

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60****[AD-FRL-7215-4]****RIN 2060-AJ41****Standards of Performance for Municipal Solid Waste Landfills****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; amendments.

SUMMARY: The EPA is proposing clarifications to the final rule entitled "Standards of Performance for Municipal Solid Waste Landfills" (61 FR 9905, March 12, 1996). We propose to clarify who is responsible for compliance activities conducted on-site; to clarify what constitutes treated landfill gas; to correct omission of an exemption for specific boilers and process heaters from the initial performance test; and to address compliance activities conducted by third parties with systems located off-site.

The proposed amendments will not change the basic control requirements of the final rule or the level of health protection it provides, but will improve implementation, compliance, and regulatory flexibility while reducing unnecessary regulatory burden.

While the proposed amendments would amend the "Standards of Performance for Municipal Solid Waste Landfills," they would also serve to amend the emission guidelines (EG) for existing municipal solid waste (MSW) landfills because the EG incorporate the provisions of the "Standards of Performance for Municipal Solid Waste Landfills."

DATES: *Comments.* Submit comments on or before July 22, 2002.

Public Hearing: If anyone contacts EPA requesting to speak at a public hearing by June 12, 2002, a public hearing will be held on June 24, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-88-09, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-88-09, U.S. EPA, 401 M Street, SW, Washington DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will begin at 10:00 a.m. and will be held at EPA's Office of Administration Auditorium in Research Triangle Park, North Carolina, or an alternate site nearby. You should contact JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division (C439-03), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5671 to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

Docket. Docket No. A-88-09 contains supporting information used in developing the new source performance standards (NSPS). The docket is located at the U.S. EPA, 401 M Street SW, Washington, DC 20460 in Room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Copies of docket materials may be obtained by request from the Air and Radiation Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (C439-03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-5256, facsimile number (919) 541-0246, electronic mail (e-mail) address: laur.michele@epa.gov.

SUPPLEMENTARY INFORMATION: *Comments.* Comments may be submitted by e-mail to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® Corel 8 file format. All comments submitted in electronic form must note the docket number: Docket No. A-88-09. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration and retain the confidentiality of that information must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Ms. Michele Laur, c/o OAQPS Document Control Officer, U.S. EPA, (C404-02), 4930 Old

Page Road, Research Triangle Park, 27709.

The EPA will disclose information identified as CBI only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. JoLynn Collins, Emission Standards Division (C439-03), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5671, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact JoLynn Collins to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of the NSPS. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.) The regulatory text and other materials related to this action are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's proposed amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Regulated Entities. Categories and entities potentially regulated by today's proposed amendments include:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management.	924110	9511	Solid waste landfills.
Industry: Refuse systems—solid waste landfills	562212	4953	Solid waste landfills.
State, local, and Tribal government agencies	562212	4953	Solid waste landfills; Air and water resource and solid waste management.
	924110		

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 60.32c of subpart Cc, or in § 60.750 of subpart WWW. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

On March 12, 1996 (61 FR 9905), the U.S. EPA promulgated the emission guidelines (EG) for existing municipal solid waste (MSW) landfills and the NSPS for new or modified MSW landfills as subparts Cc and WWW of 40 CFR part 60. The expressed goal of the EG and NSPS is to control landfill gas emissions from the largest landfills to protect human health and the environment.

The control of landfill gas results in emissions reductions of over 30 volatile organic compounds and air toxics such as toluene, benzene, and vinyl chloride. The reduction of these emissions has direct and indirect health benefits as well as environmental benefits. In addition, the control of landfill gas results in reductions of methane gas emissions which not only reduces the potential for fires and explosions near landfills but also reduces the potential for global climate change related to methane gas emissions. Another benefit is the reduction of odor problems which reduces the potential for local property de-valuation and poorer quality of life for local residents.

The EG and NSPS require large landfills (at least 2.5 million megagrams and 2.5 million cubic meters in size) with estimated nonmethane organic compound (NMOC) emissions at or above a specified limit (at least 50 megagrams per year) to collect and control or treat landfill gas. The NSPS and EG provide landfill owners or operators with some degree of flexibility to achieve compliance, allowing them to incorporate site specific factors into the

design of the collection and control or treatment systems, as long as the systems meet specific performance standards.

Recent implementation activity has shown a need for clarification of some issues. Today's proposed amendments are submitted to resolve those issues.

II. What Amendments Are We Making and Why?

A. Definition of Landfill Owner/Operator

The NSPS do not contain a specific definition for MSW landfill owners/operators. In the absence of a specific definition, relevant definitions in the NSPS and in the general provisions apply. This lack of a specific definition for MSW landfill owners/operators may have confused some with regard to who is responsible for compliance when collection and control or treatment of landfill gas is performed on-site.

