

transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(3) From 2 p.m. until 5 p.m. EDT on July 3, 1998, and from 8 a.m. until 11 a.m. EDT on July 6, 1998, all waters bounded by the south bank of the Savannah River to the center of the Savannah River Channel, from the Talmadge Bridge to position 32–04.45, 081–04.45W. During these times no vessel shall be allowed to enter these safety zones unless authorized by the Captain of the Port.

(4) From 9 p.m. to 11 p.m. EDT on July 4, 1998, a 300 foot radius around a fireworks staging area in approximate position 32–05N, 081–05W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

(5) From 8 a.m. to 2 p.m. EDT on July 6, 1998, the center 300 feet of the Savannah River channel from the Talmadge Bridge to the entrance of Bloody Point Range. Vessels that cannot safely navigate outside of this safety zone and desire to depart the port of Savannah on July 6, 1998, would be required to begin the outbound transit in sufficient time to clear the Savannah Riverfront area prior to 8 a.m. Vessels that cannot safely navigate outside of this safety zone and desire to enter the port of Savannah on July 6, 1998, would be required to clear the Savannah Riverfront area prior to 8 a.m. If unable to clear the Savannah Riverfront area by 8 a.m., these vessels would be required to start the inbound transit after 2 p.m. The Captain of the Port will allow vessel traffic to resume outbound transits utilizing the entire navigational channel when the last tall ship in the parade clears longitude 080–51W. Vessels using the ICW will not be allowed to cross the Savannah River at the junction of the Fields Cut once the parade approaches within one (1) nautical mile of this area. Vessels will be allowed to resume transiting the ICW once the last tall ship in the parade clears the Savannah River and Fields Cut junction.

(6) From 10 a.m. to 2 p.m. EDT on July 6, 1998, an area bounded by 32–00.19N, 080–44.07W, 31–59.35N, 080–43.08W, 32–00.59N, 080–41.32W, and 32–01.43N, 080–42.28W. During this time no vessel shall be allowed to enter this safety zone unless authorized by the Captain of the Port.

**Note:** The regulations specified in paragraphs (a)(1) and (a)(6) apply only within the navigable waters of the United States. In the waters within the offshore staging area and pre-race staging area that are outside the navigable waters of the United States, the following nonobligatory guidelines apply.

(i) All unaffiliated Americas' Sail vessels should remain clear of the staging area and pre-race staging area and avoid interfering with any Americas' Sail participant or Coast Guard vessel. Interference with anchoring or race activities may constitute a safety hazard warranting cancellation or termination of all or part of the Americas' Sail activities by the Captain of the Port.

(ii) Any unauthorized entry into these zones by unaffiliated vessels constitutes a risk to the safety of marine traffic. Such entry will constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 U.S.C. 2302.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into these safety zones is subject to the following requirements:

(1) These safety zones are closed to all non-participating vessels, except as may be permitted by the Captain of the Port or a representative of the Captain of the Port.

(2) The "representative of the Captain of the Port" is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Non-participating vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channel 16. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a Coast Guard vessel patrolling the perimeter of the safety zone.

(5) The Captain of the Port Savannah will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zones and restrictions imposed.

(c) *Dates.* This section becomes effective at 9 a.m., Eastern Daylight Time (EDT) on July 2, 1998, and terminates at 2 p.m., EDT on July 6, 1998.

Dated: June 3, 1998.

**R.E. Seebald,**

*Commander, U.S. Coast Guard, Captain of the Port, Savannah, Georgia.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[AD–FRL–6106–8]

#### Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This action amends, corrects errors, and clarifies regulatory text of the "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills," which was issued as a final rule and guideline on March 12, 1996.

**EFFECTIVE DATE:** This rule will become effective August 17, 1998 without further notice unless the Agency receives relevant adverse comment by July 16, 1998. Should the Agency receive such comments, it will publish a timely document withdrawing this rule.

**ADDRESSES:** Comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attn: Docket No. A–88–09/Category V–D, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA request that a separate copy also be sent to the contact person listed below. Refer to **SUPPLEMENTARY INFORMATION** for information regarding electronic submittal of comments.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice and analyses performed in developing this rule, contact Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5256. For implementation issues, contact Mary Ann Warner, Program Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1192. For information on the Landfill

Model, contact Susan Thorneloe through the internet at: thorneloe.susan@epamail.epa.gov. For information concerning applicability and rule determinations, contact the appropriate regional representative:

#### *Region I*

Greg Roscoe, Air Programs Compliance Branch Chief, U.S. EPA/ASO, Region I, JFK Federal Building, Boston, MA 02203, (617) 565-3221

#### *Region II*

Christine DeRosa, U.S. EPA, Region II, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-4022

#### *Region III*

James Topsale, U.S. EPA/3AP22, Region III, 841 Chestnut Building, Philadelphia, PA 10107, (215) 566-2190

#### *Region IV*

R. Douglas Neeley, Chief, Air and Radiation Technology Branch, U.S. EPA, Region IV, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562-9105

#### *Region V*

George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA/5AE-26, Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 353-2088

#### *Region VI*

John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733, (214) 655-7220

#### *Region VII*

Ward Burns, U.S. EPA/RME, Region VII, 726 Minnesota Avenue/ARTDAPCO, Kansas City, KS 66101-2728, (913) 551-7960

#### *Region VIII*

Vicki Stamper, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466, (303) 312-6445

#### *Region IX*

Patricia Bowlin, U.S. EPA/RM HAN/17211, Region IX, 75 Hawthorne Street/AIR-4, San Francisco, CA, (415) 744-1188

#### *Region X*

Catherine Woo, U.S. EPA, Region X, Office of Air Quality Planning and Standards-107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553-1814

**SUPPLEMENTARY INFORMATION:** A companion proposal to this final rule is being published in the proposed rules section of today's **Federal Register** and is identical to this direct final rule. Any

comments on this direct final rule should address the companion proposal. The proposal provides information on addresses for submittal of comments. If relevant adverse comments are timely received, such comments will be addressed in a subsequent final rule based on the proposed rule. A document informing the public that the direct final rule did not take effect will be published. If no relevant adverse comments are timely filed on any provision of this direct final rule, then the entire direct final rule will become effective 60 days from today's **Federal Register** document and no further action will be taken on the companion proposal published today.

