triggered ninety days after the effective date of the MSW landfills Federal plan as this is the date that MSW landfills are required to submit design capacity reports (if they have not already been submitted). For more information on title V permitting requirements, please see the preamble discussion entitled “Clarification of Title V Permitting Requirements” in the June 16, 1998 direct final rule (63 FR 32743, 32746) for NSPS and emission guidelines for MSW landfills.

Sources subject to the title V permitting program under part 70 or 71 are required to file title V applications within 12 months after becoming subject to the program. To be timely, the owner or operator of a MSW landfill, which is subject to title V as a result of this landfills Federal plan, must submit an application for an operating permit not later than one year and ninety days after the effective date of the MSW landfills Federal plan. If a source submits a timely and complete application within this time frame, the permitting authority may grant the source a permit application shield which, if maintained by the source, would

allow the source to operate without a permit until its final title V permit is issued.

Existing MSW landfills that are not currently subject to title V because their design capacity is less than 2.5 million Mg or 2.5 million m^3 may trigger the requirement to apply for a title V permit in the future if the design capacity subsequently increases to equal or exceed 2.5 million Mg and 2.5 million m^3. The only circumstance under which this could occur is if the increase in design capacity is a change that is not a modification, i.e., it is not based on an increase in permitted design capacity by either vertical or horizontal expansion. For example, an increase in the compaction of waste where the rate of compaction can be increased without a modification to the permit issued by the State, local or Tribal agency that is responsible for regulating the landfill. An amended design capacity report must be submitted within 90 days of the design capacity increase. (See 40 CFR 60.35c which incorporates the requirement in 40 CFR 60.757(a)(3).) Such sources would be required to file title V applications (if the sources are not already subject to title V) within 12 months of the date that the amended design capacity reports are required to be submitted. The proposal preamble accurately reflected this fact. Unfortunately,

§ 62.14352(d) of the proposed regulatory text incorrectly indicated that the 12-month period for submitting a title V application commenced 90 days after the amended design capacity report is due. This would be contrary to title V of the Act and the requirements of 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). The EPA is correcting this error in promulgating the Federal plan. Section 62.14352(e) (section number revised in final Federal plan) now correctly indicates that a MSW landfill becomes subject to the requirement of section 70.5(a)(1)(i) or section 71.5(a)(1)(i) on the date the amended design capacity report is due.

Existing MSW landfills that increase the permitted design capacity (via modification of the permit issued by the State, local or Tribal agency that regulates the landfill) to 2.5 million Mg and 2.5 million m^3 or more will, upon commencing construction on the vertical or horizontal expansion, have undergone either a modification or reconstruction and will, therefore, not be subject to the landfills Federal plan, but rather will be subject to the NSPS.

As noted above, a landfill could be subject to title V for another reason or reasons. MSW landfills, for example, may be subject to title V permitting as a result of being a

major source under one or more of three major source definitions in title V: (1) section 112, (2) section 302, or (3) part D of title I of the Act. If a landfill is subject to title V for more than one reason, then the 12 month time frame for filing a title V application will be triggered by the criterion in section 70.3 or 71.3 which first caused the landfill to be subject to title V. As provided in section 503(c) of the Act, permitting authorities may establish earlier deadlines (earlier than the 12 months allowed) for submitting title V applications.

A MSW landfill that is closed and is no longer subject to title V as a result of this landfills Federal plan (see 40 CFR 62.14352(e)) may remain subject to title V permitting requirements for another reason or reasons as discussed above. In such circumstances, the landfill would be required to continue operating in compliance with a title V permit.

Title V operating permits issued to MSW landfills subject to this Federal plan must include all applicable requirements of this Federal plan (see 40 CFR 70.2 and 71.2). These permits must also contain all necessary terms and conditions to assure compliance with these applicable requirements. If a source is subject to both State and Federal plan requirements due to a State taking delegation

of part of the Federal plan, then the landfill's permit must contain the applicable provisions from each plan. Given that a title V permit for a MSW landfill may contain both State and Federal provisions, it is especially important that each title V permit issued to a MSW landfill clearly state the basis for each requirement consistent with 40 CFR 70.6(a)(1)(i) and 71.6(a)(1)(i).