To facilitate implementation and improve compliance, we propose to amend § 60.751 of the NSPS by adding a landfill-specific definition for MSW landfill owners/operators. This landfill-specific definition will identify the MSW landfill owners/operators as entities that own or operate the landfill or any stationary equipment located at the landfill that is used in the collection, control, or treatment of landfill gas. The inclusion of owners/operators of landfill gas collection, control, or treatment equipment located on-site in the definition of "MSW landfill owner/operator" is consistent with our historical approach and with the "owner/operator" and "affected facility" definitions found in the general provisions to 40 CFR part 60. Today's proposed amendments should help to more clearly identify entities responsible for compliance with the NSPS.

B. Definitions for Treated Landfill Gas, Treatment System, and Untreated Landfill Gas, and Clarification of the Treatment Standard

The NSPS allow landfill owners/operators the option of achieving compliance by routing collected landfill

gas to a treatment system prior to subsequent sale or use. Once landfill gas is treated, facilities that buy or use the gas have no further obligations related to the NSPS.

The NSPS do not clearly define landfill gas treatment. In the absence of a clear definition, a range of activities has been construed as constituting treatment. This absence of a clear treatment definition may have hindered implementation of this option, reduced rule flexibility, and reduced full use of this option.

We propose to amend § 60.751 of the NSPS by adding a definition for treatment system. The proposed definition for treatment system specifies that the system must filter, de-water and compress landfill gas. At a minimum, the system must filter landfill gas using a dry filter or similar device (e.g., impaction, interception or diffusion device). The filter should reduce particulate matter in the gas stream. This will prolong the life of the combustion device and decrease the buildup of material on combustion device internals, which will support good combustion. Good combustion is essential to ensuring the proper destruction of NMOC. In addition, the system must de-water landfill gas using chillers or other dehydration equipment. The de-watering equipment should reduce moisture content of the gas, which will maintain low water content in the gas and will prevent degradation of combustion efficiencies. Finally, the system must compress landfill gas using gas blowers or similar devices. Compression should further reduce the moisture content of the gas and raise gas pressure to the level required by the end use combustion device. This definition of treatment was chosen because we believe it cleans up the gas to the extent it can be readily combusted in gas-to-energy projects. It also reflects current practices at many facilities and fosters expanded beneficial combustion of landfill gas.

We recognize that some landfill gas-to-energy projects may use a different definition of treatment than we are proposing. We request data from them

that show achievement of the expected emissions reductions using a different treatment definition. If these facilities submit data that show different approaches to treatment, or different levels of treatment will sufficiently clean up the landfill gas so it is readily combustible, the data will be considered in development of the final rule.

Today's proposed amendment to § 60.751 of the NSPS reduces burden on States and Regions currently performing case-by-case determinations related to the adequacy of treatment options being employed across the Nation. It also serves to clarify the treatment issue for the regulated community so better informed decisions can be made about compliance options. It fosters the use of treated landfill gas, a renewable energy source, as an alternative to combustion of fossil fuels which can generate greater emissions. It will improve implementation and compliance, as well as increase regulatory flexibility.

To implement the proposed treatment definition, we also propose to amend § 60.751 of the NSPS by adding definitions for treated landfill gas and untreated landfill gas. The proposed definitions for treated and untreated landfill gas differentiate treated landfill gas, a gas that is not subject to requirements in the landfills NSPS, from untreated landfill gas. In addition, we propose to amend § 60.752(b)(2)(iii)(C) of the NSPS to specify that to achieve compliance with this section, landfill gas must be processed in a system that meets the treatment system definition in today's proposed amendment. We also propose to amend this section to clarify that venting of treated landfill gas to the ambient air is not permitted under this regulation.

C. Boiler and Process Heater Performance Test Exemption

The NSPS currently require landfill owners/operators to conduct an initial performance test on all enclosed combustion devices used to control landfill gas emissions. The purpose of that test is to verify control device compliance with the standard and to determine the control device operating temperature that corresponds to compliance with the standard. Following the performance test, landfill owners/operators must monitor and maintain the control device operating temperature within a specified range to ensure continuous compliance.

Requiring a performance test on boilers and process heaters with design heat input capacities of 44 megawatts (MW) or greater represents an unnecessary burden resulting in

additional cost to industry without additional emissions reductions or other environmental benefits. This conclusion is based on our determination that large boilers and process heaters consistently achieve the required level of control. Therefore, such units have historically been exempt from performance tests. In addition, the NSPS do not require temperature monitoring to evaluate continuous compliance for these large boilers and process heaters.

We propose to amend § 60.752(b)(2)(iii)(B) to exempt owners/operators of boilers and process heaters with design input capacities of 44 MW or greater from the requirement to conduct an initial performance test.