#### **Background**

On March 12, 1996 (60 FR 9918), the U.S. Environmental Protection Agency (EPA) promulgated in the **Federal Register** standards of performance for new sources (NSPS) for municipal solid waste landfills and emission guidelines for existing municipal solid waste landfills. These regulations and guidelines were promulgated as subparts WWW and Cc of 40 CFR part 60.

This document revises the wording of the applicability sections of subparts WWW and Cc and related definitions to clarify the intent regarding which landfills are subject to subpart WWW versus subpart Cc. This notice also corrects typographical and cross referencing errors. A few editorial modifications are also being made to clarify the intent of certain provisions and correct inconsistencies between different sections of subpart WWW. These changes do not significantly modify the requirements of the regulation.

#### **I. Description of Changes**

##### *A. Definitions*

The NSPS applies to landfills that commence construction, modification, or reconstruction on or after May 30, 1991. A definition of "modification" is being added. The definition is specific to landfills but is consistent with the intent of section 60.14 of the NSPS General Provisions. Application of the NSPS General Provisions to landfills is problematic due to the fact that a landfill is not a typical production or manufacturing facility for which the General Provisions originally were written. The following discussion demonstrates the considerations made to apply the NSPS General Provisions to landfills. This limited definition of modification is uniquely appropriate for landfills, and EPA does not believe at

this time that such a rationale could be extended outside the landfill context.

As stated in 40 CFR 60.14(a), modifications are physical or operational changes to an existing facility that result in an increase in the emissions of any pollutant to which a standard applies. However, with respect to landfills, the concept of a physical or operational change leading to an increase in emissions is of limited application, since unlike more traditional sources of air pollution, increased emissions at landfills are based on the amount and character of waste placed in the landfill, rather than through physical or operational changes to equipment or production methods. Equipment at a landfill is essentially the landfill itself and while production can be roughly equated to the amount of waste placed in the landfill, total "production" for the entire life of the facility is controlled through the amount of design capacity specified in the permit. Although the amount and character of waste present at any given time may vary within the design capacity constraints set forth in the permit, emissions over the total life of the facility depend on the amount of waste a landfill can accept pursuant to its permitted design capacity. Accordingly, for landfills, it makes sense to consider only those physical or operational changes that increase the size of the landfill beyond its permitted capacity as modifications subjecting an existing facility to the NSPS. Therefore, if the design capacity of a landfill increases, a change leading to an increase in emissions is assumed to have occurred. For purposes of this NSPS, a landfill is considered modified and subject to the NSPS if its design capacity has been increased after May 30, 1991.

Operational changes at landfills, such as increasing the moisture content of the waste, increasing the physical compaction on the surface, changing the cover material or thickness of daily cover, and changing bailing or compaction practices, can typically be accomplished without a capital expenditure. Consequently, the landfill definition of modification does not include such operational changes. Existing landfills that make an operational change but do not increase the horizontal or vertical dimensions of the landfill continue to be subject to the emission guidelines rather than the NSPS. Therefore, for landfills, the only change which would constitute a modification is an increase in design capacity caused by an increase in the permitted horizontal or vertical dimensions of the landfill.

Reconstructions are unlikely for landfills. As specified in the NSPS General Provisions, reconstructions are "the replacement of components of an existing facility [landfill] to such an extent that: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new facility [landfill] \* \* \*." The Agency knows of no situation where this would occur at a landfill.

The definition of "design capacity" is being amended to clarify that the design capacity is determined by the *most recent* permit issued by the State, local, or Tribal agency responsible for regulating the landfill plus any in-place waste not accounted for in that permit. This clarification addresses cases where a landfill may have multiple permits. It makes sense to use the most recent permitted design capacity to determine whether a landfill exceeds the design capacity exemption level. The words "construction or operating" permit have also been deleted and substituted with the word "permit." The use of the term "operating permit" could be misinterpreted to mean a title V permit. The permit intended was the State, local, or Tribal agency permit that establishes the design capacity.

The definition of design capacity is also being clarified to state that a permit may express design capacity on a volumetric or a mass basis. The revised definition also states that the owner or operator may choose to convert the design capacity from volume to mass or from mass to volume, using a site-specific density, in order to demonstrate that the design capacity is less than 2.5 million Mg or 2.5 million m<sup>3</sup>. If the density changes, the design capacity changes. Therefore, an owner or operator who converts from volume to mass or mass to volume must annually calculate the site-specific density. These revisions to the definition are clarifications that do not change the intent of the NSPS and emission guidelines as promulgated on March 12, 1996.

Under the NSPS and emission guidelines, design capacity is used to determine whether or not a landfill is below the design capacity cutoff. If the design capacity in the permit is below either 2.5 million megagrams (Mg) or 2.5 million cubic meters (m<sup>3</sup>), the landfill is exempt (except for design capacity reporting requirements). A landfill with a volumetric permit may choose to calculate design capacity on a mass basis (or vice versa) based on a site-specific density. The initial design capacity report must provide supporting documentation of this calculation. If such a conversion is made, records must

also be kept of the annual recalculation of the site-specific density and design capacity with supporting documentation.

For example, a landfill may have a permitted design capacity greater than 2.5 million m<sup>3</sup> by volume; but the landfill may have documented calculations showing that, based on the actual waste density, the design capacity is less than 2.5 million Mg by mass. Because the design capacity is less than 2.5 million Mg, the landfill is below the design capacity cutoff. If such a landfill changes its compaction practices such that the density of the waste placed in the landfill increases, the calculated design capacity could become greater than 2.5 million Mg, and the landfill would then need to submit an amended design capacity report. If the revised design capacity is over 2.5 million m<sup>3</sup> and 2.5 million Mg, the landfill must estimate emissions and must install controls if emissions are greater than or equal to 50 Mg/yr.

If an existing landfill makes an operational change (such as a change in compaction practices), this is not a "modification" (see the previous discussion on the definition of "modification"). Such a landfill will continue to be subject to the emission guidelines rather than becoming subject to the NSPS. The emission guidelines require the landfill to report any increase in design capacity that results in a capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup>. The control requirements of the emission guidelines will apply if the design capacity increases to over 2.5 million Mg and 2.5 million m<sup>3</sup> due to an operational change and not due to modification as defined by this rule.

