

Dated: October 3, 1997.

William P. Yellowtail,
Regional Administrator, Region VIII.

40 CFR part 52 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 BB—Montana

2. Section 52.1391 is added to read as follows:

§ 52.1391 Emission inventories.

The Governor of the State of Montana submitted the 1990 carbon monoxide base year emission inventories for Missoula and Billings on July 18, 1995, as a revision to the State Implementation Plan (SIP). The Governor submitted the 1990 carbon monoxide base year emission inventory for Great Falls on April 23, 1997, as a revision to the SIP. The inventories address emissions from point, area, on-road mobile, and non-road sources. These 1990 base year carbon monoxide inventories satisfy the nonattainment area requirements of the Clean Air Act of section 187(a)(1) for Missoula and section 172(c)(3) for Billings and Great Falls.

[FR Doc. 97-32644 Filed 12-12-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[ND-001-0003a; FRL-5933-8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the North Dakota plan for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which was required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan was submitted to EPA on September 11, 1997 in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. It establishes performance standards for existing MSW landfills and provides for the

implementation and enforcement of those standards. EPA finds that North Dakota's plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans.

DATES: This action is effective on February 13, 1998 unless adverse or critical comments are received in writing by January 14, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper, 8P2-A, at the EPA Region VIII Office listed. Copies of the documents relative to this action are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466; and the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, room 304, Box 5520, Bismarck, North Dakota 58506-5520.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312-6445.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the 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, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) 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 emissions guidelines 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's section 111(d) plan for a designated facility must comply with the emission guideline for that source

category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published Emission Guidelines for existing MSW landfills (EG) 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 9905-9929.) The pollutant regulated by the NSPS and EG is 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 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

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

On September 11, 1997, the State of North Dakota submitted its "Section 111(d) Plan for MSW Landfills" for implementing EPA's MSW landfill EG. The following provides a brief discussion of the requirements for an approvable State plan for existing MSW landfills and EPA's review of North Dakota's submittal in regard to those requirements. More detailed information on the requirements for an approvable plan and North Dakota's submittal can be found in the Technical Support Document (TSD) accompanying this notice, which is available upon request.

II. Review of North Dakota's MSW Landfill Plan

EPA has reviewed North Dakota's section 111(d) plan for existing MSW landfills against the requirements of 40 CFR part 60, subpart B and subpart Cc, as follows:

A. Identification of enforceable State Mechanism for Implementing the EG

40 CFR 60.24(a) requires that the section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as "a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions." North Dakota has adopted State regulations as the cornerstone of its State plan to control air emissions from certain existing landfills. Those regulations are in the State's Air Pollution Control Rules, chapter 33-15-12, section 02, of the North Dakota Administrative Code (NDAC). These regulations were adopted by the State in accordance with the State's and EPA's administrative procedures and became effective on September 1, 1997. Thus, the State has met the requirement of 40 CFR 60.24(a) to have legally enforceable emission standards.

B. Demonstration of the State's Legal Authority to Carry out the Section 111(d) State Plan as Submitted

40 CFR 60.26 requires the section 111(d) plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules. North Dakota provided an opinion from the State's Assistant Attorney General and included a copy of the North Dakota Air Pollution Control Law, North Dakota Century Code (NDCC) Chapter 23-25, to demonstrate its authority for adopting, implementing, and enforcing its section 111(d) plan. EPA has reviewed the Assistant Attorney General's opinion and the State laws and has determined that the State has adequate legal authority to adopt and implement the section 111(d) plan in accordance with 40 CFR 60.26.

The State did not submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this State Plan as it relates to those sources.

C. Inventory of Existing MSW Landfills in the State Affected by the State Plan

40 CFR 60.25(a) requires the section 111(d) plan to include a complete source inventory of all existing MSW landfills (i.e., those MSW landfills that constructed, reconstructed, or modified prior to May 30, 1991) in the State that are subject to the plan. This includes all existing landfills that have accepted waste since November 8, 1987 or that have additional capacity for future waste deposition. North Dakota addressed this requirement in Section

IV. of its section 111(d) plan by including a list of all MSW landfills in the State, regardless of design capacity, that have accepted waste since November 8, 1987. There are a total of 13 MSW landfills in North Dakota. The State believes that three of these MSW landfills appear to be subject to 40 CFR part 60, subpart WWW due to expansions that have occurred since the date the State plan was first proposed and, thus, are not subject to the State plan. The State of North Dakota estimates that there is one "existing" landfill, the City of Grand Forks Municipal Landfill, that is subject to the requirements to report solid waste capacity, calculate NMOC emissions, and potentially install a gas collection and control system. The State estimated in its section 111(d) plan that there are 9 additional landfills that have solid waste capacities less than 2.5 million Mg or 2.5 million m³ that have accepted waste since November 8, 1987. Since the State's adoption of its section 111(d) plan, the State received the design capacity reports from these nine landfills and confirmed that none are over the 2.5 million Mg or 2.5 million m³ design capacity threshold. Thus, these nine MSW landfills are not subject to any additional requirements of the State's section 111(d) plan.

