

Dated: October 23, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(231)(i)(B)(4), (248)(i)(C), (254)(i)(A)(3), (254)(i)(C)(2), and (255) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(231) * * *

(i) * * *

(B) * * *

(4) Rule 410.4A, adopted on May 6, 1991 and amended on March 7, 1996 and Rule 410.7, adopted on June 29, 1981 and amended on March 7, 1996.

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(248) * * *

(i) * * *

(C) Placer County Air Pollution Control District.

(I) Rule 239, adopted on November 3, 1994 and amended on February 13, 1997.

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(254) * * *

(i) * * *

(A) * * *

(3) Rules 4602 and 4607, adopted on April 11, 1991 and amended on September 17, 1997.

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(C) * * *

(2) Rule 339, adopted on November 5, 1991 and revised on April 17, 1997.

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(255) New and amended regulations for the following APCD's were submitted on May 18, 1998, by the Governor's designee.

(i) Incorporation by reference.

(A) Sacramento Metropolitan Air Quality Management District.

(I) Rule 450, adopted on July 23, 1981 and amended on December 5, 1996, and Rule 459, adopted on December 7, 1995 and amended on October 2, 1997.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[GA-41-9829a; FRL-6187-4]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the Georgia Department of Natural Resources (DNR) for the State of Georgia on January 20, 1998, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills.

DATES: This direct final rule is effective on January 12, 1999, without further notice, unless EPA receives adverse comment by December 14, 1998. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Scott Martin, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104; and at the Georgia Department of Natural Resources, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562-9036 or Scott Davis at (404) 562-9127.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (Act), EPA has established procedures whereby States submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under

section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a State, local, or tribal agency's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (See 61 FR 9905-9944.) The pollutants regulated by the NSPS and EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to either: (1) submit a plan for the control of the designated pollutant to which the EG applies; or (2) submit a negative declaration if there were no designated facilities in the State within nine months after publication of the EG (by December 12, 1996).

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association v. Browner, et al.* No. 96-1152 (D.C. Cir.), in accordance with section 113(g) of the Act. See 62 FR

60898. It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the proposed settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA is amending 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. See 63 FR 32743–32753, 32783–32784. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. Thus, States are not yet required to submit State Plan revisions to address the June 16, 1998, direct final amendments to the EG. In addition, as stated in the June 16, 1998, preamble, the changes to 40 CFR part 60, subparts Cc and WWW, do not significantly modify the requirements of those subparts. See 63 FR 32744. Accordingly, the MSW landfill EG published on March 12, 1996, was used as a basis by EPA for review of section 111(d) Plan submittals.

This action approves the section 111(d) Plan submitted by the Georgia DNR for the State of Georgia to implement and enforce subpart Cc.

II. Discussion

The Georgia DNR submitted to EPA on January 20, 1998, the following in their section 111(d) Plan for implementing and enforcing the emission guidelines for existing MSW landfills in the State of Georgia: Legal Authority; Enforceable Mechanism; MSW Landfill Source and Emission Inventory; Emission Standards; Collection and Control System Design Plan Review Process; Compliance Schedule; Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments; Submittal of Progress Reports to EPA; Source Surveillance, Compliance Assurance and Enforcement; and applicable State of Georgia statutes and rules of the Georgia DNR.

The approval of the Georgia State Plan is based on finding that: (1) the Georgia DNR provided adequate public notice of public hearings for the proposed rulemaking and State Plan which allows the Georgia DNR to implement and enforce the EG for MSW landfills; and (2) the Georgia DNR also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain

information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In section A of the Plan, the Georgia DNR cites the following references for the legal authority: State of Georgia Attorney General's Opinion Regarding State Authority to Operate the Title V Operating Permit Program; The Georgia Air Quality Act, sections 12–9–1 through 12–9–25; The Rules of the Georgia Department of Natural Resources for Air Quality Control, Chapter 391–3–1; the Georgia Natural Resources Act; the Georgia Administrative Procedures Act; and the Official Code of Georgia Annotated. On the basis of the Attorney General's Opinion, the statutes, and rules of the State of Georgia, the State Plan is approved as being at least as protective as the Federal requirements for existing MSW landfills.

In section C of the Plan, the Georgia DNR cites the enforceable mechanism for implementing the EG for existing MSW landfills. The enforceable mechanism is the state regulation adopted by the State of Georgia in Rule 391–3–1–.02(2)ggg, "Municipal Solid Waste Landfills." The State's regulation meets the Federal requirements for an enforceable mechanism and is approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In section C of the Plan, the Georgia DNR cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards and limitations in the Georgia DNR's Rule 391–3–1–.02(2)ggg are approved as being at least as protective as the Federal requirements contained in Subpart Cc for existing MSW landfills.

Section D of the Plan describes the process the Georgia DNR will utilize for the review of site-specific design plans for gas collection and control systems. The process outlined in the Plan meets the Federal requirements contained in subpart Cc for existing MSW landfills.

In section E of the Plan, the Georgia DNR cites the compliance schedules adopted in Rule 391–3–1–.02(2)ggg for each existing MSW landfill to be in compliance within 30 months of the effective date of their implementing regulation (June 23, 1997). These compliance times for affected MSW landfills address the required compliance time lines of the EG. This portion of the Plan has been reviewed and approved as being at least as

protective as Federal requirements for existing MSW landfills.

In section B of the Plan, the Georgia DNR submitted a source and emission inventory of all designated pollutants for each MSW landfill in the State of Georgia. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing MSW landfills.

Section G of the Plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities. The Georgia DNR also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MSW landfill emissions data, correlated with emission standards that apply, available to the general public. Georgia Rule 391–3–1–.02(2)ggg supports the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These Georgia rules have been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

Section G of the Plan, outlines how the Georgia DNR will provide progress reports of Plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for Plan reporting.

Consequently, EPA finds that the Georgia State Plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The Georgia DNR did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this Plan as it relates to those sources.

III. Final Action

Based on the rationale discussed above, EPA is approving the State of Georgia section 111(d) Plan, as submitted on January 20, 1998, for the control of landfill gas from existing MSW landfills, except for those existing MSW landfills located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to the Georgia State Plan or associated regulations will not be considered part of the applicable plan until submitted by the Georgia DNR in accordance with 40 CFR 60.28(a) or (b), as applicable, and until

approved by EPA in accordance with 40 CFR part 60, subpart B.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the revision should significant, material, and adverse comments be filed. This action will be effective January 12, 1999, unless by December 14, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 12, 1999.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled Regulatory Planning and Review.

B. Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under Executive Order 12866.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Pursuant to section 605(b) of the RFA I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under Federal, State, or Local law and imposes no new requirements on any entity affected by

this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 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.

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

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

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

Dated: September 21, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642

Subpart L—Georgia

2. Section 62.2600 is amended by adding paragraphs (b)(5) and (c)(4) to read as follows:

§ 62.2600 Identification of plan.

* * * * *

(b) * * *

(5) State of Georgia Plan for Implementation of 40 CFR Part 60, Subpart Cc, For Existing Municipal Solid Waste Landfills, submitted on January 20, 1998, by the Georgia Department of Natural Resources.

(c) * * *

(4) Existing municipal solid waste landfills.

3. Subpart L is amended by adding a new § 62.2607 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.2607 Identification of sources.

The plan applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

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