The definition of "closed landfill" and wording in section 60.752(b) are being revised to delete references to section 258.60. This reference is not appropriate for all landfills because some landfills closed prior to the October 1993 effective date of part 258 and are not subject to part 258. Section 60.752(b)(2)(v)(A) is being revised for clarification to refer to the definition of "closed landfill" in section 60.751 instead of the requirements of section 258.60.

The definition of "interior well" is being revised to clarify that an interior well is located inside the perimeter of the landfilled waste.

The definition of "radii of influence" is being added parenthetically in section 60.759(a)(3)(ii) for clarification. This definition makes it clear that the radii of influence is the distance from the well center to a point in the landfill where the pressure gradient applied by

the blower or compressor approaches zero.

#### *B. Designation of Affected Facility*

Section 60.750(a) of subpart WWW is being revised slightly to clarify which landfills are subject to the NSPS. The promulgated rule stated that "the provisions of this subpart apply to each municipal solid waste landfill that commenced construction, reconstruction, or modification or began accepting waste on or after May 30, 1991. The words "or began accepting waste" have been deleted. This change makes the applicability consistent with both the definition of "new source" in section 111 of the Clean Air Act (CAA) and the applicability of the emission guidelines in section 60.32c of subpart Cc. As stated in section 60.32c(a), the emission guidelines apply to landfills that commenced construction, modification, or reconstruction before May 30, 1991. A landfill that commenced construction before May 30, 1991, but began accepting waste after May 1991 should be subject to the emission guidelines rather than the NSPS. The change being made accomplishes this objective and is consistent with the CAA. The definitions of "commenced" and "construction" are contained in section 60.2 of the NSPS General Provisions (subpart A). A definition for "modification" is being added to subpart WWW, and "reconstruction" is described in section 60.15 of the NSPS General Provisions.

Section 60.750(b) of subpart WWW is being revised to clarify that authority for test methods are retained by the Administrator and shall *not* be transferred to the State. This is consistent with EPA's historical position on test methods.

Under applicability, we are also clarifying that activities conducted as part of CERCLA remedial actions or RCRA corrective actions are not considered construction, modification, or reconstruction and would not make a landfill subject to the NSPS. This is consistent with the provisions that changes made to an existing landfill solely to comply with the emission guidelines do not make the landfill subject to the NSPS. It is also consistent with the exemption of facilities subject to a CERCLA remedial action from permitting requirements. This provision is being added to section 60.750 of subpart WWW as paragraph (c).

Regarding applicability and the design capacity exemption, the wording "or" in several places in section 60.752 has been changed to "and" to clarify that if a landfill design capacity is less

than either 2.5 million Mg or 2.5 million m<sup>3</sup>, the landfill is exempt from all provisions except the design capacity report; whereas if the capacity is equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup>, the additional requirements of the rule apply. As previously discussed under the definition of design capacity, a landfill may calculate design capacity on either a mass or volume basis to determine if it qualifies for the design capacity exemption.

#### C. Compliance Dates

The compliance time in section 60.752(b)(2)(ii) is being revised to make it clear that landfills have 30 months to install a collection and control system once the landfill becomes affected (i.e., the annual report shows NMOC emissions equal to or greater than 50 Mg/yr). Section 60.752(b)(2)(ii) stated that a landfill has 18 months to install a collection and control system after submitting a design plan to the Administrator. Section 60.752(b)(2)(i) requires landfills to submit a design plan within 1 year of the annual report showing NMOC emissions equal to or greater than 50 Mg/yr. Therefore, the previous language in the rule would require landfills that submitted a design plan earlier than 1 year after becoming affected to install a collection and control system sooner than landfills that waited the full 1 year to submit the design plan. The intent was to allow landfills 30 months after the first report showing NMOC emissions equal to or greater than 50 Mg/yr to install controls.

Similarly, in the emission guidelines, section 60.36c(a) is revised to specify that installation of collection and control systems shall be accomplished within 30 months of the initial report showing NMOC emissions equal or exceed 50 Mg/yr rather than within 30 months of the effective date of the State rule. This is consistent with the timing in the NSPS, which allows 90 days to submit an initial report, and 30 months to install controls if the report shows that emissions equal or exceed 50 Mg/yr.

Section 60.755(b) is being revised to clarify that an affected landfill must install each well no later than 60 days after the date on which the initial solid waste has been in place (1) for five years or more if the area is active or (2) two years or more if the area is closed or at final grade. The only change is to specify "no later than 60 days after" instead of "within 60 days."

#### D. Clarification of Title V Permitting Requirements

The paragraphs on part 70 permitting requirements are being revised to refer

to both part 70 and 71. In States with approved part 70 operating permit programs, sources will apply for part 70 permits; in States without approved part 70 permit programs, EPA will implement the federal operating permits program under part 71.

Section 502(a) of the Act requires title V operating permits for a number of sources, including, but not limited to, major sources and sources (including nonmajor sources) which are subject to standards or regulations under section 111 or 112. Section 502(a) also states that the Administrator may exempt source categories (in whole or in part) from permitting requirements if the Administrator determines that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, but not major sources.

At promulgation of this NSPS and EG (61 FR 9905, March 12, 1996), landfills with a design capacity less than 2.5 million Mg in mass or 2.5 million m<sup>3</sup> in volume were exempted from part 70 operating permit requirements based on the above provisions. Although these landfills are required to submit a design capacity report under this NSPS and EG, no control is required for landfills of this size. As a result, EPA believes that it would be unnecessarily burdensome for landfills, which are not major sources and which have design capacities less than 2.5 million Mg or 2.5 million m<sup>3</sup>, to apply for a title V permit when the NSPS or EG does not establish any emission limits or control requirements for such landfills.

If a MSW landfill is subject to title V permitting (40 CFR part 70 or part 71) as a result of this NSPS or EG standard (i.e., a source which meets or exceeds the design capacity of 2.5 million Mg and 2.5 million m<sup>3</sup>) it is not subject to the requirement to apply for a title V permit until 90 days after the earlier of the following dates: (1) the effective date of this NSPS (March 12, 1996); (2) the effective date of EPA's approval of a state's 111(d) plan; or (3) the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996, even if the design capacity report is submitted prior to the relevant deadline. Sentences have been added to section 60.752 and section 60.32c(c) to clarify the date the landfill becomes subject to title V. These dates for triggering title V applicability are consistent with the dates that NSPS sources are required to file design capacity reports. To maintain consistency between NSPS sources and EG sources, EG sources will not become

subject to the requirement to apply for a title V permit until 90 days after the effective date of EPA's approval of a state's 111(d) plan.