D. Inventory of Emissions From Existing MSW Landfills in the State

40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG, which, in the case of MSW landfills, is NMOC. North Dakota included in Section IV. of its section 111(d) plan an estimation of NMOC emissions for all of the thirteen landfills in the State using the Landfill Air Emissions Estimation Model and AP-42 default emission factors.

E. Emission Limitations for MSW Landfills

40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG (except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met). 40 CFR 60.33c contains the emissions standards applicable to existing MSW landfills. The State of North Dakota incorporated the EG by reference at NDAC 33-15-12-02, including the emission limitations of 40 CFR 60.33c. Thus, the State plan meets the emission limitation requirements by requiring emission limitations that are no less stringent than the EG.

F. A Process for State Review and Approval of Site-Specific Gas Collection and Control System Design Plans

40 CFR 60.33c(b) in the EG requires State plans to include a process for State review and approval of site-specific design plans for required gas collection and control systems. In NDAC 33-15-12-02, the State has incorporated by reference the EG, including the requirements of 40 CFR 60.33c(b) for the submittal of site-specific design plans meeting the conditions of 40 CFR 60.752(b)(2)(ii). In addition, Section VII. of the State's section 111(d) plan discusses the State's process for review and approval of the design plans. Thus, North Dakota's section 111(d) plan adequately addresses this requirement.

G. Compliance Schedules

The State's section 111(d) plan must include a compliance schedule that owners and operators of affected MSW landfills must meet in complying with the requirements of the plan. 40 CFR 60.36c provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG must be accomplished within 30 months of the effective date of a State emission standard for MSW landfills (i.e., the effective date of EPA approval of the State plan). 40 CFR 60.24(e)(1) provides that any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/installation of emission control equipment, and final compliance.

North Dakota has adopted enforceable compliance schedules in NDAC 33-15-12-02. The State's rules require that the landfills which are required to install a collection and control system be in final compliance with the requirements of the State plan no later than twenty-nine months from the effective date of EPA approval of this plan or, for those MSW landfills which are not currently subject to the collection and control system requirements, within twenty-nine months of first becoming subject to such requirements (i.e., within 30 months of reporting a NMOC emission rate of 50 Mg/yr or greater). Thus, the State's rule satisfies the requirement of 40 CFR 60.36c. In addition, the State has included increments of progress

deadlines for the submittal of a final collection and control system design plan, awarding contracts for installation of the collection and control system, initiation of on-site installation of the collection and control system, and final compliance. Thus, the State's rule satisfies the requirements of 40 CFR 60.24(e). The State's regulations also include a requirement for the initial performance test to be conducted within 180 days of the installation of the collection and control equipment.

H. Testing, Monitoring, Recordkeeping and Reporting Requirements

40 CFR 60.34c specifies the testing and monitoring provisions that State plans must include, and 40 CFR 60.35c specifies the reporting and recordkeeping requirements. In NDAC 33-15-12-02, the State has incorporated by reference the EG, including the test methods and procedures of 40 CFR 60.34c and the reporting and recordkeeping provisions of 40 CFR 60.35c.

However, the State did adopt one exception to the quarterly monitoring requirements for surface methane concentrations in 40 CFR 60.756(f): the State rule only requires surface methane concentration monitoring during the second, third, and fourth quarters of the calendar year. In a June 27, 1997 letter to EPA, the State submitted extensive climatological data and explained why it believes this data shows that exceedingly cold temperatures and snow cover during the winter quarter (January through March) would make monitoring of surface methane concentrations nearly impossible. In examining this data for the one MSW landfill that currently appears to be subject to the collection and control system requirements of the State plan, the City of Grand Forks Municipal Landfill, the State found the following information:

a. The mean temperature in Grand Forks is approximately 5 degrees Fahrenheit in January, 9 degrees in February, and 23 degrees in March;

b. Using the average wind speed for the months of January through March in Fargo, which is 78 miles south of Grand Forks, the average wind chill factors would range from -22 degrees Fahrenheit in January to 2 degrees Fahrenheit in March. Average wind speed in those same months ranges from 13 to 13.6 mph;

c. The Grand Forks area receives approximately 38 inches of snow during the winter season, and there is normally at least one inch of snow depth in Grand Forks from December 1 through the end of March; and

d. The Grand Forks area has approximately 50 days with snow depths of 6 inches or more and approximately 115 days with snow depth of one inch or more, which generally fall within the December through March time frame.