VI. SUMMARY OF FEDERAL PLAN

The MSW landfills Federal rule (40 CFR part 62, subpart GGG) includes applicability criteria, emission standards, design criteria, monitoring and performance testing requirements, and recordkeeping and reporting requirements. These emission standards and requirements are the same as those in the emission guidelines (40 CFR part 60, subpart Cc), as revised in 1998 and 1999. The requirements are summarized in section V of the proposal preamble (63 FR 69377). However, the EPA has determined that the summary in the proposal preamble is deficient in its discussion of the requirements applicable to MSW landfills with a capacity of less than 2.5 million Mg or 2.5 million m^3. In addition to the requirement to submit an initial design capacity report, the owner or operator of such a MSW landfill who converts design capacity from volume to mass or mass to volume to demonstrate that the landfill's

design capacity is less than 2.5 million Mg or 2.5 million m^3, as provided in the definition of “design capacity”, has an ongoing obligation to recalculate site-specific density annually and to keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity and the supporting documentation. The owner or operator of such a MSW landfill is also required to submit an amended design capacity report within 90 days of the annual recalculation of site-specific density and design capacity indicating that the landfill now has a design capacity of equal to or greater than 2.5 million Mg and 2.5 million m^3. The EPA has added language to § 62.14353(a) to make it clearer that the owner or operator of such a MSW landfill is subject to these requirements. For purposes of consistency, EPA has added the same language to § 62.14353(b).

VII. ADMINISTRATIVE REQUIREMENTS

This section addresses the following administrative requirements: Docket, Paperwork Reduction Act, Executive Order 12866, Executive Orders on Federalism, Executive Orders 13045 and 13084, Unfunded Mandates Reform Act, Regulatory Flexibility Act, Submission to Congress and the General Accounting Office, and National Technology Transfer and Advancement Act. Since today’s adopted rule merely

implements the emission guidelines promulgated on March 12, 1996 (codified at 40 part 60, subpart Cc) as they apply to MSW landfills and does not impose any new requirements, much of the following discussion of administrative requirements refers to the discussion of the administrative requirements contained in the preamble to the 1996 rule (61 FR 65404-65413, March 12, 1996).

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rule. Material is added to the docket throughout the rule development process. The docketing system is intended to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process. The contents of the docket will serve as the record in case of judicial review (see 42 U.S.C. 7607(d)(7)(A)) except for interagency review material. Docket number A-88-09 contains the technical support for the March 12, 1996 emission guidelines. Additional technical support specific to this rule is contained in Docket No. A-98-03.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management

and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1893.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be accessed on the internet at http://www.epa.gov/icr and in Docket No. A-98-03, Item No. IV-B-4. The information requirements are not effective until OMB approves them.

The information will be used by the Agency to ensure that the MSW landfill Federal plan requirements are implemented and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify MSW landfills that may not be in compliance with the MSW landfill Federal plan requirements. Based on reported information, EPA will decide which landfills should be inspected and what records or processes should be inspected. The records that owners and operators of MSW landfills maintain will indicate to EPA whether personnel are operating and maintaining control equipment properly.

Based on 1992 and 1996 Office of Solid Waste reports, a national survey of landfills, and recent information from

States, this Federal plan is projected to affect approximately 3,837 MSW landfills in 28 States, 5 territories, and 1 municipality. The EPA prepared the ICR in June 1999 and based the calculations on the status of State plans as of May 30, 1999. See Table 2 for the status of State plans as of October 19, 1999. A number of State plans are expected to be approved within the year following Federal plan promulgation. When a State plan is approved, the Federal plan, by its own terms, will no longer apply to MSW landfills covered in that State plan. Thus, the rule may affect fewer MSW landfills and States during the second and third years following promulgation, and the average annual burden may be less than the numbers presented here.

