

The EPA Administrator, Michael S. Regan, signed the following notice on 02/03/2022, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2002-0047. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 62, and 63

[EPA-HQ-OAR-2002-0047; FRL-6838.1-03-OAR]

RIN 2060-AV01

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste

Landfills Residual Risk and Technology Review; Correction

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: In this action, the U.S. Environmental Protection Agency (EPA) is finalizing technical revisions and clarifications for the national emission standards for hazardous air pollutants (NESHAP) for MSW Landfills established in the March 26, 2020, final rule. This final rule also amends the MSW Landfills NSPS at 40 CFR part 60, subpart XXX, to clarify and align the timing of compliance for certain requirements involving installation of a gas collection and control system (GCCS) under related MSW landfill rules. Additionally, the EPA is revising the definition of Administrator in the MSW Landfills Federal Plan that was promulgated on May 21, 2021 to clarify who has the authority to implement and enforce the applicable requirements. The EPA is also making some minor typographical corrections.

DATES: The final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2002-0047. All documents in the docket are listed on the <https://www.regulations.gov/>

website. Although listed, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/> or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC. The EPA has temporarily suspended its Docket Center and Reading Room for public visitors to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. The EPA continues to carefully and continuously monitor information from the Centers for Disease Control (CDC), local area health departments, and our Federal partners so that the EPA can respond rapidly as conditions change regarding COVID-19. For further information on EPA Docket Center services and the current status, please visit the docket online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Andy Sheppard, Sector Policies and Programs Division (E143-03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4161; fax number: (919) 541-0516; and email address: sheppard.andy@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. The EPA uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA	Clean Air Act
CBI	Confidential Business Information

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CFR	Code of Federal Regulations
COVID-19	coronavirus disease of 2019
EPA	Environmental Protection Agency
GCCS	gas collection and control system
HAP	hazardous air pollutants
m ³	cubic meter
Mg	megagram
MSW	municipal solid waste
NMOC	nonmethane organic compounds
NSPS	new source performance standards
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RTR	risk and technology review
SSM	startup, shutdown, and malfunction
RIN	Regulatory Information Number
UMRA	Unfunded Mandate Reform Act

Organization of this document. The information in this preamble is organized as follows:

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J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the associated regulated industrial source categories that are the subject of this final rule. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this action is likely to affect. The standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities could be affected by this action because these entities are often the owners or operators of MSW landfills. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA-450/3-91-030; July 1992), the MSW Landfills source category is any facility that is an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive commercial waste, sludges, and industrial waste. An MSW landfill may also receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes (see 40 CFR 257.2) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.

Questions regarding the applicability of this final action to a particular entity should be directed to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1. INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS ACTION

Source Category	NAICS Code ¹
Industry: Air and water resource and solid waste management	924110
Industry: Refuse systems--solid waste landfills	562212
State, local, and tribal government agencies	562212, 924110

¹ North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards>. Following publication in the *Federal Register*, the EPA will post the *Federal Register* version of this final action at this same website.

C. What is the statutory authority for this action?

The statutory authority for revisions to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) is provided by sections 112 and 301 of the Clean Air Act (CAA), as amended (42 U.S.C. 7412 and 7401). The statutory authority for revisions to the MSW Landfills New Source Performance Standards (40 CFR part 60, subpart XXX) and the Federal Plan (40 CFR part 62, subpart OOO) is provided by sections 111 and 301 of the CAA (42 U.S.C. 7411 and 7401).

The EPA finds that it has good cause to make these revisions immediately effective upon publication under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). Section 553(d) provides that final rules shall not become effective until 30 days after publication in the Federal Register “except . . . as otherwise provided by the agency for good cause.” The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir.

1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should, “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” *Gavrilovic*, 551 F.2d at 1105. The EPA has determined that there is good cause under section 553(d) for making this final rule effective immediately because this action clarifies the regulatory provisions that already apply to regulatory sources as well as the compliance deadline for controlled landfills that become subject to the 2016 MSW Landfills NSPS through modification is September 27, 2021. Making this rule effective immediately upon publication will minimize confusion and increase compliance certainty.

D. Judicial Review

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements. Section 307(d)(7)(B) of the CAA further provides that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for

such objection arose after the period for public comment, (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

II. Background

A. What is the regulatory development background and legal authority for this action?

The NESHAP regulates HAP emissions from MSW landfills that are either major or area sources, and applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m³) and have estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) of non-methane organic compounds (NMOC). The NESHAP also applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and include a bioreactor and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m³ that were not permanently closed as of January 16, 2003.

