[FR Doc. E6–19865 Filed 11–22–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2006–0570; FRL–8246–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Bernalillo County, NM

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the section 111(d) Plan submitted by City of Albuquerque (Bernalillo County), New Mexico, on May 24, 2006, to implement and enforce the Emission Guidelines (EG) for existing Municipal Solid Waste (MSW) Landfills. The EG require delegated municipalities to develop plans to reduce landfill gas emissions from all MSWs. Finally, this action also approves the concomitant delegation of authority to implement 40 CFR part 60, subparts WWW and Cc.

DATES: This rule is effective on January 23, 2007 without further notice, unless EPA receives adverse comment by December 26, 2006. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by File ID No. EPA–R06–OAR–2006–0570, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8am and 4pm weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Please include the text ''Public comment on File ID No. EPA–R06–OAR–2006–0570'' in the subject line of the first page of your comments. EPA's policy is that all comments received will be included in the public file without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through regulations.gov or e-mail if you believe that it is CBI or otherwise protected from disclosure. Regulations.gov is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Official File: Copies of the documents relevant to this action are in the official file, which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15-cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency listed below during official business hours by appointment: Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7259; fax number 214–665–7263; e-mail address *boyce.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (CAA or 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 new source performance standards (NSPS) that control a designated pollutant, EPA establishes emission guidelines (EG) 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 EG for that source category as well as 40 CFR part 60, subpart B (40 CFR 60.23 through 60.26). On March 12, 1996, EPA promulgated the NSPS for new municipal solid waste (MSW) landfills at 40 CFR part 60, subpart WWW (Standards of Performance for Municipal Solid Waste Landfills) and EG for Municipal Solid Waste Landfills at 40 CFR part 60, subpart Cc.

The procedures under which States submit these plans to control existing sources are defined in 40 CFR part 60, subpart B. According to subpart B, the States are required to develop plans within Federal guidelines for the control of designated pollutants. The EPA publishes guideline documents for development of State emission

standards along with the promulgation of any NSPS for a designated pollutant. These guidelines apply to designated pollutants and include information such as a discussion of the pollutant's effects, description of control techniques and their effectiveness, costs and potential impacts. Also as guidance for the States, recommended emission limits and times for compliance are set forth, and control equipment which will achieve these emission limits are identified. The emission guidelines for landfill gas are promulgated in 40 CFR part 60. The final section 111(d) emission standards and guidelines for landfill gas were promulgated on March 12, 1996 (61 FR 9905), and codified in the CFR at 40 CFR subparts WWW and Cc, respectively. The emission guideline's specified limits for landfill gas requires affected facilities to operate a control system designed to reduce collected non-methane organic compounds (NMOC) concentrations by 98 weight-percent, or reduce the outlet NMOC concentration to 20 parts per million or less, using the test methods specified under § 60.754(d).

The City of Albuquerque (Bernalillo County), New Mexico submitted its Plan to EPA on May 26, 2006. This **Federal Register** action approves Emission Guidelines (EG) for existing Municipal Solid Waste (MSW) Landfills in Albuquerque (Bernalillo County), New Mexico.

II. Analysis of Submittal

The official procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. The EPA promulgated the original provisions on November 17, 1975 and then amended them on December 19, 1995, to incorporate changes specific to solid waste incineration. These changes, which were necessary to conform to the solid waste incineration requirements under section 129 of the Act, are not relevant to MSW landfills. Thus, the procedures described in the original provisions for adopting and submitting State Plans still apply to MSW landfills and are reflected in 40 CFR part 60, subpart B, §§ 60.23 through 60.26. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, compliance assurance, and enforcement requirements, and cross-references to the MSW landfill EG.

The City of Albuquerque (Bernalillo County), New Mexico Plan includes documentation that all applicable subpart B requirements have been met.

The City of Albuquerque Environmental Health Department (AEHD) incorporates the NSPS and cross-references the NSPS for existing facilities to adopt the requirements of the Federal rule. The AEHD has ensured, through this cross-reference process, that all the applicable requirements of the Federal rule have been adopted into the AEHD Plan. The emission limits, reporting and recordkeeping requirements, and other aspects of the Federal rule have been adopted into 20 NMAC 11.71, Municipal Solid Waste Landfills and 20 NMAC 11.63, New Source Performance Standards for Stationary Sources. The City of Albuquerque (Bernalillo County), New Mexico, amended the NSPS to remove the current exclusions from delegation of 40 CFR 60 subpart WWW, Standards of Performance Municipal Solid Waste Landfills.