The estimated average annual burden for industry for the first 3 years after the implementation of the Federal plan is 15,110 hours annually at a cost of $ 1,509,135 per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated average annual burden, over the first 3 years, for the Agency is 7,401 hours at a cost of $336,341 (including travel expenses) per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions;

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

One commenter (IV-G-01) stated that 24 hours is not long enough for EPA to review the site-specific design plan. The commenter contended that EPA's estimate may be too low for an adequate and comprehensive review, particularly where alternatives are proposed. The EPA did further analysis and determined that it would be appropriate to increase the time allocated for reviewing and approving the design plan, thus the EPA has increased the estimate to review site-specific

design plans to 30 hours. The EPA based this estimate on a survey of EPA Regional Offices and several States.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The EPA considered the 1996 guidelines and standards to be significant and the rules were reviewed by OMB in 1996

(see 61 FR 9913, March 12, 1996). The Federal plan adopted today will simply implement the 1996 guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1996 guidelines; therefore, this regulatory action is considered “not significant” under Executive Order 12866.

D. Executive Orders on Federalism:

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 complies by consulting, 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 an unfunded mandate on State, local or tribal governments. The Federal plan adopted today does not impose any additional costs or result in any additional control requirements above those previously considered during promulgation of the 1996 guidelines. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. The EPA nonetheless has involved State and local governments in the development of this rule. During development of the MSW landfills Federal plan, EPA worked with the EPA Regional Offices to identify and address State issues. In addition, EPA requested compliance schedules from States that want a schedule in the Federal plan consistent with the State plan until the State plan becomes effective. No such schedules have been received.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, [64 FR 43255 (August 10, 1999),] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on 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 12612. This Federal plan affects owners and operators of existing municipal solid waste landfills for which a State or Tribal plan is not in effect. Most of these landfills are owned or operated by private industry or municipalities, not States. A State or Indian Tribe may request delegation to implement the Federal plan but is not required to do so. In addition, the Federal plan adopted today will simply implement the 1996 guidelines and does not result in any additional federalism issues above those previously considered during promulgation of the 1996 guidelines.

E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (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 is not economically significant. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks such that the analysis required under section 5-501 of the order has the potential to influence the regulation. This MSW landfills Federal plan is not subject to E.O. 13045 because it merely implements the previously promulgated emission guidelines and thus does not involve decisions on environmental health risks or safety risk that may disproportionately affect children.

F. Executive Order 13084: Consultation with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 complies by consulting, 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."

The MSW landfills Federal plan adopted today does not significantly or uniquely affect the communities of Indian tribal governments. There are very few existing landfills in Indian country large enough to require the installation of a collection and control system. For most existing landfills in Indian country, the only requirements this Federal plan imposes are to submit an initial design capacity report of landfills in Indian country and to recalculate their site-specific density and design capacity annually and submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million Mg and 2.5 million m^3. Further, the Federal plan adopted today does not impose any

additional costs or result in any additional control requirements above those previously considered during promulgation of the 1996 guidelines.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not

adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. An unfunded mandate statement was prepared and published in the March 12, 1996 promulgation notice for the final emission guidelines and new source performance standards (see 63 FR 9913 through 9918).

The EPA has determined that the adopted MSW landfills Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1996 guidelines. Therefore, the requirements of sections 202 and 205 of the Unfunded Mandates Act do not apply to this rule.

H. Regulatory Flexibility Act

Section 605 of the Regulatory Flexibility Act (RFA) requires Federal agencies to give special consideration to

the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1996 rulemaking, EPA estimated that small entities would not be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (see 61 FR 9918). This adopted Federal plan does not establish any new requirements; therefore, pursuant to the provisions of 5 U.S.C. 605 (b), EPA certifies that this MSW landfills Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

I. Submission to Congress and the General Accounting Office

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 adopting 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 this rule in the

Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The purpose of the NTTAA is to reduce the costs to the private and public sectors by requiring federal agencies to use existing technical standards used in commerce or industry. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply because the Federal plan implements an existing rule to which NTTAA did not apply. In addition, the emission guidelines, which the Federal plan is based on, do not impose technical standards.