The permit provisions originally included as sentences within paragraphs (a) and (b) of section 60.752 have been moved to separate paragraphs (c) and (d) so that the detailed permit provisions are in one location. The wording has also been revised to clarify that landfills smaller than 2.5 million Mg or 2.5 million m<sup>3</sup> do not require a part 70 or 71 operating permit unless they are subject to part 70 or 71 for some other reason. A landfill of this size *could* be a major source, and, if so, would need to apply for a permit. This situation was discussed in the preamble to the promulgated rule (61 FR 9912, March 12, 1996). Also, a landfill of this size could be subject to title V for some other reason, e.g., subject to another NSPS or NESHAP.

Sources subject to the title V permitting program under parts 70 or 71 are required to file applications within 12 months after becoming subject to the program. Landfills which are subject to the title V permitting program as a result of being subject to this NSPS or EG are required to file title V applications within 12 months following the deadline to submit a design capacity report (which indicates that the landfill in question is equal to, or greater than, 2.5 million Mg and 2.5 million m<sup>3</sup>). In that the designation of size in the report triggers title V applicability, EPA believes that it is appropriate that the deadline for filing this report initiates the 12 month time frame for submitting a title V application. As provided in section 503(c) of the Act, permitting authorities may establish earlier deadlines, prior to the 12 month deadline, for submitting title V applications. If more than one requirement causes a source to be subject to title V permitting, the time frame for filing a title V application will be triggered by the requirement which first caused the source to be subject to title V.

Section 60.752(d) (formerly the last sentence in section 60.752(b)) is being revised. This paragraph stated that after a landfill is closed and either never required a control system or has met the criteria for control system removal, a title V permit is no longer needed. The phrase "if the landfill is not otherwise subject to the requirements of either part 70 or 71" has been added. As previously discussed, if a landfill is a major source or is subject to title V for some other reason (e.g., subject to another NSPS or NESHAP), it will still require a permit. Other format changes to this paragraph

are to improve clarity and do not change the intent.

Subpart Cc is being amended by adding paragraphs (c) and (d) to section 60.32c. These paragraphs, which cover when existing MSW landfills require part 70 or 71 operating permits, were excluded from the promulgated emission guidelines through an oversight. Part 70 permit provisions were included in the NSPS, but the Emission Guidelines inadvertently did not reference this section of the NSPS. The inclusion of these paragraphs makes subpart Cc consistent with subpart WWW with respect to part 70 or 71 operating permits. Specifically, paragraph (c) clarifies that an existing landfill smaller than 2.5 million Mg or 2.5 million m<sup>3</sup> does not require a part 70 or 71 operating permit unless it is subject to part 70 or 71 for some other reason. Paragraph (c) also clarifies that an existing landfill equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup> is subject to part 70 or 71 permitting requirements whether it is a major source or not. In addition, paragraph (d) clarifies that closed landfills that are only required to have title V permits due to 40 CFR part 60, subparts WWW or Cc and are not required to have a control system or meet the conditions for control system removal are not required to have part 70 or 71 operating permits, if they are not otherwise subject to title V permitting requirements. As with 40 CFR part 60, subpart WWW, under 40 CFR part 60, subpart Cc, the deadline for submitting a design capacity report initiates the time frame for submitting a title V application. Permitting authorities may, however, establish earlier dates by which applications are required from these title V sources.

#### E. Equations

Section 60.754(a)(1) is being revised to clarify that *both* the equation in section 60.754(a)(1)(i) and the equation in section 60.754(a)(1)(ii) may be used when the actual year-to-year solid waste acceptance rate is known for only part of the life of the landfill. This is the technically correct way to calculate emissions and was the intent of the rule.

Section 60.754(a)(1) is being amended by the addition of the methane generation rate constant (k) for geographical areas with low precipitation. A k value of 0.02 per year is provided for the tier 1 calculation for landfills located in geographical areas with a thirty year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site. Landfills located in geographical areas with low

precipitation experience slower decomposition of their waste than landfills located in geographical areas with moderate to high rainfall. Consequently, the gas production rate at landfills located in drier areas is reduced. Rather than burden these landfills with pursuing tier 3 Method 2E testing and analysis for a site-specific k value, it is reasonable to allow an alternative default k value. In reviewing the information used to estimate the impacts of the final rule (Docket A-88-09, Item IV-M-4), a k value of 0.02 per year for landfills that meet this description is a reasonably conservative value consistent with the intent of the tier 1 analysis.

Sections 60.754(a)(1)(i) and (ii) are also being revised to clarify that only documentation of the nature and amount of nondegradable waste needs to be maintained when subtracting the mass of nondegradable waste from the total mass of waste when calculating the NMOC emission rate. The previous language specified that the documentation provisions of section 60.758(d)(2) were to be followed; however, these provisions are related to segregated areas within the landfill excluded from collection pursuant to section 60.759(a)(3)(i) or (ii) because asbestos or other nondegradable wastes were disposed in those areas or because the area is nonproductive. For the purposes of estimating emissions, only documentation of the nature and amount of nondegradable waste needs to be maintained to justify the subtraction of the mass of nondegradable waste.

#### F. Test Methods and Procedures

Section 60.754(a)(4)(ii) is revised to clarify that the site-specific methane generation rate constant is calculated only once and that this value is to be used in all subsequent annual NMOC emission rate calculations.

Section 60.752(b)(2)(iii)(B) is being revised to clarify that the initial performance test required under section 60.8 must be completed no later than 180 days after the initial startup of the approved control system. The promulgated regulation already required under section 60.757(f) that the initial performance test report must be submitted within 180 days of start-up of the collection system. This is being reiterated in section 60.752(b)(2)(iii)(B) for clarification.

Section 60.759(a)(3)(ii), which required the use of the values of k and CNMOC determined by field testing, if performed to determine the NMOC emission rate or radii of influence, is being revised to also refer to alternative

means for determining k or CNMOC allowed by section 60.754(a)(5). The reference to using L<sub>o</sub> values from testing is deleted because it was incorrect. The tier procedures do not include testing for L<sub>o</sub>. As previously mentioned, the definition of radii of influence is being added parenthetically for clarity.