The EPA completed the residual risk and technology review (RTR) for the Municipal Solid Waste (MSW) Landfills source category as regulated under the MSW Landfills NESHAP

and promulgated amendments to 40 CFR part 63, subpart AAAA on March 26, 2020. (85 FR 17244). The rule finalized the EPA's determination that risks from this source category are acceptable and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. There were no revisions to the NESHAP based on our analyses conducted under CAA section 112(f). However, the final rule clarified regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); revised wellhead operational standards and corrective action to improve effectiveness and provide compliance flexibility; incorporated provisions from the MSW Landfills NSPS; and added requirements for electronic reporting of performance test results. The EPA subsequently corrected inadvertent errors in the cross-referencing and formatting of the final rule and made minor clarifications to the operational and reporting requirements. (85 FR 64398, October 13, 2020).

In August 2016, the EPA finalized changes to the NSPS for MSW landfills resulting from the EPA's under Clean Air Act (CAA) section 111. In order to avoid possible confusion regarding which MSW landfills would actually be subject to these changes, the EPA established a new subpart XXX (40 CFR part 60, subpart XXX) rather than merely updating the existing subpart WWW (40 CFR part 60, subpart WWW). One of the key changes in the new subpart XXX was the lowering of the emissions threshold for installing controls from 50 megagrams per year (Mg/yr) to 34 Mg/yr. (81 FR 59332, August 29, 2016).

At the same time, the EPA reviewed the existing emission guideline (EG) (subpart Cc) and determined it was appropriate to revise it consistent with the promulgation of the new NSPS subpart XXX. Rather than merely updating subpart Cc, the EPA determined that the most appropriate way to proceed was to establish a new subpart Cf. (81 FR 59276, August 29, 2016).

The promulgation of the MSW landfills EG (subpart Cf) triggered states' obligation to submit state plans applying the updated EG to existing sources located in their states. The EPA found a number of states failed to submit state plans for the 2016 MSW Landfills EG. (85 FR 14474, March 12, 2020). In May of 2021, the EPA promulgated a Federal plan to implement the 2016 MSW Landfills EG for existing MSW landfills located in jurisdictions where the EPA had not approved a state or tribal plan. (86 FR 27756, May 21, 2021).

B. What is the purpose of this action?

On April 13, 2021, the EPA proposed technical revisions and clarifications for the NESHAP for MSW Landfills and the EPA proposed clarifying amendments to the MSW Landfills NSPS. See 86 FR 19176. In this action, the EPA finalizes technical revisions and clarifications for the NESHAP for MSW Landfills established in the March 26, 2020, final rule. These technical revisions correct inadvertent errors in the NESHAP for MSW Landfills. This action clarifies the following: wellhead monitoring requirements for the purpose of identifying excess air infiltration; delegation of authority to state, local, or tribal agencies for “emission standards;” applicability of the General Provisions to affected MSW landfills; and handling of monitoring data for combustion devices during periods of monitoring system breakdowns, repairs, calibration checks, and adjustments. This action also amends the MSW Landfills NSPS at 40 CFR part 60, subpart XXX, to clarify the timing of compliance for certain requirements of the MSW Landfills NSPS for existing MSW landfills that have been modified but previously triggered the requirement to install a GCCS under related MSW landfill rules. Additionally, the EPA is revising the definition of Administrator in the MSW Landfills Federal Plan that was promulgated on May 21, 2021, to clarify who is the administrator for the Federal plan and the

administrator for a state plan. The EPA is also making some minor typographical corrections to NESHAP and the Federal Plan.

III. Summary of Changes Since Proposal and Response to Comments

The EPA received two comment letters on the proposed revisions to the MSW Landfills NESHAP and NSPS (EPA-HQ-OAR-2002-0047-0111, EPA-HQ-OAR-2002-0047-0112). This section summarizes the EPA's response to those comments and indicates where the EPA has made additional changes to the proposed revisions to the MSW Landfills NESHAP and NSPS, in part, in response to those public comments. The changes include clarifications to the wellhead monitoring requirements [including test methods], and clarifications to the compliance times for various landfills, especially those modifying and becoming subject to 40 CFR part 60, subpart XXX. For more information, see the response to comments document, titled, *Summary of Public Comments and EPA's Responses for the Proposed Corrections to National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review; Correction*, which is available in the docket for this action.