List of Subjects in 40 CFR Part 62.

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

_____	_____
Dated	Carol M. Browner, Administrator

For reasons set out in the preamble, title 40, chapter 1 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.

2. Amend part 62 by adding subpart GGG consisting of §§ 62.14350 through 62.14356 as follows:

Subpart GGG--Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991.

Sec.

Table 1 of Subpart GGG–States That Have an Approved and Effective State Plan

Table 2 of Subpart GGG–States that Submitted a Negative Declaration Letter

Table 3 of Subpart GGG–Generic Compliance Schedule and Increments of Progress

Table 4 of Subpart GGG–Site-Specific Compliance Schedules and Increments of Progress [Reserved]

Subpart GGG--Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991.

§ 62.14350 Scope and Delegation of Authority.

(a) This subpart contains emission requirements and compliance schedules for the control of designated pollutants from certain municipal solid waste landfills in accordance with section 111(d) of the Clean Air Act and 40 CFR part 60, subpart B. This municipal solid waste landfills Federal plan applies to each designated facility as defined in § 62.14352 of this subpart that is not covered by an EPA approved and currently effective State or Tribal plan.

(b) The following authorities shall be retained by the Administrator and not transferred to the State or Tribe upon

delegation of authority to the State or Tribe to implement and enforce the Federal plan pursuant to sections 101(a)(3) and 111 of the Clean Air Act:

(1) Approval of alternative methods to determine site-specific NMOC concentration (C_{NMOC}) or site-specific methane generation rate constant (k) used in calculating the annual NMOC emission rate (as provided in 40 CFR 60.754(a)(5) of subpart WWW),

(2) Alternative emission standards,

(3) Major alternatives[1] to test methods,

(4) Major alternatives[1] to monitoring, or

(5) Waivers of recordkeeping.

§ 62.14351 Definitions.

Terms used but not defined in this subpart have the meaning given them in the Clean Air Act and 40 CFR part 60, subparts A, B, and WWW.

Achieve final compliance means to connect and operate the collection and control system as specified in the final control plan. Within 180 days after the date the landfill

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[1] Major changes to test methods or to monitoring are modifications made to a federally enforceable test method or to a federal monitoring requirement. These changes would involve the use of unproven technology or procedures or an entirely new method (which is sometimes necessary when the required test method or monitoring requirement is unsuitable).

is required to achieve final compliance, the initial performance test must be conducted.

Award contract means the MSW landfill owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the MSW landfill owner or operator. The MSW landfill owner or operator may award a number of contracts to install the collection and control system. To meet this increment of progress, the MSW landfill owner or operator must award a contract or contracts to initiate on-site construction or installation of the collection and control system.

Complete on-site construction means that all necessary collection system components and air pollution control devices identified in the final control plan are on site, in place, and ready for operation.

Design Capacity means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the State, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million

megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually.

EPA approved State plan means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. An approved State plan becomes effective on the date specified in the notice published in the Federal Register announcing EPA's approval.

Federal Indian Reservation means for purposes of the Clean Air Act, all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final Control Plan (Collection and Control System Design Plan) means a plan that describes the collection and control system that will capture the gas generated within an MSW landfill. The collection and control system design plan must be prepared by a professional engineer and must describe a collection and control system that meets the requirements of 40 CFR 60.752(b)(2)(ii). The final control plan must contain engineering specifications and drawings of the collection and control system. The final control plan must include any alternatives to the operational standards,

test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of 40 CFR 60.753 through 60.758 proposed by the owner or operator. The final control plan must either conform with the specifications for active collection systems in 40 CFR 60.759 or include a demonstration that shows that based on the size of the landfill and the amount of waste expected to be accepted, the system is sized properly to collect the gas, control emissions of NMOC to the required level and meet the operational standards for a landfill.