Thus, North Dakota contends that, with mean temperatures during the winter quarter below freezing and with snow covering the landfill at depths up to three feet, surface monitoring for methane during the winter quarter is not practical and, at best, extremely difficult.

EPA believes that the State has provided substantial documentation showing that the extremely cold temperatures and wind chill factors, as well as the snow cover, in the Grand Forks area justify the exemption from first quarter monitoring for surface methane concentrations. If any other existing MSW landfills become subject to the State's section 111(d) plan in the future, EPA will need to re-evaluate the State's exemption from first quarter monitoring based on the location and meteorological data for that location.

Consequently, EPA finds that the State's section 111(d) plan for MSW landfills adequately addresses the testing, monitoring, reporting, and recordkeeping requirements of the EG.

I. A Record of Public Hearings on the State Plan

40 CFR 60.23 contains the requirements for public hearings that must be met by the State in adopting a section 111(d) plan. North Dakota included documents in its plan submittal demonstrating that these procedures, as well as the State's administrative procedures, were complied with in adopting the State's plan. Therefore, EPA finds that North Dakota has adequately met this requirement.

J. Submittal of Annual State Progress Reports to EPA

40 CFR 60.25(e) and (f) require States to submit to EPA annual reports on the progress of plan enforcement. North Dakota committed in Section IX. of its section 111(d) plan to submit annual progress reports to EPA on compliance status, enforcement actions, increments of progress, identification of sources that have started operation, emission inventory information for sources that have started operation, updated emission inventory and compliance information, and technical reports on all performance testing and monitoring for landfills subject to the EG. The first progress report will be submitted by the

State one year after EPA approval of the State plan.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving North Dakota's September 11, 1997 submittal of its section 111(d) plan for the control of landfill gas from existing MSW landfills, except those located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to North Dakota's section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the State 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.

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, EPA is proposing to approve the State Plan should adverse or critical comments be filed. This action will be effective February 13, 1998 unless, by January 14, 1998, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. 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 on February 13, 1998.

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 a 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 12866

The Office of Management and Budget (OMB) 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. 5 U.S.C. 603 and 604. Alternatively, EPA may certify 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 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 small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory 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. *Union Electric Co. T1 v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

C. 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 the 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.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 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. 804(2).

E. 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 February 13, 1998. 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 must 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: October 24, 1997.

William P. Yellowtail,
Regional Administrator, Region VIII.

40 CFR part 62 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. Subpart JJ is added to read as follows:

Subpart JJ—North Dakota

LANDFILL GAS EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS

Sec.

- 62.8600 Identification of plan.
- 62.8601 Identification of sources.
- 62.8602 Effective date.

Subpart JJ—North Dakota

LANDFILL GAS EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS

§ 62.8600 Identification of plan.

"Section 111(d) Plan for Municipal Solid Waste Landfills" and the associated State regulation in section 33-15-12-02 of the North Dakota Administrative Code, submitted by the State on September 11, 1997.

§ 62.8601 Identification of sources.

The plan applies to all 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.

§ 62.8602 Effective date.

The effective date of the plan for municipal solid waste landfills is February 13, 1998.

[FR Doc. 97-32640 Filed 12-12-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 96-262 and 91-213; FCC 97-401]

Access Charge Reform; Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the Third Report and Order, FCC 97-401, adopted and released November 26, 1997 (*Third Report and Order*), in its Access Charge Reform and Transport Rate Structure Pricing proceedings, the Commission amends its cost allocation rules to increase the allocation of certain general purpose computer and other general support facilities (GSF) costs by price cap local exchange carriers (LECs) to their nonregulated billing and collection categories and the *Third Report and Order* also requires affected price cap LECs to reduce their price cap indices (PCIs) and related basket indices to ensure that their regulated access and interexchange services do not continue to recover GSF costs attributable their nonregulated billing and collection services. These rule amendments and related exogenous adjustments are intended to reduce the subsidization of