A. Wellhead Monitoring

Comment: Commenter (0111) suggested that the EPA add language to 40 CFR 63.1981(k) to clarify whether or not a 24-hour high temperature report is required for wells with landfill gas temperatures greater than 170 degrees Fahrenheit but less than an approved higher operating value (HOV).

Response: The EPA is amending 40 CFR 63.1981(j)(2) to clarify that the corrective action and corresponding timelines are not required if the landfill has an approved HOV. We added the following phrase to the end of 40 CFR 63.1981 (j)(2): "unless a higher operating temperature value has been approved by the Administrator for the well under this subpart or

under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a Federal plan or EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf.”

Comment: Commenter (0112) requested that EPA re-evaluate its proposal to require five 1-minute averages to be limited to 7 parts per million (ppm) variance. The commenter (0112) contends that the proposed requirement is unnecessarily prescriptive and says that although this low level of variability may be appropriate for some stationary sources of air emissions, such as controlled manufacturing processes, landfills may experience more variability than this limitation would allow. Commenter (0112) asserted that EPA has neither provided an explanation for why this requirement is necessary, nor shown that it can be achieved by landfills. Moreover, this requirement does not appear to be a necessary clarification or correction but rather an entirely new and unjustified compliance obligation. Therefore, unless and until EPA demonstrates a need for this requirement and that it is achievable by landfills, EPA should not finalize it in this corrections rule.

Response: The EPA believes that a limited variability provision would increase the data quality when collecting samples pursuant to 40 CFR 1961(a)(5)(vi)(D). However, the EPA agrees with the commenter that the CO concentrations can, under certain conditions (*e.g.*, underground fires), exhibit short term CO variability higher than 7 ppm. Therefore, the EPA has removed the 7 ppm variability requirement and may revisit this when more data is available.

Comment: Commenter (0112) requested that the EPA clarify language in 40 CFR 63.1961(a)(5)(vii) directing that enhanced monitoring “must begin 7 days after the first measurement” to provide that monitoring “must begin within 7 days to account for landfill operating hours, including weekends and holidays.”

Response: The EPA has revised 40 CFR 63.1961(a)(5)(vii) to clarify that the requirement is to begin enhanced monitoring 7 calendar days after the first measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit). Decomposition of waste and monitoring a landfill are 24-hour per day/365 day per year operation where conditions change constantly. The EPA determined that it is reasonable and necessary to begin enhanced monitoring within 7 calendar days to keep a check on high temperature conditions in the landfill and minimize the potential for a landfill fire.

B. Compliance Timing

In the proposed rule, the EPA requested comment on whether the proposed modifications to the 2016 MSW Landfills NSPS regulations adequately clarify the expected compliance deadlines for controlled landfills that become subject to the 2016 MSW Landfills NSPS through modification and/or whether other approaches are needed to align the timing provisions of the 2016 MSW Landfills NSPS with the timing provisions of the MSW Landfills NESHAP. (86 FR 19176, 19182, April 13, 2021)

Comment: Commenter (0111) requested that the EPA should specify compliance deadlines for three categories of landfills:

- (1) Landfills with an NMOC emission rate less than 34 megagrams per year that become subject to subpart XXX through modification;
- (2) uncontrolled landfills with an NMOC emission rate between 34 and 50 megagrams per year that become subject to subpart XXX through modification; and
- (3) controlled landfills that become subject to subpart XXX through modification.

Response: The EPA recognizes that from July 17, 2014 (the applicability date of the NSPS) to June 21, 2021 (the effective date of the Federal plan at 40 CFR part 62 subpart OOO),

landfills that modify could become subject to 40 CFR part 60, subpart XXX after having previously been subject to 40 CFR part 62, subpart GGG; 40 CFR part 60, subpart WWW; or a state plan implementing 40 CFR part 60, subpart Cf or subpart Cc. By virtue of this final action, the EPA is clarifying that landfills that meet the definition of a “controlled landfill” would not receive an additional 30 months to comply when they transition to subpart XXX.

The EPA notes that after June 21, 2021, all three groups of landfills that modify as identified in this comment will have been previously subject only to either a state plan implementing 40 CFR part 62, subpart Cf, or 40 CFR part 62, subpart OOO to 40 CFR part 60, subpart XXX. The EPA is clarifying in this rule that compliance timing for landfills that become subject to subpart XXX after previously being subject to the Federal plan subpart OOO depends on whether the facility is a legacy controlled landfill, a controlled landfill or an uncontrolled landfill, and the results and timing of the landfill’s NMOC emission rate report.