Subpart Cc requires affected existing landfills to be capable of attaining the specified level of emissions within 30 months after the State Plan is federally approved. For compliance schedules for MSW landfills extending more than 12 months beyond the date required for submittal of the plan (December 12, 1996), the compliance schedule must include legally enforceable increments of progress towards compliance for that MSW landfill. Each increment of progress in § 60.21(h) of subpart B must have a compliance date and must be included as an enforceable date in the AEHD Plan. As an alternative, the AEHD must negotiate specific dates for the increments of progress on a facility-by-facility basis, and submit them to the public participation process. A revision to the City of Albuquerque (Bernalillo County), New Mexico Plan must be submitted to EPA once the dates for the increments of progress are established for each affected facility. The AEHD Plan may include such additional increments of progress as may be necessary to permit close and effective supervision of progress towards final compliance. The AEHD did not submit evidence of authority to regulate sources in Indian Country. Therefore, EPA is not approving this AEHD Plan as it relates to those sources. AEHD must submit an updated source inventory once the affected facilities have reported their design capacities and NMOC emissions as required under 40 CFR part 60, subpart Cc (§ 60.35c). In addition, Title V permit applications for the affected facilities are due within one year from the due date of the design capacity reports.

III. Final Action

In this final action EPA is promulgating a revision to the AEHD Plan and the Code of Federal Regulations, part 62, to adopt the AEHD Plan for the control of landfill gas from MSW landfills, except those located in Indian Country. On May 24, 2006, the City of Albuquerque (Bernalillo County), New Mexico submitted to EPA a plan identifying the existing MSW landfills in Bernalillo County and establishing standards for the control of landfill gas emissions from these facilities. The AEHD Plan includes regulations 20 NMAC 11.71, Municipal Solid Waste Landfills, and regulations 20 NMAC 11.63, Standards of Performance Municipal Solid Waste Landfills, documentation of the public participation process, a source inventory, and other required elements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any AEHD Plan. Each request for revision to the AEHD Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Since the City of Albuquerque has not submitted a demonstration of authority over ''Indian Country'' (as defined in 18 U.S.C. 1151), we are limiting our approval to those areas that do not constitute Indian Country. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Any existing designated facility that may exist on ''Indian Country'' is subject to the Federal plan for the designated facility. See 40 CFR 62.13.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action 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 these rules should relevant adverse comments be filed. This action will be effective January 23, 2007 unless EPA receives adverse written comments by December 26, 2006.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent direct final rule based on the

proposed rule. The EPA will not institute a second comment period. 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 January 23, 2007 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to EO 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state and local declarations that rules implementing certain federal standards are unnecessary. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves state and local declarations that rules implementing certain federal standards are unnecessary, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by EO 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132 (64 FR 43255, August 10, 1999). This action merely approves state and local declarations that rules implementing certain federal standards are unnecessary, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to EO 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State plan submission, to use VCS in place of a State plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 2007. Filing a petition for reconsideration by the Administrator of this direct 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 may 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 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 62

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

Dated: November 9, 2006.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 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 *et seq.*

Subpart GG—New Mexico

■ 2. Section 62.7855 is revised to read as follows:

§ 62.7855 New Mexico Environmental Improvement Board.

(a) *Identification of Plan.* Control of landfill gas emissions from existing municipal solid waste landfills, submitted on January 7, 1997.

(b) *Identification of Sources.* The plan applies to all existing municipal solid waste landfills with design capacities greater than or equal to 2.5 million megagrams and non-methane organic emissions greater than or equal to 50 megagrams per year as described in 40 CFR part 60, subpart Cc, under the jurisdiction of the New Mexico State Environmental Improvement Board.

■ 3. Section 62.7856 is revised to read as follows:

§ 62.7856 Albuquerque/Bernalillo County Air Quality Control Board.

(a) *Identification of Plan.* Albuquerque-Bernalillo County Municipal Solid Waste Landfill Designated Pollutant Plan, as adopted by the Albuquerque/Bernalillo County Air Quality Control Board on November 9, 2005.

(b) *Identification of Sources.* The plan applies to all existing municipal solid waste landfills under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board that commenced construction prior to May 30, 1991, and have not been modified or reconstructed since May 30, 1991, and are subject to the requirements of 40 CFR part 60, subpart Cc.

[FR Doc. E6–19861 Filed 11–22–06; 8:45 am]

BILLING CODE 6560–50–P