#### G. Prevention of Significant Deterioration Determination

Section 60.754(c) is being revised to clarify that the intent of this provision was to establish the *method* by which prevention of significant deterioration determinations should be made, not to require a PSD determination. The original wording could have been misinterpreted to require PSD-related actions. PSD is a separate permit program that applies to new and modified sources. The PSD regulations, not this NSPS, establish whether a PSD determination is needed. New sources may be subject to PSD review.

In a July 1, 1994 guidance memorandum issued by the EPA (available on the Technology Transfer Network; see "Pollution Control Projects (PCP) and New Source Review (NSR) Applicability" from John S. Seitz, Director, OAQPS to EPA Regional Air Division Directors), the EPA provided guidance for permitting authorities on the approvability of PCP exclusions for source categories other than electric utilities. In the guidance, the EPA indicated that add-on controls and fuel switches to less polluting fuels meet the definition of a PCP and, provided certain safeguards are met, may qualify for an exclusion from major NSR. To be eligible to be excluded from otherwise applicable major NSR requirements, a PCP must, on balance, be "environmentally beneficial," and the permitting authority must ensure that the project will not cause or contribute to a violation of a national ambient air quality standard (NAAQS) or PSD increment, or adversely affect visibility or other air quality related value (AQRV).

A potential exclusion available under PSD is discussed here for informational purposes. In the July 1, 1994 guidance memorandum, the EPA specifically identified the installation of controls pursuant to the NSPS and EG rules as an example of add-on controls that could be considered a PCP and an appropriate candidate for a case-by-case exclusion from major NSR. The EPA considers installation of controls pursuant to the NSPS and EG rules for the control of landfill gases a PCP because the controls are installed to comply with the NSPS and will reduce emissions of NMOC. The EPA also

considers the reduction of these pollutants to represent an environmental benefit. However, EPA recognizes that the incidental formation of nitrogen oxides and carbon monoxide due to the destruction of landfill gas will occur. Consistent with the 1994 guidance, the permitting authority should confirm that in each case that the resultant increase in nitrogen oxides and carbon monoxide would not cause or contribute to a violation of the NAAQS and PSD increment or adversely affect an AQRV.

Finally, the 1994 guidance did not void or create an exclusion from any applicable minor source preconstruction review requirements in an approved State Implementation Plan (SIP). Any minor NSR permitting requirements in a SIP would continue to apply, regardless of any exclusion from major NSR that might be approved for a source under the PCP exclusion policy.

#### H. Monitoring

Section 60.756(a) is being revised to clarify that a temperature measuring device does not need to be permanently installed at each wellhead. It is common for wellheads to have an access port for temperature measurements so that a temperature measuring device can be shared across wellheads for the monthly temperature monitoring requirement. As long as the temperature is monitored monthly, the intent of the regulation is met.

Section 60.756(b)(2) is also being revised to clarify that the device for monitoring gas flow need only record the flow or bypass, not necessarily measure the rate at which gas is flowing to the control device.

#### I. Compliance Provisions

Section 60.755(a)(3) is being revised to allow an alternative timeline to be proposed for correcting an exceedance in collection header pressure at each well. Consistent with section 60.755(c)(4)(v), a sentence is being added to sections 60.755(a)(3) and 60.755(a)(5) to allow an alternate timeline to be proposed to the Administrator for correcting an exceedance. This revision makes the

sections consistent. Depending on the remedy selected to correct the problem, a different timeline may be needed, but any timeline extending more than 120 days must be approved by the regulatory agency.

Section 60.755(c)(1) is being revised slightly to indicate that surface monitoring of methane shall be performed along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30-meter intervals. This change makes the wording consistent with other sections of the rule (e.g., section 60.753(d)).

#### J. Recordkeeping and Reporting

Sections 60.757(a)(1) and (b)(1)(i) are being revised to clarify that subject landfills that commenced construction, modification, or reconstruction after May 30, 1991 (date of proposal) but before the date of promulgation had until June 10, 1996 (90 days from the promulgation date) to submit an initial design capacity report and an initial NMOC emission rate report to the Administrator. The previous language was not clear as to when landfills that commenced construction, modification, or reconstruction between proposal and promulgation would be required to submit an initial design capacity report or NMOC emission rate report. However, it is obvious that the reports could not be required prior to promulgation of the regulation. Therefore, instead of submitting the reports 90 days after commencing construction, landfills that were constructed before promulgation have 90 days after the promulgation date to submit the reports.

Also paragraphs (a)(1)(i) and (ii) in the promulgated rule were somewhat repetitive and contradictory. Paragraph (a)(1)(iii) reflected an unrealistic scenario in that this date would always occur later than the date in paragraphs (a)(1)(i) and (ii). For this reason, the previous paragraph (a)(1)(iii) was unnecessary and confusing. Therefore, that paragraph has been deleted, and paragraphs (a)(1)(i) and (ii) have been revised to state that the report is due on June 10, 1996 or within 90 days after the date of commencement of construction,

modification, or reconstruction, depending on when the construction, modification, or reconstruction commenced.

The wording of section 60.757(a)(2)(ii) is being revised to require calculation of design capacity submitted as part of the design capacity report to include "relevant parameters" rather than the specific list of parameters in the promulgated rule. Some of the previously listed parameters (e.g., compaction practices) would not apply to landfills that calculate design capacity on a volumetric rather than mass basis. Other parameters that were not listed will be needed to perform the calculation in some cases.

The wording of section 60.757(a)(3), which requires amended design capacity reports, is being revised for clarity and consistency with the definitions of modification and design capacity discussed under I.A. It also clarifies that a report is required only if capacity increases above 2.5 million Mg and 2.5 million m<sup>3</sup>. This was the original intent, but the original wording was confusing.

Several paragraphs in section 60.758 are being revised to clarify that the recordkeeping requirements in paragraphs (b), (c), (d), and (e) do not apply if an alternative to the operational standards, test methods, procedures, compliance measures, monitoring, or reporting provisions has been submitted with the design plan and approved by the Administrator.

#### II. Cross-Referencing and Typographical Errors

Errors in cross-referencing one section to another within subpart WWW are being corrected. Typographical errors are also being corrected.

#### III. Corrections to Promulgation Preamble

Tables 3 and 5 in the promulgation preamble contained typographical errors. The units for the small size cutoff (column 1) are stated to be in millions of megagrams (millions Mg); however, the values presented are actually in megagrams. These tables are corrected and provided below for clarification.