Landfills with an NMOC emission rate less than 34 megagrams per year that later become subject to subpart XXX through modification and have not installed controls should follow the requirements in subpart XXX, including the 30-month window to install and operate a GCCS. The landfill will submit their first NMOC report within 90 days of the date of construction or modification. The landfill could submit a revised NMOC report based on Tier 2 within 180 days of that first report, if desired.

For uncontrolled landfills with an NMOC emission rate equal to or greater than 34 but less than 50 megagrams per year that later become subject to subpart XXX through modification, we are clarifying that the 30-month clock for previously uncontrolled landfills will begin at the first report containing NMOC emissions greater than or equal to 34 Mg/yr NMOC that was submitted under any of the following subparts: 40 CFR part 60, subpart XXX or a state plan

implementing subpart Cf; or 40 CFR part 62, subpart OOO. We are starting the 30-month clock at the NMOC report submitted under that subpart for these landfills with an NMOC emission rate equal to or greater than 34 but less than 50 megagrams per year because the landfill was not otherwise subject to any requirement to install and operate GCCS until they became subject to these subparts.

For controlled landfills that become subject to subpart XXX through modification, we do not intend to restart the 30-month clock for landfills reporting NMOC emissions greater than or equal to 50 Mg/yr NMOC under 40 CFR part 60, subpart WWW or Cc; or 40 CFR part 62, subpart GGG, and that submitted a design plan before the effective date of these 2021 subpart XXX amendments. These landfills already started the “control” process under the previous subparts and must stay on that previously triggered 30-month timeframe to install a GCCS in a timely manner.

Comment: Commenter (0112) disagreed with the EPA’s proposal not to allow 30 months to install and operate a GCCS as the landfill transitions to a new subpart. However, the commenter (0112) recognized that landfills with emissions 50 Mg/yr NMOC or greater will be required to begin complying with the same requirements to install and operate GCCS pursuant to NESHAP AAAA as of September 28, 2021.

Response: For controlled landfills that become subject to subpart XXX through modification, the EPA does not agree that it would be appropriate to restart the 30-month clock for landfills reporting NMOC emissions greater than or equal to 50 Mg/yr NMOC under 40 CFR part 60, subpart WWW or Cc; or 40 CFR part 62, subpart GGG and that submitted a design plan before the effective date of these 2021 subpart XXX amendments. These landfills already started the “control” process under the previous subparts and it is reasonable to require these landfills to

stay on that 30-month timeframe to install a GCCS in a timely manner. The commenter has not provided any information that would justify any further delay in the implementation of GCCS.

Comment: Commenter (0112) disagreed with using any subpart WWW reports between 34 and 50 Mg/yr NMOC as the trigger for the 30-month timeframe for installation of GCCS since this would not allow the landfill sufficient time to prepare a design plan and install the GCCS. The commenter (0112) suggested alternative regulatory text.

Response: The EPA recognizes that previous regulatory requirements are based on an emission rate threshold of 50 Mg/yr NMOC and that newer regulatory requirements are based on an emission rate threshold of 34 Mg/yr NMOC. With these technical revisions, we intend to clarify the application of the 30-month clock for previously uncontrolled landfills reporting NMOC emissions greater than or equal to 34 Mg/yr NMOC and less than 50 Mg/yr NMOC under 40 CFR part 60, subpart XXX or Cf; or 40 CFR part 62, subpart OOO. We are starting the 30-month clock at the NMOC report submitted under those subparts for those landfills that exceeded 34 Mg/yr NMOC because the 34-50 Mg/yr NMOC threshold did not apply until they became subject to these subparts.

However, we do not intend to restart the 30-month clock for landfills reporting NMOC emissions greater than or equal to 50 Mg/yr NMOC under 40 CFR part 60, subpart WWW or Cc; or 40 CFR part 62, subpart GGG and that submitted a design plan before the effective date of these 2021 subpart XXX amendments. These landfills already started the “control” process under the previous subparts and it is reasonable to require these landfills to stay on that 30-month timeframe to install a GCCS in a timely manner.

