



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451; FRL-9963-19-OAR]

RIN 2060-AT62

Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Stay.

SUMMARY: By a letter dated May 5, 2017, the Administrator announced the convening of a proceeding for reconsideration of certain requirements in the final rules, “Standards of Performance for Municipal Solid Waste Landfills,” and “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,” both published on August 29, 2016. In this action, the EPA is staying subparts, which were added or revised by the two rules, for 90 days pending reconsideration.

DATES: Title 40 CFR part 60, subpart Cf, and 40 CFR part 60, subpart XXX, are stayed from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Electronic copies of this document are available on the EPA’s Web site at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards>. Copies of this document are also available at <https://www.regulations.gov>, at Docket ID No. EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Tsirigotis, Sector Policies and Programs Division (D205-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (888) 627-7764; email address: airaction@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 14, 2016, the U.S. Environmental Protection Agency (EPA) Administrator signed a final rule establishing new source performance standards (NSPS) intended to reduce emissions of landfill gas from new, modified, and reconstructed municipal solid waste (MSW) landfills, thereby updating standards that were issued in 1996. In a separate action, the Administrator also signed a final rule revising guidelines for reducing emissions from existing MSW landfills, thereby updating the previous emissions guidelines (EG), which also were issued in 1996. The NSPS are codified at 40 CFR part 60, subpart XXX, and the EG are codified at 40 CFR part 60, subpart Cf. For further information on these 2016 rules, see 81 FR 59332 and 81 FR 59276 (August 29, 2016).

On October 27, 2016, a number of interested parties submitted administrative petitions to the EPA seeking reconsideration of various aspects of the 2016 rules pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA) (42 U.S.C. 7607(d)(7)(B)).¹ Under section 307(d)(7)(B) of the CAA, the Administrator shall convene a reconsideration proceeding if, in the Administrator's judgment, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period, but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule. The Administrator may stay the effectiveness of the rule for up to 3 months during such reconsideration.

In a letter dated May 5, 2017, based on the criteria in CAA section 307(d)(7)(B), the Administrator convened a proceeding for reconsideration. The May 5, 2017, letter announced the

¹ Copies of these petitions are included in the docket for the 2016 rules, Docket ID No. EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451.

convening of an administrative reconsideration proceeding to reconsider the following topics from one petition: (1) tier 4 surface emission monitoring; (2) annual liquids reporting; (3) corrective action timeline procedures; (4) overlapping applicability with other rules; (5) the definition of cover penetration; and (6) design plan approval. As part of the proceeding, the EPA will prepare a notice of proposed rulemaking that will provide the petitioners and the public an opportunity to comment on the issues identified in that letter. As explained in the letter, the EPA has not taken action on the remaining issues in the petitions for reconsideration. A copy of the letter is included in the dockets for this rule, Docket ID No. EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451.

The EPA convened a proceeding for reconsideration based on the determination that some of the objections raised in the petition for reconsideration met the criteria set forth in CAA section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which requires the Administrator to convene a proceeding for reconsideration of a rule when the person raising an objection to a rule can demonstrate: (1) that it was either impractical to raise the objection during the period for public comment or that the grounds for the objection arose after the period for public comment; and (2) that the objection is of central relevance to the outcome of the rule. In particular, we determined that the tier 4 surface emissions monitoring (SEM) issues raised in the petition for reconsideration met those criteria. The proposed rule included tier 4 SEM as an optional monitoring method; however, the final rule imposed restrictions on the use of tier 4 SEM, *e.g.*, limits on wind speed, the use of wind barriers, and restricting the use of tier 4 SEM to landfills with non-methane organic compounds emission rates between 34 and 50 mega grams per year, that were not included in the proposal. While we believe that the restrictions are appropriate in light of the potential impact of the results of tier 4 SEM, we recognize that they were added

without the benefit of public comment. Thus, we find that the petitioners have demonstrated that it was impractical to raise the objection during the period for public comment. We also find that the objection to the restrictions on the use of tier 4 SEM is of central relevance to the outcome of the rule. Tier 4 SEM can be used as a site-specific methodology for determining whether and when the requirement to install a gas collection and control system is triggered. The restrictions limit an owner's/operator's ability to use tier 4 SEM for those purposes, thereby reducing intended flexibility in the rule. If we had the benefit of public comment on the restrictions, we might have structured the rule in such a way as to minimize any potential impacts on flexibility.

II. Stay of Subparts Cf and XXX

By this action, the EPA is staying the subparts added or revised by two final rules, “Standards of Performance for Municipal Solid Waste Landfills,” 81 FR 59332 and “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,” 81 FR 59276 for 90 days pursuant to its authority under section 307(d)(7)(B) of the CAA. We believe that it is necessary to stay the subparts in their entirety because the tier 4 SEM provisions in the two rules are integral to how the rules function as a whole. The ability to use tier 4 SEM is a primary aspect of the flexibility we intended to include in the rule. Tier 4 SEM can be used to determine on a site-specific basis whether and when the requirement to install and operate a gas collection and control system is triggered. The tier 4 SEM provision provides flexibility in complying with other requirements in the rules that does not otherwise exist. As a result, we believe that it is appropriate to stay the subparts in their entirety while we address the tier 4 SEM issues and the other issues for which the Administrator has granted reconsideration. Therefore, pursuant to section 307(d)(7)(B) of the CAA, the EPA is staying 40 CFR part 60, subpart XXX, and 40 CFR part 60, subpart Cf, for 90 days.

This stay will remain in place until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects in 40 CFR Part 60

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

Dated: May 22, 2017.

E. Scott Pruitt,
Administrator.

40 CFR part 60 is amended as follows:

PART 60--STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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

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

Subpart Cf—[Stayed]

2. Subpart Cf is stayed from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Subpart XXX—[Stayed]

2. Subpart XXX is stayed from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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