Indian Country means all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Initiate on-site construction means to begin any of the following: installation of the collection and control system to be used to comply with the emission limits as outlined in the final control plan; physical preparation necessary for

the installation of the collection and control system to be used to comply with the final emission limits as outlined in the final control plan; or, alteration of an existing collection and control system to be used to comply with the final emission limits as outlined in the final control plan.

Modification means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

Municipal solid waste landfill or MSW landfill means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads. A municipal solid waste landfill may be publicly or privately owned.

Negative declaration letter means a letter to EPA declaring that there are no existing MSW landfills in the State or that there are no existing MSW landfills in the

State that must install collection and control systems according to the requirements of 40 CFR part 60, subpart Cc. The negative declaration letter must include the design capacities of any existing MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

Protectorate means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) of the Clean Air Act and 40 CFR part 60, subpart B that implements and enforces 40 CFR part 60, subpart Cc. State plans include plans developed by States, local agencies, and protectorates.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart Cc.

§ 62.14352 Designated facilities.

(a) The designated facility to which this subpart applies is each municipal solid waste landfill in all States, protectorates, and Indian Country that meets the conditions of paragraphs (a)(1) and (a)(2) of this section,

except for landfills exempted by paragraphs (b) and (c) of this section.

(1) The municipal solid waste landfill commenced construction, reconstruction, or modification before May 30, 1991 (landfills that commence construction, modification, or reconstruction on or after May 30, 1991 are subject to 40 CFR part 60, subpart WWW), and

(2) The municipal solid waste landfill has accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition.

(b) A municipal solid waste landfill regulated by an EPA approved and currently effective State or Tribal plan is not subject to the requirements of this subpart. States that have an approved and effective State plan are listed in table 1 of this subpart. Notwithstanding the exclusions in table 1 of this subpart, any MSW landfill located in a State or portion of Indian country that does not have an EPA approved and currently effective State or Tribal plan is subject to the requirements of this subpart.

(c) A municipal solid waste landfill located in a State, locality, or portion of Indian country that submitted a negative declaration letter is not subject to the requirements of this subpart other than the requirements in the definition of design capacity to recalculate the site-

specific density annually and in § 62.14355 to submit an amended design capacity report in the event that the recalculated design capacity is equal to or greater than 2.5 million megagrams and 2.5 million cubic meters. However, if the existing municipal solid waste landfill already has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, then it is subject to the requirements of the Federal plan. States, localities, or portions of Indian country that submitted negative declaration letters are listed in table 2 of this subpart.

(d) Physical or operational changes made to an existing municipal solid waste landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing municipal solid waste landfill to the requirements of 40 CFR part 60, subpart WWW.

(e) For purposes of obtaining an operating permit under title V of the Clean Air Act, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise

subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on [60 days from date of publication] and not otherwise subject to either part 70 or 71, becomes subject to the requirements of § 70.5(a)(1)(i) or § 71.5(a)(1)(i) of this chapter [150 days from date of publication], even if the initial design capacity report is submitted earlier. In addition, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on [60 days from date of publication] and not otherwise subject to either part 70 or 71, but whose design capacity subsequently increases to equal or exceed 2.5 million megagrams and 2.5 million cubic meters by a change that is not a modification or reconstruction becomes subject to the requirements of § 70.5(a)(1)(i) or § 71.5(a)(1)(i) of this chapter upon the date the amended design capacity report is due.

(f) When a municipal solid waste landfill subject to this subpart is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit

under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement for a control system under § 62.14353 of this subpart; or

(2) The owner or operator meets the conditions for control system removal specified in 40 CFR 60.752(b)(2)(v).

§ 62.14353 Standards for municipal solid waste landfill emissions.

(a) The owner or operator of a designated facility having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) in addition to the applicable reporting and recordkeeping requirements specified in this subpart.

(b) The owner or operator of a designated facility having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(b) in addition to the applicable reporting and recordkeeping requirements specified in this subpart.

§ 62.14354 Procedures, test methods, and monitoring.