The EPA is revising 40 CFR 60.762(b)(2)(ii)(A) to read as follows:

“(A) The first annual report submitted under this subpart or part 62 of this subchapter in which the NMOC emission rate equals or exceeds 34 megagrams per year,

unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in §60.767(c)(4); or”

This approach points to 40 CFR part 60, subpart XXX or 40 CFR part 62 (the Federal plan subpart OOO or state plans implementing subpart Cf). When these subpart XXX amendments are finalized, all “existing” landfills will be subject to the state and/or Federal plan implementing subpart Cf because the Federal plan became effective on June 21, 2021. Subpart OOO handles the legacy controllers separately and gives a full 30 months for landfills with NMOC emissions greater than 34 Mg/yr and less than 50 Mg/yr.

C. Technical and Typographical Corrections

In this final action, the EPA is revising the definition of Administrator at 40 CFR 62.16730 in the MSW Landfills Federal Plan that was promulgated on May 21, 2021 (86 FR 27756). The revision makes the definition consistent with other Federal plans such as the Federal Plan Requirements for Sewage Sludge Incineration Units (40 CFR part 62, subpart LLL), which distinguishes between the administrator of the Federal plan and the administrator of a state plan. In developing the MSW Landfills Federal Plan, the EPA inadvertently retained the definition of Administrator from the Emission Guidelines (40 CFR part 60, subpart Cf), which was written in the context of states preparing a state plan. As currently written, the definition could be interpreted to allow non-delegated authority to implement and enforce the Federal plan. In the context of the Federal plan, the revised definition of Administrator clarifies that the EPA Administrator or his/her authorized representative have the authority to implement and enforce the Federal plan. To add clarity in the context of developing State plans, the EPA has further revised the definition of Administrator to clearly identify the director of the state air pollution control agency or his/her authorized representative, which will better allow states to incorporate by reference the Federal plan as their state rule applying to landfills in the state.

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The EPA is also correcting typographical errors in the MSW Landfills NESHAP that were published in the *Federal Register* on March 26, 2020 (85 FR 17244) and the MSW Landfills Federal Plan that was published in the *Federal Register* on May 21, 2021 (86 FR 27756). In the MSW Landfills NESHAP, the EPA is correcting 40 CFR 63.1981(n) to change September 2, 2021 to September 27, 2021. In the MSW Landfills Federal Plan, the EPA is correcting a cross reference error in 40 CFR 62.16712(b) and (c). Both paragraphs incorrectly refer to 40 CFR 62.16712(c)(3), which does not exist. The correct reference is to 40 CFR 62.16712(d). Finally, the EPA is correcting the omission of the word “is” in 40 CFR 62.16714(a)(4), so that the correct reading is: The landfill is in the closed landfill subcategory and has an NMOC emission rate greater than or equal to 50 megagrams per year.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making these technical and typographical changes without prior proposal and opportunity for comment because, as explained here above, the technical correction to the definition of Administrator and the typographical changes are noncontroversial in nature and do not substantively change the requirements of the MSW Landfills regulations. Thus, notice and opportunity for public comment are unnecessary for these changes. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0505 for the NESHAP and OMB control number 2060-0697 for the NSPS. The revisions include technical corrections to the NESHAP and NSPS and do not pose any changes to the information collection burden for either.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities if the rule has no net burden on the small entities subject to the rule. This action includes only technical corrections to provisions from the March 26, 2020, final RTR rulemaking and clarifying amendments to 2016 MSW Landfills NSPS and does not implement new requirements. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

Although state, local, or tribal governments own and operate landfills subject to these final amendments, this action includes only technical corrections to provisions from the March 26, 2020, final RTR rulemaking and clarifying amendments to the 2016 MSW Landfills NSPS and there are no impacts resulting from this regulatory action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action has tribal implications as specified in Executive Order 13175. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments nor preempt tribal law. As explained in the March 26, 2020, final rule, the EPA previously identified one tribe that owns three landfills that are potentially subject to the MSW Landfills NESHAP. However, this action includes only technical corrections to provisions from the March 26, 2020, final RTR rulemaking and clarifying amendments to the subpart XXX NSPS and does not impose any new requirements on tribes.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629; February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action is a technical correction to a previously promulgated regulatory action and does not have any impact on human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.**40 CFR Part 62**

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.**40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated:

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR parts 60, 62, and 63 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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

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

Subpart XXX—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014

2. Amend §60.761 by revising the definition of “Controlled landfill” to read as follows:

§60.761 Definitions

* * * * *

Controlled landfill means any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with either §60.762(b)(2)(i), 40 CFR part 60, subpart WWW, or a Federal plan or EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subparts Cc or Cf, whichever regulation first required submission of a collection and control system design plan for the landfill.