D. Allowance for Off-Site Control or Treatment Option

At the time the NSPS were developed, off-site control or treatment of landfill gas was not considered as an option. Therefore, the NSPS do not address off-site control or treatment of landfill gas.

Since development and implementation of the NSPS, landfill owners/operators have sought new and innovative ways to operate landfills while maintaining compliance with the NSPS. Some of these innovative approaches involve the control or treatment of landfill gas by entities operating equipment located off-site. Since these operations are currently not addressed, the flexibility to engage in innovative control and use of landfill gas is hindered.

In developing the NSPS, we wanted to allow landfill owners/operators the flexibility to achieve compliance taking into account site-specific conditions. The option to transfer landfill gas for off-site control or treatment by a third party would provide landfill owners/operators greater flexibility in complying with the rule. The proposed option would allow transfer of control or treatment responsibility in specified circumstances without holding the landfill owners/operators responsible for the actions of another party. This approach is consistent with our historical approach to similar waste stream transfers in other rules such as the National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater. It would also facilitate the use of landfill gas as a renewable energy source while achieving emission reductions of methane, a global climate change gas, which would benefit public health, the environment, and the regulated community.

We propose to amend § 60.752 of the NSPS to allow landfill owners/operators to transfer untreated landfill gas off-site for control or treatment provided the transferee certifies to EPA (and provides a copy to the owner/operator) that it will control or treat the landfill gas in accordance with the NSPS provisions, including providing for either a backup control device should the primary control or treatment system malfunction or shutdown, or a mechanism for shutoff of landfill gas flow to the off-site facility. During times when landfill gas flow to the off-site facility is shutdown, the owner/operator of the landfill is responsible for complying with the rule.

III. What Are the Administrative Requirements for This Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant," and therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive 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.

Pursuant to the terms of Executive Order 12866, it has been determined that today's proposed amendments are not a "significant regulatory action" because they will not have an annual effect on the economy of \$100 million or more and they do not impose any additional control requirements above the 1996 NSPS. The EPA considered the 1996 NSPS to be "significant" because they were expected to have an annual effect on the economy in excess of \$100 million, and we submitted the 1996 NSPS to OMB for review. Today's proposed amendments are projected to have no impact above the 1996 NSPS. Consequently, today's proposed

amendments were not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Today's proposed amendments do not impose additional costs or result in additional control requirements above those considered during promulgation of the 1996 landfills NSPS. In developing the 1996 landfills NSPS, EPA consulted extensively with State and local governments to enable them to provide meaningful and timely input in the development of that rulemaking. Because the control requirements of today's proposed amendments are the same as those developed in 1996, these previous consultations still apply. For a discussion of EPA's consultations with State and local governments, the nature of the governments' concerns, and EPA's position supporting the need for the specific control requirements included in the NSPS, see the preamble to the 1996 NSPS (61 FR 9905, March 12, 1996). Thus, Executive Order 13132 does not apply to today's proposed amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA

to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and the Indian tribes."

Today's proposed amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's proposed amendments do not impose additional costs or result in additional control requirements above those considered during promulgation of the 1996 NSPS. In addition, today's proposed amendments do not significantly or uniquely affect the communities of Indian tribal governments. Thus, the requirements of Executive Order 13175 do not apply to today's proposed amendments.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on today's proposed amendments from tribal officials.

D. 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 Executive Order 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, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation.

Today's proposed amendments are not subject to Executive Order 13045

because they are based on technology performance and not on health and safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. In addition, today's proposed amendments are not economically significant as defined in Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

F. Unfunded Mandates Reform Act of 1995

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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.

The EPA has determined that today's proposed amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that today's proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they consist of new definitions and clarifications and do not impose new costs on government entities or the private sector. Therefore, today's proposed amendments are not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments, small entities are defined as: (1) A small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by NAICS codes 562212 and 924110 with annual receipts less than \$10 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's proposed amendments. Today's

proposed amendments clarify the applicability of control requirements in the NSPS and do not include provisions that create a new burden for regulated entities.

Today's proposed amendments do not increase the stringency of the NSPS, nor do they add additional control requirements. Today's proposed amendments reduce the control, monitoring, recordkeeping, and reporting requirements of the promulgated rule under specific conditions for some entities.

H. Paperwork Reduction Act

An Information Collection Request (ICR) document was prepared for the landfills NSPS and was submitted to and approved by OMB. A copy of this ICR (OMB control number 1557.03) may be obtained from Sandy Farmer, by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by calling (202) 260-2740; or by email at: farmer.sandy@epa.gov. You may also download a copy from the policy website at <http://www.epa.gov/icr>.