(a) The owner or operator of a designated facility having a design capacity equal to or greater than

2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compounds emission rate using the procedures listed in 40 CFR 60.754, as applicable, to determine whether the landfill nonmethane organic compounds emission rate equals or exceeds 50 megagrams per year.

(b) The owner or operator of a designated facility with a gas collection and control system used to comply with § 62.14353(b) must comply with the operational standards in 40 CFR 60.753; the test procedures in 40 CFR 60.754(b) and (d); the compliance provisions in 40 CFR 60.755; and the monitoring provisions in 40 CFR 60.756, unless alternative procedures have been approved.

§ 62.14355 Reporting and recordkeeping requirements.

(a) The owner or operator of a designated facility must comply with the recordkeeping and reporting provisions listed in 40 CFR 60.757 and 60.758, except as provided for under paragraphs (a)(1) and (a)(2) of this section.

(1) The initial design capacity report for a designated facility is due within 90 days of the effective date of this subpart. Existing MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters that are located in States that submitted a negative declaration letter are not required to submit an

initial design capacity report provided that the MSW landfill's design capacity was included in the negative declaration letter.

(2) The initial nonmethane organic compounds emission rate report for a designated facility is due within 90 days of the effective date of this subpart.

(b) The owner or operator of a designated facility must submit notification to the EPA Regional Office within 10 business days of completing each increment of progress. Each notification must indicate which increment of progress specified in § 62.14356(a)(1) through (a)(5) of this subpart has been achieved. The notification must be signed by the owner or operator of the landfill.

(1) For the first increment of progress, the final control plan (collection and control system design plan) must be submitted in addition to the notification. A copy of the design plan must also be kept on site at the landfill.

(2) For the second increment of progress, a signed copy of the contract(s) awarded must be submitted in addition to the notification.

(c) The owner or operator of a designated facility who fails to meet any increment of progress specified in § 62.14356(a)(1) through (a)(5) of this subpart according to

the applicable schedule in § 62.14356 of this subpart must submit notification that the owner or operator failed to meet the increment to the EPA Regional Office within 10 business days of the applicable date in § 62.14356.

(d) The owner or operator (or the State or Tribal air pollution control authority) that is submitting alternative dates for increments 2 and 3 according to § 62.14356(d) of this subpart must do so by the date specified for submitting the final control plan. The date for submitting the final control plan is specified in § 62.14356(c)(1) and (c)(2) of this subpart, as applicable. The owner or operator (or the State or Tribal air pollution control authority) must submit a justification if any of the alternative dates are later than the increment dates in table 3 of this subpart. In addition to submitting the alternative dates to the appropriate EPA Regional Office, the owner or operator must also submit the alternative dates to the State.

§ 62.14356 Compliance Schedules and Increments of Progress.

(a) Increments of progress. The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 megagrams per year must achieve the increments of progress specified in paragraphs (a)(1)

through (a)(5) of this section to install air pollution control devices to meet the emission standards specified in § 62.14353(b) of this subpart. (Refer to § 62.14351 for a definition of each increment of progress.)

(1) Submit control plan: Submit a final control plan (collection and control system design plan) according to the requirements of § 62.14353(b) of this subpart and 40 CFR 60.752(b)(2).

(2) Award contract(s): Award contract(s) to initiate on-site construction or initiate on-site installation of emission collection and/or control equipment.

(3) Initiate on-site construction: Initiate on-site construction or initiate on-site installation of emission collection and/or control equipment as described in the EPA-approved final control plan.

(4) Complete on-site construction: Complete on-site construction and installation of emission collection and/or control equipment.

(5) Achieve final compliance: Complete construction in accordance with the design specified in the EPA-approved final control plan and connect the landfill gas collection system and air pollution control equipment such that they are fully operating. The initial performance test must be

conducted within 180 days after the date the facility is required to achieve final compliance.

(b) Compliance date. For each designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 Mg per year, planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the standards in § 62.14353(b) must be accomplished within 30 months after the date the initial emission rate report (or the annual emission rate report) first shows that the nonmethane organic compounds emission rate equals or exceeds 50 megagrams per year.