* * * * *

3. Amend §60.762 by revising paragraphs (b)(2)(i) and (ii)(A) to read as follows:

§60.762 Standards for air emissions from municipal solid waste landfills

* * * * *

(b) * * *

(2) * * *

(i) *Calculated NMOC Emission Rate.* Calculated NMOC Emission Rate. Submit an initial or revised collection and control system design plan prepared by a professional engineer to the Administrator as specified in §60.767(c) or (d); calculate NMOC emissions using the next higher tier in §60.764; or conduct a surface emission monitoring demonstration using the procedures specified in §60.764(a)(6). The collection and control system must meet the requirements in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) * * *

(A) The first annual report submitted under this subpart or part 62 of this subchapter in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in §60.767(c)(4); or

* * * * *

4. Amend §60.767 by revising paragraph (d) introductory text to read as follows:

§60.767 Reporting Requirements

* * * * *

(d) *Revised design plan.* The owner or operator who has already been required to submit a design plan under paragraph (c) of this section, subpart WWW of this part, or a Federal plan or EPA-approved and effective state plan or tribal plan that implements subparts Cc or Cf of this part, must submit a revised design plan to the Administrator for approval as follows:

* * * * *

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

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

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

Subpart OOO— Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014

6. Amend §62.16712 by revising paragraphs (b) and (c) introductory text to read as follows:

* * * * *

(b) *Compliance date.* For each designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a NMOC emission rate greater than or equal to 34 megagrams per year (50 megagrams per year for closed landfill subcategory), planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the standards in §62.16714(b) and (c) must be accomplished within 30 months after the date the initial emission rate report (or the annual emission rate report) first shows that the NMOC emission rate equals or exceeds 34 megagrams per year (50 megagrams per year for closed landfill subcategory), except as provided in §62.16712(d).

(c) *Compliance schedules.* The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a NMOC emission rate greater than or equal to 34 megagrams per year (50 megagrams per year for closed landfill subcategory) must achieve the increments of progress specified in paragraphs (a)(1) through (5) of this section according to the schedule specified in paragraph (c)(1), (2), or (d) of this section.

7. Amend §62.16714 by revising paragraph (a)(4) to read as follows:

§ Standards for municipal solid waste landfill emissions.

(a) * * *

(4) *Closed subcategory.* The landfill is in the closed landfill subcategory and has an NMOC emission rate greater than or equal to 50 megagrams per year.

* * * * *

8. Amend §62.16730 by revising the definition of “Administrator” to read as follows:

§62.16730 Definitions.

* * * * *

Administrator means:

(1) For municipal solid waste landfills covered by the federal plan, the Administrator of the EPA or his/her authorized representative (e.g., delegated authority);

(2) For municipal solid waste landfills covered by an approved state plan, the director of the state air pollution control agency or his/her authorized representative.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

9. The authority citation for part 63 continues to read as follows:

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

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

10. Amend §63.1960 by revising paragraph (a)(4)(i) to read as follows:

§63.1960 Compliance provisions.

(a) * * *

(4) * * *

(i) Once an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in §63.1958(c)(1), the owner or operator must monitor each well monthly for temperature for the purpose of identifying whether excess air infiltration exists. If a well exceeds the operating parameter for temperature as provided in §63.1958(c)(1), action must be initiated to correct the exceedance within 5 days. Any attempted corrective measure must not cause exceedances of other operational or performance standards.

* * * * *

11. Amend §63.1961 by revising paragraphs (a)(5)(vi)(A), adding (C) and (D), and revising (a)(5)(vii) to read as follows:

§63.1961 Monitoring of operations.

* * * * *

(a) * * *

(5) * * *

(vi) Monitor and determine carbon monoxide concentrations, as follows:

(A) Collect the sample from the wellhead sampling port in a passivated canister or multi-layer foil gas sampling bag (such as the Cali-5-Bond Bag) and analyze that sample using EPA Method 10 of appendix A-4 to part 60 of this chapter, or an equivalent method with a detection limit of at least 100 ppmv of carbon monoxide in high concentrations of methane; or

* * * * *

(C) When sampling directly from the wellhead, you must sample for 5 minutes plus twice the response time of the analyzer. These values must be recorded. The five 1-minute averages are then averaged to give you the carbon monoxide reading at the wellhead.