TABLE 3.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE EMISSION GUIDELINES<sup>a b</sup>

Small size cutoff (mg)	Number landfills af- fected	Annual <sup>c</sup> NMOC emission reduction (Mg/yr)	Annual <sup>d</sup> methane emission reduction (Mg/yr)	Annual cost (million \$/yr)	NMOC av- erage cost eff. (\$/Mg)	NMOC in- cremental cost eff. (\$/Mg)
Baseline <sup>e</sup> .....						
3,000,000 .....	273	73,356	3,220,000	84	1,145	1,145
2,500,000 .....	312	77,600	3,370,000	89	1,147	1,178
1,000,000 .....	572	97,600	3,990,000	119	1,219	1,500

TABLE 3.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE EMISSION GUIDELINES <sup>a b</sup>—Continued

Small size cutoff (mg)	Number landfills affected	Annual <sup>c</sup> NMOC emission reduction (Mg/yr)	Annual <sup>d</sup> methane emission reduction (Mg/yr)	Annual cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC incremental cost eff. (\$/Mg)
No cutoff <sup>f</sup> .....	7,299	142,000	8,270,000	719	5,063	13,514

<sup>a</sup> Emission rate cutoff level of 50 Mg NMOC/yr.<sup>b</sup> All values are fifth year annualized.<sup>c</sup> NMOC emission reductions are from a baseline of 145,000 Mg NMOC/yr.<sup>d</sup> Methane emission reductions are from a baseline of 8,400,000 Mg methane/yr.<sup>e</sup> In the absence of an emission guidelines.<sup>f</sup> No emission rate cutoff and no design capacity exemption level.TABLE 5.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE NEW SOURCE PERFORMANCE STANDARDS <sup>a b</sup>

Small size cutoff (mg)	Number landfills affected	Annual <sup>c</sup> NMOC emission reduction (Mg/yr)	Annual <sup>d</sup> methane emission reduction (Mg/yr)	Annual <sup>e</sup> cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC <sup>f</sup> incremental cost eff. (\$/Mg)
Baseline <sup>g</sup> .....						
3,000,000 .....	41	4,900	193,000	4	816	NA
2,500,000 .....	43	4,900	193,000	4	816	NA
1,000,000 .....	89	4,900	193,000	4	816	NA
No cutoff <sup>h</sup> .....	872	13,115	881,000	81	6,176	NA

<sup>a</sup> Emission rate cutoff level of 50 Mg NMOC/yr.<sup>b</sup> All values are fifth year annualized.<sup>c</sup> NMOC emission reductions are from a baseline of 13,400 Mg NMOC/yr.<sup>d</sup> Methane emission reductions are from a baseline of 899,000 Mg methane/yr.<sup>e</sup> Due to rounding off to the nearest million dollar, cost values do not appear to change for each option. However, actual costs are slightly less for a less stringent option.<sup>f</sup> Because the annual cost does not change enough to show a different cost from one option to the next, incremental cost effectiveness values are not applicable.<sup>g</sup> In the absence of a standard.<sup>h</sup> No emission rate cutoff and no design capacity exemption level.

#### IV. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's document may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

#### V. Administrative

##### A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NSPS were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1557.03) may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460 or by calling (202) 260-2740.

Today's changes to the NSPS should have no impact on the information collection burden estimates made previously. The changes consist of new definitions and clarifications of requirements; not additional requirements. Consequently, the ICR has not been revised.

##### B. Executive Order 12866 Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not "significant" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

##### C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this direct final rule amendment will not have a significant economic impact on a substantial number of small entities. Today's action clarifies the applicability of control requirements in the Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills and does not include any



provisions that create a burden for any of the regulated entities.

The changes in today's action do not increase the stringency of the rule or add additional control requirements. Nor is the scope of the rule changed so as to bring any entities not previously subject to the rule within its scope or coverage. Today's action does not alter control, monitoring, recordkeeping, or reporting requirements of the promulgated rule.

#### *D. Submission to Congress*

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

#### *E. Executive Order 12875 and Unfunded Mandates Reform Act*

Under the executive order EPA must consult with representatives of affected State, local, and Tribal governments. Under the unfunded mandates reform act, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or Tribal governments, or to the private sector, will be \$100 million or more per year. The EPA held consultations and prepared such a statement at the time of promulgation of subpart Cc and WWW (61 FR 9913, March 12, 1996). Today's changes consist of new definitions and clarifications and do not impose costs on government entities or the private sector. Consequently, a new unfunded mandates statement has not been prepared.

#### *F. Children's Health Protection*

This direct final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety that may disproportionately affect children.

#### **List of Subjects in 40 CFR Part 60**

Environmental protection, Municipal solid waste landfills, Air pollution control.

Dated: May 28, 1998.

**Carol M. Browner,**  
*Administrator.*

For the reasons set out in the preamble, title 40, chapter 1, part 60 of the Code of Federal Regulations is amended as follows:

### **PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

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

**Authority:** 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

#### **Subpart Cc—[Amended]**

2. Amend § 60.32c by adding paragraphs (c) and (d) to read as follows:

##### **§ 60.32c Designated facilities.**

\* \* \* \* \*

(c) For purposes of obtaining an operating permit under title V of the Act, the owner or operator of a MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of a MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of EPA approval of the State's program under section 111(d) of the Act, and not otherwise subject to either part 70 or 71, becomes subject to the requirements of §§ 70.5(a)(1)(i) or 71.5(a)(1)(i) of this chapter 90 days after the effective date of such 111(d) program approval, even if the design capacity report is submitted earlier.

(d) When a MSW landfill subject to this subpart is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met.

(1) The landfill was never subject to the requirement for a control system under § 60.33c(c) of this subpart; or

(2) The owner or operator meets the conditions for control system removal specified in § 60.752(b)(2)(v) of subpart WWW.

3. Amend § 60.33c by removing in paragraph (a)(2) the phrase "2.5 million

megagrams or 2.5 million cubic meters" and adding, in its place "2.5 million megagrams and 2.5 million cubic meters."

4. Amend § 60.36c by revising paragraph (a) to read as follows:

##### **§ 60.36c Compliance times.**

(a) Except as provided for under paragraph (b) of this section, planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under § 60.33c shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions equal or exceed 50 megagrams per year.