Today's proposed amendments to the NSPS will have no impact on the information collection burden estimates made previously. Today's proposed amendments consist of new definitions and clarifications of requirements. Consequently, the ICR has not been revised.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113; 15 U.S.C. 272 note), all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement 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) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

Today's proposed amendments do not involve new technical standards; thus, the requirements of section 12(d) of the NTTAA do not apply.

List of Subjects in 40 CFR Part 60

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

Dated: May 16, 2002.

Christine Todd Whitman,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart WWW—[AMENDED]

2. Section 60.751 is amended by adding in alphabetical order the definitions of MSW landfill owner/operator, treated landfill gas, treatment system and untreated landfill gas, to read as follows:

§ 60.751 Definitions.

* * * * *

Municipal solid waste landfill owner/operator means any entity that owns or operates a municipal solid waste landfill or any stationary equipment located on the same property as a municipal solid waste landfill facility that is used to collect, control or treat landfill gas.

* * * * *

Treated landfill gas means landfill gas processed in a treatment system according to this subpart.

Treatment system means a system that filters, de-waters and compresses landfill gas.

Untreated landfill gas means any landfill gas that is not treated landfill gas.

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3. Section 60.752 is amended by revising paragraphs (b)(2)(iii)(B) and (C), and by adding paragraphs (b)(2)(iii)(D), (D)(1) through (4) to read as follows:

§ 60.752 Standards for air emissions from municipal solid waste landfills.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(B) A control system designed and operated to reduce NMOC by 98 weight percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or to reduce the outlet NMOC concentration to less than 20 parts per million by volume (ppmv), dry basis as hexane at 3 percent oxygen. The reduction efficiency or ppmv shall be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test

methods specified in § 60.754(d). The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

(1) * * *

(2) * * *

(C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or use as a fuel for combustion. Landfill gas sold or used as a fuel for combustion shall be treated in a treatment system as defined in § 60.751. All emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of paragraph (b)(2)(iii)(A) or (B) of this section. For purposes of this rule, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (b)(2)(iii)(A) or (B) of this section. The owner/operator of the landfill gas treatment system must ensure compliance with these requirements. The owner/operator of a combustion device who uses or purchases treated landfill gas for fuel in a combustion device shall be exempt from further compliance with this subpart. Since the treatment option is only valid when treated landfill gas is sold or used as a fuel in a combustion device, the gas must be used as a fuel, and venting of treated landfill gas to the ambient air is not allowed under this option.

(D) The landfill owner/operator who routes untreated landfill gas for sale or use shall be exempt from the requirements of paragraphs (b)(2)(iii)(A) and (B) of this section if the conditions in paragraphs (b)(2)(iii)(D)(1) through (4) of this section are met:

(1) The landfill owner/operator transferring or selling untreated landfill

gas to an off-site operation owned or operated by a third party for treatment or for combustion as a fuel must include a notice with the transfer or sale of the untreated landfill gas. The notice must state that the untreated landfill gas is to be treated or combusted in accordance with the provisions of this subpart.

When the transfer or sale is continuous or ongoing, the notice must be submitted to the third party operator initially and whenever there is a change in the required treatment or combustion standards. These notices must be retained by the landfill owner/operator as specified in § 60.758(g).

(2) The landfill owner/operator may not transfer or sell the untreated landfill gas unless the transferee has submitted to EPA a written certification that the transferee will manage and treat or combust the untreated landfill gas received from the affected facility subject to the requirements of this subpart in accordance with the requirements in §§ 60.752 through 60.758. The certifying entity may revoke the written certification by sending a written statement to EPA and the landfill owner/operator giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph (b)(2)(iii)(D)(2). Upon expiration of the notice period, the landfill owner/operator may not transfer or sell the untreated landfill gas to the third party operation.

(3) The third party/certifying entity must provide written certification to EPA that it accepts responsibility for compliance with the regulatory provisions listed in paragraph (b)(2)(iii)(D)(2) of this section with respect to any transfer or sale of

untreated landfill gas covered by the written certification. Failure to abide by any of the provisions with respect to such transfers or sales may result in enforcement action by EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of the provisions by owners or operators of affected facilities.

(4) Written certification and revocation statements to EPA from the transferees of untreated landfill gas must be signed by a responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office. Such written certifications are not transferable by the third party.

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4. Section 60.758 is amended by adding paragraph (g) to read as follows:

§ 60.758 Recordkeeping requirements.

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(g) The landfill owner or operator transferring or selling untreated landfill gas in accordance with § 60.752(b)(2)(iii)(D)(1) shall keep a record of the notice sent to the third party operator stating that the untreated landfill gas is required to be managed and treated or combusted in accordance with the provisions of this subpart. This record shall be maintained for as long as the third party continues to accept landfill gas as specified in the third party's certification. Upon termination of the certification by the third party, this record must be maintained for 5 years.

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