(D) When collecting samples in a passivated canister or multi-layer foil sampling bag, you must sample for the period of time needed to assure that enough sample is collected to provide five (5) consecutive, 1-minute samples during the analysis of the canister or bag contents, but no less than 5 minutes plus twice the response time of the analyzer. The five (5) consecutive, 1-minute averages are then averaged together to give you a carbon monoxide value from the wellhead.

(vii) The enhanced monitoring described in this paragraph (a)(5) must begin 7 calendar days after the first measurement of landfill gas temperature greater than 62.8 degrees Celsius (145 degrees Fahrenheit); and

* * * * *

12. Amend §63.1975 by revising the introductory paragraph to read as follows:

§63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Before September 28, 2021, averages are calculated in the same way as they are calculated in §60.758(b)(2)(i) of this subchapter for average combustion temperature and §60.758(c) for 3-hour average combustion temperature for enclosed combustors, except that the data collected during the events listed in paragraphs (a) through (d) of this section are not to be included in any average computed under this subpart. Beginning no later than September 27, 2021, averages are calculated according to §63.1983(b)(2)(i) for average combustion temperature and §63.1983(c)(1)(i) for 3-hour average combustion temperature for enclosed combustors,

except that the data collected during the event listed in paragraph (a) of this section are not to be included in any average computed under this subpart.

* * * * *

13. Amend §63.1981 by revising paragraph (j)(2) and (n) introductory text, to read as follows:

§63.1981 What reports must I submit?

* * * * *

(j) * * *

(2) For corrective action that is required according to §63.1960(a)(3) or (4) and is expected to take longer than 120 days after the initial exceedance to complete, you must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 62.8 degrees Celsius (145 degrees Fahrenheit) or above unless a higher operating temperature value has been approved by the Administrator for the well under this subpart or under 40 CFR part 60, subpart WWW; 40 CFR part 60, subpart XXX; or a Federal plan or EPA approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or 40 CFR part 60, subpart Cf. The Administrator must approve the plan for corrective action and the corresponding timeline.

* * * * *

(n) Claims of force majeure. Beginning no later than September 27, 2021, if you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to comply timely with the reporting requirement. To assert a claim of force majeure, you must meet the following requirements:

* * * * *

14. Amend §63.1985 by revising paragraph (c) to read as follows:

§63.1985 Who enforces this subpart?

* * * * *

(c) The authorities that will not be delegated to state, local, or tribal agencies are as follows. Approval of alternatives to the emission standards in §§63.1955 through 63.1962. Where this subpart references part 60, subpart WWW of this subchapter, the cited provisions will be delegated according to the delegation provisions of part 60, subpart WWW of this subchapter. For this subpart, the EPA also retains the authority to approve methods for determining the NMOC concentration in §63.1959(a)(3) and the method for determining the site-specific methane generation rate constant k in §63.1959(a)(4).

15. Amend Table 1 to subpart AAAA of part 63 by:

- a. Revising entry “§ 63.6(f)(1)”;
- b. Removing the entries for “§ 63.10(b)(vi)” and “§ 63.10(b)(vii)–(xiv)” and adding in their places “§ 63.10(b)(2)(vi)” and “§ 63.10(b)(2)(vii)–(xiv)”, respectively; and
- c. Revising the entry for “§ 63.10(d)(3)”.

The revisions and additions read as follows:

Table 1 to Subpart AAAA of Part 63

* * * * *

Table 1 to Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA

Part 63 Citation	Description	Applicable to subpart AAAA before September 28, 2021	Applicable to subpart AAAA no later than September 27, 2021	Explanation
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* * * * *				
§ 63.6(f)(1)	Exemption of nonopacity emission standards during SSM	No	No	
* * * * *				
§ 63.10(b)(2)(vi)	Recordkeeping for CMS malfunctions	No ¹	Yes	
§ 63.10(b)(2)(vii)-(xiv)	Other Recordkeeping of compliance measurements	No ¹	Yes	
* * * * *				
§ 63.10(d)(3)	Reporting of visible emission observations	No ¹	No	--
* * * * *				

¹ Before September 28, 2021, this subpart requires affected facilities to follow part 60, subpart WWW of this subchapter, which incorporates the General Provisions of part 60 of this subchapter.