\* \* \* \* \*

#### **Subpart WWW**

5. Amend § 60.750 as follows:

a. In paragraph (a), remove the words "or began accepting waste".

b. In paragraph (b), remove the word "None" and add, in its place "§ 60.754(a)(5)".

c. Add paragraph (c) to read as follows:

##### **§ 60.750 Applicability, designation of affected facility, and delegation of authority.**

\* \* \* \* \*

(c) Activities required by or conducted pursuant to a CERCLA, RCRA, or State remedial action are not considered construction, reconstruction, or modification for purposes of this subpart.

6. Amend § 60.751 as follows:

a. Remove the last sentence in the definition of "closed landfill."

b. Revise the definitions of "controlled landfill," "design capacity," and "interior well" and add a definition of "modification" to read as follows:

##### **§ 60.751 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 § 60.752(b)(2)(i).

*Design capacity* means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the State, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to



mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site specific density, which must be recalculated annually.

\* \* \* \* \*

*Interior well* means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

\* \* \* \* \*

*Modification* means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991.

7. Amend § 60.752 by revising paragraph (a), the introductory text of paragraph (b), paragraphs (b)(2)(ii), (b)(2)(iii)(B), and (b)(2)(v)(A), and adding paragraphs (c) and (d) to read as follows:

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

(a) Each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume shall submit an initial design capacity report to the Administrator as provided in § 60.757(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. Submittal of the initial design capacity report shall fulfill the requirements of this subpart except as provided for in paragraphs (a)(1) and (a)(2) of this section.

(1) The owner or operator shall submit to the Administrator an amended design capacity report, as provided for in § 60.757(a)(3).

(2) When an increase in the maximum design capacity of a landfill exempted from the provisions of § 60.752(b) through § 60.759 of this subpart on the basis of the design capacity exemption in paragraph (a) of this section results in a revised maximum design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the owner or operator shall comply with the provision of paragraph (b) of this section.

(b) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, shall either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in § 60.754. The

NMOC emission rate shall be recalculated annually, except as provided in § 60.757(b)(1)(ii) of this subpart. The owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters is subject to part 70 or 71 permitting requirements.

(1) \* \* \*

(2) \* \* \*

(ii) Install a collection and control system that captures the gas generated within the landfill as required by paragraphs (b)(2)(ii)(A) or (B) and (b)(2)(iii) of this section within 30 months after the first annual report in which the emission rate equals or exceeds 50 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the emission rate is less than 50 megagrams per year, as specified in § 60.757(c)(1) or (2).

\* \* \* \* \*

(iii) \* \* \*

(A) \* \* \*

(B) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen. The reduction efficiency or parts per million by volume shall be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in § 60.754(d).

\* \* \* \* \*

(v) \* \* \*

(A) The landfill shall be a closed landfill as defined in § 60.751 of this subpart. A closure report shall be submitted to the Administrator as provided in § 60.757(d);

\* \* \* \* \*

(c) For purposes of obtaining an operating permit under title V of the Act, the owner or operator of a MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of a MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic

meters, and not otherwise subject to either part 70 or 71, becomes subject to the requirements of §§ 70.5(a)(1)(i) or 71.5(a)(1)(i) of this chapter, regardless of when the design capacity report is actually submitted, no later than:

(1) June 10, 1996 for MSW landfills that commenced construction, modification, or reconstruction on or after May 30, 1991 but before March 12, 1996;

(2) Ninety days after the date of commenced construction, modification, or reconstruction for MSW landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

(d) When a MSW landfill subject to this subpart is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement for a control system under paragraph (b)(2) of this section; or

(2) The owner or operator meets the conditions for control system removal specified in paragraph (b)(2)(v) of this section.

8. Amend § 60.753 by revising the introductory text of § 60.753 and the second sentence of paragraph (d) and the first sentence of paragraph (g) to read as follows:

**§ 60.753 Operational standards for collection and control systems.**

Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.752(b)(2)(ii) of this subpart shall: \* \* \*

(d) \* \* \* To determine if this level is exceeded, the owner or operator shall conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. \* \* \*

\* \* \* \* \*

(g) If monitoring demonstrates that the operational requirements in paragraphs (b), (c), or (d) of this section are not met, corrective action shall be taken as specified in § 60.755(a)(3) through (5) or § 60.755(c) of this subpart. \* \* \*

9. Amend § 60.754 as follows:

a. In the last sentences of paragraph (a)(1)(i) and (a)(1)(ii) remove the phrase "if the documentation provisions of § 60.758(d)(2) are followed" and add, in

its place, "if documentation of the nature and amount of such wastes is maintained";

b. In paragraph (a)(4)(ii) remove the last sentence and add in its place, "The calculation of the methane generation rate constant is performed only once, and the value obtained from this test shall be used in all subsequent annual NMOC emission rate calculations.";

c. In paragraphs (a)(5) and (b)(3) remove the phrase "as provided in § 60.752(b)(2)(i)(B)";

d. In paragraph (d), remove the words "Method 25" and add, in its place "Method 25C";

e. Revise the introductory text of paragraph (a)(1) and revise paragraph (c) to read as follows:

#### § 60.754 Test methods and procedures.

(a)(1) The landfill owner or operator shall calculate the NMOC emission rate using either the equation provided in paragraph (a)(1)(i) of this section or the equation provided in paragraph (a)(1)(ii) of this section. Both equations may be used if the actual year-to-year solid waste acceptance rate is known, as specified in paragraph (a)(1)(i), for part of the life of the landfill and the actual year-to-year solid waste acceptance rate is unknown, as specified in paragraph (a)(1)(ii), for part of the life of the landfill. The values to be used in both equations are 0.05 per year for k, 170 cubic meters per megagram for  $L_0$ , and 4,000 parts per million by volume as hexane for the  $C_{NMOC}$ . For landfills located in geographical areas with a thirty year annual average precipitation of less than 25 inches, as measured at the nearest representative official meteorologic site, the k value to be used is 0.02 per year.

(c) When calculating emissions for PSD purposes, the owner or operator of each MSW landfill subject to the provisions of this subpart shall estimate the NMOC emission rate for comparison to the PSD major source and significance levels in §§ 51.166 or 52.21 of this chapter using AP-42 or other approved measurement procedures.

