



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 28, 2020

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: EPA Response to Final Report: "EPA Needs to Improve Oversight of How States Implement Air Emissions Regulations for Municipal Solid Waste Landfills" - Report No. 20-P-0236, July 30, 2020

FROM: Anne L. Austin
Principal Deputy Assistant Administrator

A handwritten signature in black ink, reading "Anne L. Austin", is written over the typed name and title of the sender.

TO: Kathlene Butler
Acting Assistant Inspector General
Office of Audit and Evaluation
Office of the Inspector General

The Office of Air and Radiation (OAR) welcomes the opportunity to propose revised corrective actions for the Office of the Inspector General's (OIG) report titled *EPA Needs to Improve Oversight of How States Implement Air Emissions Regulations for Municipal Solid Waste Landfills*. Specifically, we wish to address OIG Recommendations 4, 5, and 6 in the report. Our responses to these OIG recommendations for OAR are as follows:

Recommendation 4: Develop and implement a process to periodically review municipal solid waste landfill (MSWL) design capacity information and title V permit lists to identify MSWLs with design capacities over the applicable threshold that have not applied for a title V permit.

Response 4: We agree with the objective of the OIG report to promote compliance with landfill rules by supporting accurate reporting by sources (*e.g.*, per *Recommendation 5*) and cultivating good practices among states for quality assuring their compliance data under a plan by the Office of Enforcement and Compliance Assurance (OECA), per *Recommendation 7*. However, it is not an element of the Clean Air Act title V program oversight to ensure compliance with the landfill emission guidelines (EG) requirement for state plans for area source landfills to report their design capacity when at or above the 2.5 million cubic meter (m³) and 2.5 million megagram (Mg) threshold. Therefore, because this recommendation was assigned to OAR, the response is limited to actions that OAR can take. The best opportunity to quality assure design capacity information,

and to check it against the threshold, occurs when the landfill applies for a construction/modification permit for an expansion under either a state's air or solid waste program for small landfills.

According to the OIG report, states already use "a solid waste spreadsheet or database" to assess and track landfill design capacity levels for solid waste regulations. Therefore, the states could use these data to determine applicability of new source performance standard (NSPS) or title V permitting requirements. So, in response to the OIG report recommendation for periodic comparison of states' data on design capacity reports with lists of title V landfill facilities, we propose to assist state and local air permitting authorities and regional offices to implement a process for quality assuring the design capacity information reported to them by landfill facilities (e.g., when the landfill applies for a state construction permit or operating permit modification) to ensure continued compliance.

- OAR will recommend that state and local air permitting authorities obtain a list of existing MSWLs from their solid waste agency counterparts and create a process for updating information about the design capacities of MSWLs when a landfill applies for a construction permit. It is important to note that OAR does not have any authority to require states to do this. Such a process would focus on existing MSWLs with design capacities above a targeted level (e.g., 30 percent below the threshold capacity by volume and up) but not yet subject to title V permitting. By creating a process for collecting these data, authorities will be able to compare the design capacity with the threshold that triggers nonmethane organic compound (NMOC) rate reporting and title V permitting.
- OAQPS' title V program will then work with regions/states to identify landfills that have obtained or applied for title V permits for their evaluation/comparison and to identify any necessary state action (consistent with *Recommendations 1* and *2*).
- OAR will communicate to states through regular meetings that they should look at the information that comes in through these permitting programs to determine whether the capacity of these landfills indicates that they should also be subject to NMOC reporting requirements (pursuant to the NSPS) and title V permitting.
- We will also reinforce the importance of this work with state and local permitting authorities in title V program evaluations and through our regular discussions with the permitting managers through the National Association of Clean Air Agencies (NACAA), and the Association of Air Pollution Control Agencies (AAPCA.) OAR will regularly communicate that states should use the data generated from comparing MSWL design capacity versus threshold capacity to ensure timely initiation of NMOC rate reporting and title V permit application submittals by landfills.

Planned Completion Date: FY 2023 - Quarter 1.

Recommendation 5: Update guidance to clarify the requirements for submitting an initial design capacity report to include how to:

- a. Address closed MSWL areas and the soil used in MSWL daily and final covers when calculating design capacity.
- b. Determine whether a MSWL is subject to title V permit and NMOC requirements.

Response 5: OAR agrees with the intent of this recommendation but proposes the following alternative approach.

Guidance provided on the 1996 MSWL NSPS and EG includes information about the requirements for the calculation of design capacity. Based on a series of simple, interactive questions, OAR is developing a “Regulation Navigation” tool that clearly identifies which regulatory requirements apply to a facility. To address OIG’s recommendation to clarify regulatory requirements related to design capacity calculations and the capacity thresholds that trigger title V permit and NMOC testing requirements, OAR proposes to develop a checklist of requirements for MSWLs that have not yet triggered the emissions thresholds for the installation of a gas collection and control system. This document would list the reporting requirements for MSWLs from the time that initial construction starts on the MSWL until the MSWL installs a gas collection and control system. This document would incorporate key regulatory definitions including “design capacity.”

OAR will provide this checklist on the website for the MSWL NSPS/EG regulations for any interested stakeholder to access. Additionally, OAR will work with OECA to include the checklist as a resource that could be included in any compliance assistance materials provided to states as part of the plan being developed to address *Recommendation 7* of this report.

Planned Completion Date: FY 2021 - Quarter 3.

Recommendation 6: Develop and implement a process to confirm that state plans approved for delegation of the 2016 MSWL EG contain all required program elements and provisions for submitting annual progress reports.

Response 6: OAR agrees with the intent of this recommendation. OAR believes that the current EPA state plan review process ensures each state plan contains the required elements and has provided an alternate corrective action related to annual progress reports. To provide additional clarity, EPA’s review process is summarized below.

- State plans submitted after September 6, 2019, to implement the 2016 MSWL EG are first subject to a completeness check based on 40 CFR part 60, subpart Ba requirements.
- Following this completeness check, the EPA regional office with oversight for each state conducts a thorough review to ensure that the plan establishes emission standards for designated pollutants from designated facilities and provides for the implementation and enforcement of such emission standards.

- EPA headquarters staff review the regional office findings. This substantive review is documented through a notice-and-comment rulemaking process in the *Federal Register* that identifies each regulatory requirement for the state plan and the section of the state plan that addresses that requirement. To date, the reviews of the state plans for the 2016 MSWL EG have been documented in a Technical Support Document; however, this information could also be contained directly in the *Federal Register* notice itself. If deficiencies are found, the state plan is not approved in whole, and EPA works with the state to address the deficiency. The results of EPA’s review and proposed decision to approve or disapprove the plan (in whole or in part) are published in the *Federal Register*. After a period for public comment, EPA publishes a final action in the *Federal Register* approving or disapproving the state plan.

This robust process ensures that each state plan approved for the delegation of the 2016 MSWL EG contains all required program elements.

It is important to clarify that the text of 40 CFR 60.25(b) itself does not require “procedures” for periodic inspections of MSWLs. Rather, the requirement reads, “... Each plan shall, as a minimum, provide for... periodic inspection and, when applicable, testing of designated facilities.” While this provision itself does not specify procedures or detailed requirements for periodic inspection and testing of designated facilities, a particular EG could promulgate more specific requirements that state plans must then meet. Because the 2016 MSWL EG does not contain specific requirements for identifying which office will conduct periodic inspections and how inspections are conducted, 40 CFR 60.25(b) is the only applicable requirement regarding periodic inspections for state plans submitted in response to this EG. OAR has re-reviewed the state plans approved to implement the 2016 MSWL EG and affirms that these plans do meet the requirement at 40 CFR 60.25 by including the state regulations allowing for periodic inspection and testing of designated facilities.

Similarly, 40 CFR 60.25(c) does not require a state plan to identify which office will make the information obtained under 40 CFR 60.25 (b) “available to the general public.” Rather, the regulations require each plan to provide that such information be made available to the public. Additionally, the 2016 MSWL EG does not contain specific requirements for identifying which office will make the information available to the public. OAR has re-reviewed the state plans approved to implement the 2016 MSWL EG and affirms that these plans do meet the requirement at 40 CFR 60.25(c) by including state regulations allowing for this information to be made available to the public.

As explained above, the process to evaluate state plans is established and each evaluation is well-documented and reviewed both within EPA and through public notice-and-comment rulemaking. Thus, OAR believes that it has addressed the recommendation to develop and implement a process to confirm that state plans contain all required elements both under 40 CFR part 60.25 and the 2016 MSWL EG.

To address OIG’s recommendation regarding provisions for submittal and review of annual progress reports, OAR proposes to develop a checklist enumerating what information these reports

must contain. Additionally, the checklist will reaffirm the requirement for annual submittal of these progress reports. As with the proposed corrective action for *Recommendation 5*, this checklist would be provided both on the website for the MSWL NSPS/EG regulations and as part of any compliance assistance materials provided to states.

Planned Completion Date: FY 2021 - Quarter 3.

If you have any questions regarding this response, please contact Mike Jones, OAQPS/OAR Audit Liaison, at (919) 541-0528.

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