

Administrative Office of the Postal Rate Commission. * * *

Dated: August 26, 1997.

Margaret P. Crenshaw,
Secretary.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[LA-39-1-7332a; FRL-5876-3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Louisiana; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document approves the Louisiana State Plan for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. The plan was submitted to fulfill the requirements of the Clean Air Act (the Act). The State Plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This action is effective on October 28, 1997, unless notice is postmarked by September 29, 1997, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the State Plan and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency,
Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700,
Dallas, Texas 75202-2733.

Air and Radiation Docket and
Information Center, Environmental
Protection Agency, 401 M Street, SW,
Washington, DC 20460.

Louisiana Department of Environmental
Quality, Air Quality Program, 7290
Bluebonnet Blvd., Baton Rouge,
Louisiana 70810.

Anyone wishing to review this State Plan at the EPA office is asked to

contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7219.

SUPPLEMENTARY INFORMATION:

I. Background

The Act requires that States submit plans to EPA to implement and enforce the Emission Guidelines (EG) promulgated for MSW landfills pursuant to Section 111(d) of the Act. Section 111(d) requires that the State submit the State Plan not later than 9 months after EPA promulgates the EG. On March 12, 1996, EPA promulgated the EG as 40 CFR part 60, subpart Cc. Thus, the State Plans were due no later than December 12, 1996. The State of Louisiana submitted its State Plan to EPA on December 20, 1996.

Under section 111(d) of the Act, the EPA established procedures whereby States submit plans to control existing sources of designated pollutants. Designated pollutants are defined as pollutants which are not included on a list published under section 108(a) of the Act (i.e., National Ambient Air Quality Standard pollutants), but to which a standard of performance for new sources applies under section 111. Under section 111(d), emission standards are to be adopted by the States and submitted to EPA for approval. The standards limit the emissions of designated pollutants from existing facilities which, if new, would be subject to the New Source Performance Standards (NSPS). Such facilities are called designated facilities.

The procedures under which States submit these plans to control existing sources are defined in 40 CFR part 60, subpart B. According to subpart B, the States are required to develop plans within Federal guidelines for the control of designated pollutants. The EPA publishes guideline documents for development of State emission standards along with the promulgation of any NSPS for a designated pollutant. These guidelines apply to designated pollutants and include information such as a discussion of the pollutant's effects, description of control techniques and their effectiveness, costs and potential impacts. Also as guidance for the States, recommended emission limits and times for compliance are set forth, and control equipment which will achieve these emission limits are identified. The emission guidelines for landfill gas are promulgated in 40 CFR part 60. The

final section 111(d) emission standards and guidelines for landfill gas were promulgated on March 12, 1995 (61 FR 9905), and codified in the CFR at 40 CFR subparts WWW and Cc, respectively. The emission guideline's specified limits for landfill gas requires affected facilities to operate a control system designed to reduce collected non-methane organic compounds (NMOC) concentrations by 98 weight-percent, or reduce the outlet NMOC concentration to 20 parts per million or less, using the test methods specified under § 60.754(d).

II. Analysis of State Submittal

The official procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. The EPA promulgated the original provisions on November 17, 1975, and then amended them on December 19, 1995, to incorporate changes specific to solid waste incineration. These changes, which were necessary to conform with the solid waste incineration requirements under section 129 of the Act, are not relevant to MSW landfills. Thus, the procedures described in the original provisions for adopting and submitting State Plans still apply to MSW landfills and are reflected in 40 CFR part 60, subpart B, §§ 60.23 through 60.26. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, compliance assurance, and enforcement requirements, and cross-references to the MSW landfill EG.

The Louisiana State Plan includes documentation that all applicable subpart B requirements have been met. Please see the evaluation report for a detailed description of EPA's analysis of the Plan's compliance with the subpart B requirements.

The Louisiana Department of Environmental Quality (LDEQ) cross-referenced both the NSPS and EG to adopt the requirements of the Federal rule. The State has ensured, through this cross-reference process, that all the applicable requirements of the Federal rule have been adopted into the State Plan. The emission limits, reporting and recordkeeping requirements, and other aspects of the Federal rule have been adopted into LAC 33.III.3003B, Table 2, as part of the AQ 145 State Implementation Plan revision.

Subpart Cc requires affected existing landfills to be capable of attaining the specified level of emissions within 30 months after the State Plan is federally approved. For compliance schedules for MSW landfills extending more than 12

months beyond the date required for submittal of the plan (December 12, 1996), the compliance schedule must include legally enforceable increments of progress towards compliance for that MSW landfill. Each increment of progress in § 60.21(h) of subpart B must have a compliance date and must be included as an enforceable date in the State Plan. As an alternative, the State must negotiate specific dates for the increments of progress on a facility by facility basis, and submit them to the public participation process. A revision to Louisiana's State Plan must be submitted to EPA once the dates for the increments of progress are established. The State Plan may include such additional increments of progress as may be necessary to permit close and effective supervision of progress towards final compliance.

Louisiana must submit an updated source inventory once the affected facilities have reported their design capacities and NMOC emissions as required under 40 CFR part 60, subpart Cc (60.35c). In addition, Title V permit applications for the affected facilities are due within one year from the due date of the design capacity reports.