#### 10. Amend § 60.755 as follows:

a. In paragraphs (a)(3) and (a)(5), add a sentence at the end of each paragraph reading "An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval.";

b. Revise paragraph (a)(4) to read as follows:

#### § 60.755 Compliance provisions.

(a) \* \* \*

(4) Owners or operators are not required to expand the system as required in paragraph (a)(3) of this section during the first 180 days after gas collection system startup.

\* \* \* \* \*

c. In paragraph (b) introductory text, in the last sentence, remove the phrase "within 60 days of the date in which" and add in its place, "no later than 60 days after the date on which";

d. In paragraph (c)(1), delete the phrase "and along a serpentine pattern spaced 30 meters apart (or a site-specific established spacing)" and add in its place, "and along a pattern that traverses the landfill at 30 meter intervals (or a site-specific established spacing)".

#### 11. Amend § 60.756 as follows:

a. In paragraph (a) introductory text, remove the phrase "or other temperature measuring device" and add, in its place, "other temperature measuring device, or an access port for temperature measurements";

b. In paragraph (b)(1), remove the phrase "an accuracy of" and add in its place, "a minimum accuracy of";

c. In paragraph (b)(2), introductory text, remove the phrase "A gas flow rate measuring device that provides a measurement of gas flow" and add, in its place, "A device that records flow";

12. Amend § 60.757 by revising paragraphs (a)(1), (a)(2), (a)(3), (b)(1)(i) and (g) introductory text to read as follows:

#### § 60.757 Reporting requirements.

\* \* \* \* \*

(a) \* \* \*

(1) The initial design capacity report shall fulfill the requirements of the notification of the date construction is commenced as required by § 60.7(a)(1) and shall be submitted no later than:

(i) June 10, 1996, for landfills that commenced construction, modification, or reconstruction on or after May 30, 1991 but before March 12, 1996 or

(ii) Ninety days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

(2) The initial design capacity report shall contain the following information:

(i) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the State, local, or tribal agency responsible for regulating the landfill.

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the permit

issued by the State, local, or tribal agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity shall be calculated using good engineering practices. The calculations shall be provided, along with the relevant parameters as part of the report. The State, Tribal, local agency or Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(3) An amended design capacity report shall be submitted to the Administrator providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to or above 2.5 million megagrams and 2.5 million cubic meters. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in § 60.758(f).

(b) \* \* \*

(1) \* \* \*

(i) The initial NMOC emission rate report may be combined with the initial design capacity report required in paragraph (a) of this section and shall be submitted no later than indicated in paragraphs (b)(1)(i)(A) and (B) of this section. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in paragraphs (b)(1)(ii) and (b)(3) of this section.

(A) June 10, 1996, for landfills that commenced construction, modification, or reconstruction on or after May 30, 1991, but before March 12, 1996, or

(B) Ninety days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction on or after March 12, 1996.

\* \* \* \* \*

(g) Each owner or operator seeking to comply with § 60.752(b)(2)(iii) shall include the following information with the initial performance test report required under § 60.8:

\* \* \* \* \*

#### 13. Amend § 60.758 as follows:

a. Remove the introductory text;

b. At the beginning of paragraphs (a), (b) introductory text, (c) introductory text, (d) introductory text, and (e), add the phrase "Except as provided in § 60.752(b)(2)(i)(B),";

c. In paragraph (a), remove the phrase "on-site records of the maximum design capacity" and add, in its place "on-site records of the design capacity report which triggered § 60.752(b)";

d. Add paragraph (f) to read as follows:

**§ 60.758 Recordkeeping Requirements.**

\* \* \* \* \*

(f) Landfill owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, as provided in the definition of "design capacity", shall keep readily accessible, on-site records of the annual recalculation of site-specific density, design capacity, and the supporting documentation. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

14. Amend § 60.759 as follows:

a. In paragraph (a)(3)(iii), remove the sentence "The values for k,  $L_0$ , and  $C_{NMOC}$  determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence." and add, in its place, the sentence "The values for k and  $C_{NMOC}$  determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence (the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero)."

b. In paragraph (a)(3)(iii), remove the sentence "If field testing has not been performed, the default values for k,  $L_0$ , and  $C_{NMOC}$  provided in § 60.754(a)(1) shall be used" and add, in its place, the sentence "If field testing has not been performed, the default values for k,  $L_0$  and  $C_{NMOC}$  provided in § 60.754(a)(1) or the alternative values from § 60.754(a)(5) shall be used.

[FR Doc. 98-15007 Filed 6-15-98; 8:45 am]

BILLING CODE 6560-50-P

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of quizalofop-p ethyl ester [ethyl (R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]propanoate), and its acid metabolite quizalofop-p [(R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]propionate) and the S enantiomers of the ester and the acid, all expressed as quizalofop-p ethyl ester in or on canola seed, canola meal, peppermint tops and spearmint tops. DuPont Agricultural Products requested the tolerances for canola and the Interregional Research Project Number 4 (IR-4) requested the tolerances for peppermint and spearmint. These tolerances were requested under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170). **DATES:** This regulation is effective June 16, 1998. Objections and requests for hearings must be received by EPA on or before August 17, 1998.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300663], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300663], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300663]. No Confidential Business

Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-7610; e-mail: jackson.sidney@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** published on October 29, 1997 (62 FR 56176 (mint)) (FRL-5749-7) and December 17, 1997, 62 FR 66080 (canola)) (FRL-5758-3), EPA, issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP) 6E4652 and 5F4545 for tolerances by the IR-4 and DuPont Agricultural Products, Wilmington, Delaware. These notices included a summary of the petitions prepared by DuPont Agricultural Products, Wilmington, Delaware, the registrant. There were no comments received in response to these notices of filing.

The petitions requested that 40 CFR 180.441 be amended by establishing tolerances for combined residues of the herbicide quizalofop-p ethyl ester [ethyl (R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]propanoate), and its acid metabolite quizalofop-p [(R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]propionate) and the S enantiomers of the ester and the acid, all expressed as quizalofop-p ethyl ester, in or on canola seed at 1.0 part per million (ppm), canola meal at 1.5 ppm, and peppermint tops and spearmint tops at 2.0 ppm. .

## **I. Risk Assessment and Statutory Findings**

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 180, 185 and 186**

[OPP-300663; FRL-5793-5]

RIN 2070-AB78

### **Quizalofop-p ethyl ester; Pesticide Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).