(c) Compliance schedules: The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 megagrams per year must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section according to the schedule specified in paragraph (c)(1) or (c)(2) of this section, unless a site-specific schedule is approved by EPA.

(1) The owner or operator of a designated facility must achieve the increments of progress according to the schedule in table 3 of this subpart, except for those affected facilities specified in paragraph (c)(2) of this section. Once this subpart becomes effective on [60 days from date of publication], any designated facility to which this subpart applies will remain subject to the schedule in table 3 if a subsequently approved State or Tribal plan contains a less stringent schedule, (i.e., a schedule that provides more time to comply with increments 1, 4 and/or 5 than does this Federal plan).

(2) The owner or operator of the specified designated facility in table 4 of this subpart must achieve the increments of progress according to the schedule in table 4 of this subpart.

(d) For designated facilities that are subject to the schedule requirements of paragraph (c)(1) of this section, the owner or operator (or the State or Tribal air pollution control authority) may submit to the appropriate EPA Regional Office for approval alternative dates for achieving increments 2 and 3.

Tables to subpart GGG

TABLE 1 OF SUBPART GGG - STATES THAT HAVE AN APPROVED AND EFFECTIVE STATE PLAN[a]

State Plan	Effective Date of State Plan[b]
Alabama	12/07/98
Allegheny County, Pennsylvania	04/16/99
Arizona	11/19/99
California	11/22/99
Colorado	09/28/98
Delaware	11/16/99
Florida	08/03/99
Georgia	01/12/99
Illinois	01/22/99
Iowa	06/22/98
Kansas	05/19/98
Kentucky	06/21/99
Louisiana	10/28/97
Maryland	11/8/99
Minnesota	09/25/98
Missouri	06/23/98
Montana	09/08/98
Nashville, Tennessee	02/16/99
Nebraska	06/23/98
Nevada	11/19/99
New Mexico	02/10/98
New York	09/17/99
North Dakota	02/13/98
Ohio	10/06/98
Oklahoma	05/18/99
Oregon	08/25/98
South Carolina	10/25/99
South Dakota	08/02/99
Tennessee	11/29/99
Texas	08/16/99
Utah	03/16/98

Wyoming	07/31/98

[a] This table is provided as a matter of convenience and is not controlling in determining whether a MSW landfill is subject to the Federal plan. A MSW landfill is subject to this Federal plan if it commenced construction before May 30, 1991 and has not been modified or reconstructed on or after that date and is not covered by an approved and currently effective State or Tribal plan.

[b] The State plan is expected to become effective on the date indicated. However, if the State plan does not become effective on the date indicated, the Federal plan applies until the State plan becomes effective.

TABLE 2 OF SUBPART GGG -- STATES THAT SUBMITTED A NEGATIVE DECLARATION LETTER[a]

State, locality, or portion of Indian country	Date of negative declaration
District of Columbia	09/11/97
New Hampshire	07/22/98
Philadelphia, Pennsylvania	02/27/96
Rhode Island	05/27/98
Vermont	08/20/96

[a]A MSW landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters located in an area for which a negative declaration letter was submitted is subject to the Federal plan, notwithstanding the negative declaration letter and this table 2.

TABLE 3 OF SUBPART GGG - GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS[a]

Increment	Date
Increment 1 Submit final control plan	1 year after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr.[b]
Increment 2 Award Contracts	20 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr.[b]
Increment 3 Begin on-site construction	24 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr.[b]
Increment 4 Complete on-site construction	30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr.[b]
Increment 5 Final compliance	30 months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr.[b]

[a]Table 3 of subpart GGG applies to landfills with design capacities ≥2.5 million megagrams and 2.5 million cubic meters that are subject to this subpart except those with site-specific compliance schedules shown in table 4 of subpart GGG.

[b]NMOC = nonmethane organic compounds
Mg/yr = megagrams per year

TABLE 4 OF SUBPART GGG - SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS

[Reserved]