III. Final Action

In this final action EPA is promulgating a revision to the Louisiana State Plan and the Code of Federal Regulations, part 62, to adopt the Louisiana State Plan for the control of landfill gas from MSW landfills. On December 20, 1996, the State of Louisiana submitted to EPA a plan identifying the existing MSW landfills in the State and establishing standards for the control of landfill gas emissions from these facilities. On January 7, 1997, the LDEQ transmitted the adopted rule associated with the earlier plan submission. The plan entitled: "Municipal Solid Waste Landfill Section 111(d) Plan" and LAC 33.III.3003B, Table 2, the cross-reference to 40 CFR part 60, subparts Cc and WWW, are the regulatory elements of the Louisiana 111(d) Plan.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Plan. Each request for revision to the State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning State Plans on such grounds. See *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements

under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: August 11, 1997.

Jerry Clifford,

Acting Regional Administrator.

40 CFR Part 62, Subpart T, is amended as follows:

PART 62—[AMENDED]

Subpart T—Louisiana

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 62.4620 is amended by adding paragraph (b)(4) to read as follows:

§ 62.4620 Identification of Plan.

* * * * *

(b) * * *

(4) Control of landfill gas emissions from existing municipal solid waste landfills, submitted on December 9, 1996, and the associated rule adopted by the State on December 20, 1996 (LAC 33.III.3003B, Table 2).

* * * * *

3. A new center heading consisting of §§ 62.4631 and 62.4632 is added to read as follows:

§ 62.4931 Identification of sources.

The plan applies to all existing municipal solid waste landfills with design capacities greater than 2.5 million megagrams and non-methane organic emissions greater than 50 megagrams per year as described in 40 CFR part 60, subpart Cc.

§ 62.4932 Effective date.

The effective date of the portion of the plan applicable to existing municipal solid waste landfills is October 28, 1997.

[FR Doc. 97-21814 Filed 8-28-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL-5884-6]

Extension of Operating Permits Program Interim Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating revisions to Appendix A of the operating permits regulations codified in part 70 of chapter I of title 40 of the Code of Federal Regulations. Those regulations were originally promulgated on July 21, 1992. These revisions to Appendix A extend up to October 1, 1998 all operating permits program interim approvals that expire before that date. This action will allow the program revisions necessary to correct interim approval deficiencies to be combined with program revisions necessary to implement the revisions to part 70 that are anticipated to be promulgated mid-summer of 1998.

DATES: The regulatory amendments announced herein take effect on September 29, 1997. For those programs whose interim approval dates are amended by today's action, interim approval will expire on October 1, 1998.

ADDRESSES: Supporting material used in developing the proposal and final regulatory revisions is contained in Docket Number A-93-50. This docket is

available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying. The address of the EPA air docket is: EPA Air Docket, Mail Code 2311, Attention: Docket Number A-93-50, Room M-1500, Waterside Mall, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Roger Powell (telephone 919-541-5331), Mail Drop 12, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

On August 29, 1994 (59 FR 44460) and August 31, 1995 (60 FR 45530), EPA proposed revisions to the part 70 operating permits regulations. Primarily, the notices proposed changes to the system for revising permits. A number of other less detailed proposed changes were included in the notices. Altogether, State and local permitting authorities will have a complicated package of program revisions to prepare in response to these changes once promulgated. The part 70 revisions are anticipated to take place in mid-summer of 1998.

Contemporaneous with permitting authorities revising their programs to meet the revised part 70, many programs have been granted interim approval which will require permitting authorities to prepare program revisions to correct those deficiencies identified in the interim approval notice. The preamble to the August 31, 1995 proposal noted the concern of many permitting authorities over having to revise their programs twice; once to correct interim approval deficiencies, and again to address the revisions to part 70. In the August 1995 preamble, the Agency proposed that States with interim approval “* * * should be allowed to delay the submittal of any program revisions to address program deficiencies previously listed in their notice of interim approval until the deadline to submit other changes required by the proposed revisions to part 70” (60 FR 45552). Comment was solicited on this action and on a legal rationale. The Agency also proposed “* * * to exercise its discretion under proposed section 70.4(i)(1)(iv) to provide States 2 years to submit program revisions in response to the proposed part 70 revisions * * *” (60 FR 45551).

In combination, these actions could extend all interim approvals such that permitting authorities would not have to submit program revisions addressing interim approval deficiencies until up to 2 years after part 70 is revised. Six comments were received on this subject during the public comment period on the August 1995 proposal. Five of these commenters supported either the extension or efforts to minimize the burden on permitting authorities, but none provided a reasonable legal rationale. One of the commenters indicated the action is not consistent with title V.

II. Discussion

On October 31, 1996 (61 FR 56368), EPA amended section 70.4(d)(2) to allow the Administrator to grant the proposed additional extension to interim approvals. The Agency does not believe, however, that the August 31, 1995 blanket proposal to extend all interim approval program revision submittal dates until up to 2 years after part 70 is revised is appropriate. Program deficiencies that caused granting of interim approval of permitting programs vary from a few problems that can be easily corrected to complex problems that will require regulatory changes and, in some cases, legislative action. Where an undue burden will be encountered by developing two program revisions, combining program revisions and thus granting a longer time period for submission of the program revision to correct interim approval deficiencies is warranted. Where no such burden will occur, the Agency encourages permitting authorities to proceed with correcting their interim approval program deficiencies and not wait for the revised part 70.

To encourage permitting authorities to proceed with program revisions within their interim approval timeframes, rather than wait for the revised part 70, all interim approvals granted prior to the date of issuance of a memorandum announcing EPA's position on this issue (memorandum from Lydia N. Wegman to Regional Division Directors, “Extension of Interim Approvals of Operating Permits Programs,” June 13, 1996) were extended in the October 1996 notice by 10 months. The June 1996 memorandum is in the docket for this action.

The reason for this automatic extension was that permitting authorities, upon reading the August 1995 proposed action, may have delayed their efforts to develop program revisions to address interim approval deficiencies because they believed the