Subpart X—Michigan

§ 52.1174 Amended

2. Section 52.1174 is amended by removing paragraph (q).

Dated: July 9, 1998.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 98–20006 Filed 7–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[CO–001–0026a; FRL–6131–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado; 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 Colorado plan and associated regulations for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which were required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan was submitted to EPA on April 13, 1998, in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. The State's plan establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. EPA finds that Colorado's plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans.

DATES: This direct final rule is effective on September 28, 1998 without further notice, unless EPA receives adverse comment by August 28, 1998. If adverse comment is received, EPA will publish a timely withdrawl of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action may be mailed 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 Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

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, 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 (EG) for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c-60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750–60.759). (See 61 FR 9905–29.) 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 either (1) submit a plan for the control of the designated pollutant to which the EG applies or (2) submit a negative declaration if there were no designated facilities in the State within nine months after publication of the EG, or by December 12, 1996.

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in National Solid Wastes Management Association v. Browner, et. al., No. 96–1152 (D.C. Cir), in accordance with section 113(g) of the Act. (See 62 FR 60898.) It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the proposed settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA is amending 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. See 63 FR 32783–32784, 32743–32753. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. Thus, States are not yet required to submit State Plan revisions to address the June 16, 1998 direct final amendments to the EG. In addition, as stated in the June 16, 1998 preamble, the changes to 40 CFR part 60, subparts Cc and WWW, do not significantly modify the requirements of those subparts. See 63 FR 32744. Accordingly, the MSW landfill EG published on March 12, 1996 was used as a basis for EPA's review of Colorado's submittal.

II. Analysis of State's Submittal

On April 13, 1998, the State of Colorado submitted its plan and regulations (hereafter referred to as the ''State Plan'') for implementing EPA's MSW landfill EG. The Colorado State Plan includes the ''111(d) Plan for Existing Municipal Solid Waste Landfills Existing in Colorado'' and the State's implementing regulations in Part A of Colorado Regulation No. 6.

Colorado has incorporated by reference the EG of 40 CFR part 60, subpart Cc in Part A of Colorado Regulation No. 6. In addition, the State has adopted language in Part A of Colorado Regulation No. 6 which clarifies the requirements applicable to existing MSW landfills in Colorado. Part A of Colorado Regulation No. 6 also includes compliance deadlines to address the compliance timelines of the EG and the increments of progress requirements of 40 CFR part 60, subpart B. Thus, the State's regulations adequately address the requirements of the EG, including the required applicability, emission limitations, test methods and procedures, reporting and recordkeeping requirements, and compliance times. Specifically, Colorado's regulation requires that existing MSW landfills that: (1) Accepted waste since November 8, 1987; (2) have a design capacity equal to or greater than 2.5 million megagrams (Mg) or 2.5 million m^3; and (3) have a NMOC emission rate, calculated in accordance with the procedures of 40 CFR 60.754, equal to or greater than 50 Mg/year to install a gas collection and control system meeting the requirements of 40 CFR 60.33c(b) and (c) within thirty months from the effective date of the State regulation (or, for those existing MSW landfills whose initial NMOC emission rate is less than 50 Mg/yr on the effective date of the State regulation, within thirty months after submittal of the first annual NMOC emission rate report showing emissions equal to or exceeding 50 Mg/yr).

The State Plan also includes documentation showing that all requirements of 40 CFR part 60, subpart B have been met. Specifically, the State Plan includes a demonstration of legal authority to adopt and implement the plan, an emissions inventory, increments of progress compliance deadlines, a commitment to submit to EPA annual State progress reports on plan implementation and enforcement, and documentation that the State addressed the public participation requirements of 40 CFR part 60.23. In addition, as stated above, the State has adopted emission standards and compliance schedules into an enforceable State regulation that is no less stringent than the EG.

Consequently, EPA finds that the State Plan and implementing regulations meet all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The State did not, however, 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.

More detailed information on the requirements for an approvable plan and Colorado's submittal can be found in the Technical Support Document (TSD) accompanying this notice, which is available upon request.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving Colorado's plan and associated regulations, as submitted on April 13, 1998, for the control of landfill gas from existing MSW landfills, except for those existing MSW landfills located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to Colorado's State 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 approved by EPA in accordance with 40 CFR part 60, subpart B.

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.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should adverse comments be filed. This rule will be effective September 28, 1998 without further notice unless the Agency receives adverse comments by August 28, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 28, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under section 111 of the Clean Air 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning State Plans on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''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 Comptroller General

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

E. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Colorado's audit privilege and penalty immunity law (sections 13–25–126.5, 13–90–107, and 25–1–114.5 Colorado Revised Statutes (C.R.S.); S.B. 94–139, effective June 1, 1994) or its impact upon any approved provision in the State Plan, including the submittal at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Colorado's audit privilege and immunity law. A State audit privilege and immunity law can affect only State enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 114, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State Plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a State audit privilege or immunity law.

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 28, 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: July 20, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

Part 62, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

SUBPART G—[AMENDED]

2. Subpart G is amended by adding an undesignated center heading and sections 62.1350, 62.1351 and 62.1352 to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.1350 Identification of plan.

''111(d) Plan for Existing Municipal Solid Waste Landfills Existing in Colorado'' and the associated State regulations in Part A of Colorado Regulation No. 6, submitted by the State on April 13, 1998.

§ 62.1351 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.

§ 62.1352 Effective date.

The effective date of the plan for municipal solid waste landfills is September 28, 1998.

[FR Doc. 98–20282 Filed 7–28–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–246; RM–9205, RM–9250]

Radio Broadcasting Services; Walla Walla and Pullman, WA, and Hermiston, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mark Jacky Broadcasting, substitutes Channel 256C2 for Channel 256C3 at Walla Walla, Washington, and modifies Station KUJ–FM's license accordingly. To accommodate the upgrade, we substitute Channel 263A for Channel 257A at Hermiston, Oregon, and modify Station KQFM(FM)'s license accordingly (RM–9205). *See* 63 FR 194, January 5, 1998. At the request of counterproponent Palouse Country, Inc., we also substitute Channel 258C for Channel 258C1 at Pullman, Washington, and modify Section KZZL–FM's license accordingly (RM–9205). Channel 256C2 can be allotted to Walla Walla in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at Station KUJ–FM's requested site. The coordinates for Channel 256C2 at Walla Walla are North Latitude 45–59–38 and West Longitude 118–10–47. *See* Supplementary Information, *infra.*

EFFECTIVE DATE: August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–246, adopted July 8, 1998, and released July 17,1998. The full text of this Commission decision is available for inspection and copying during business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy