



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA-R09-RCRA-2018-0568; FRL-10007-02-Region 9]

Tentative Determination to Approve Site Specific Flexibility for the Cocopah Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a tentative determination to approve two Site Specific Flexibility Requests (SSFRs) from Cocopah Landfill, Inc. (CLI), a Republic Services (Republic) company, to close and monitor the Cocopah Landfill. The Cocopah Landfill is located within Indian Country on the Cocopah Indian Reservation near Somerton, Arizona and was operated by Republic and its predecessors from the 1960's to the present. Republic is seeking approval from EPA for an alternative final cover and an alternative location for the storage of facility records. EPA is now seeking public comment on EPA's tentative determination to approve the SSFRs. EPA will consider timely comments before making a final determination.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*]. If sufficient public interest is expressed by [insert date 15 days after date of publication in the *Federal Register*], EPA will hold a virtual public hearing on [insert date 30 days after date of publication in the *Federal Register*] from 6:00 p.m. to 8:00 p.m. If by [insert date 15 days after date of publication in the *Federal Register*] EPA does not receive information indicating sufficient public interest for a public hearing, EPA will cancel the public hearing and provide notice of the cancelled public hearing on

<http://www.regulations.gov> under Docket ID No. EPA-R09-RCRA-2018-0568. If there is sufficient public interest for a public meeting EPA will announce further details on <http://www.regulations.gov> under Docket ID No. EPA-R09-RCRA-2018-0568 in advance of the hearing. If you are interested in attending the public hearing, contact Steve Wall at (415) 972-3381 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-RCRA-2018-0568 at <http://www.regulations.gov>, or via email to R9LandSubmit@epa.gov. Due to COVID-19, we are not providing facsimile or regular mail options, because those are not viable at this time. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Steve Wall, EPA Region IX, (415) 972-3381, wall.steve@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” or “our” refer to the EPA.

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I. Legal Authority for this Proposal

Under sections 1008, 2002, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6901 *et seq.*, Congress required EPA to establish revised minimum federal criteria for Municipal Solid Waste Landfills (MSWLFs), including landfill location restrictions, operating standards, design standards, and requirements for ground water monitoring, corrective action, closure and post-closure care, and financial assurance. Under RCRA section 4005, states are to develop permit programs for facilities that may receive household hazardous waste or waste from conditionally exempt small quantity generators of hazardous waste, and EPA is to determine whether the state’s program is adequate to ensure that facilities will comply with the revised federal criteria.

The MSWLF criteria are in the Code of Federal Regulations at 40 CFR Part 258. These regulations are prescriptive, self-implementing and apply directly to owners and operators of MSWLFs. Many of these criteria include a flexible performance standard as an alternative to the prescriptive, self-implementing regulation. The flexible standard is not self-implementing and requires approval by the Director of an EPA-approved state MSWLF permitting program.

However, EPA's approval of a state program generally does not extend to Indian Country because states generally do not have authority over Indian Country. For this reason, owners and operators of MSWLF units located in Indian Country cannot take advantage of the flexibilities available to those facilities that are within the jurisdiction of an EPA-approved state program. However, the EPA has the authority under sections 2002, 4004, and 4010 of RCRA to promulgate site-specific rules to enable such owners and operators to use the flexible standards. See *Yankton Sioux Tribe v. EPA*, 950 F. Supp. 1471 (D.S.D. 1996); *Backcountry Against Dumps v. EPA*, 100 F.3d 147 (D.C. Cir. 1996). EPA refers to such rules as "Site Specific Flexibility Determinations" and has developed draft guidance for owners and operators on preparing a request for such a site-specific rule, entitled "Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country Draft Guidance," EPA530-R-97-016 (August 1997) (Draft Guidance).

II. Background

The Cocopah Landfill is located on the Cocopah Indian Reservation on property owned by the Cocopah Indian Tribe (Tribe) and is located near Somerton, Arizona. The Cocopah Landfill is a commercial MSWLF operated by Republic and its predecessors from the 1960's to the present. Waste was last received at the Site on June 30, 2000 and interim closure construction was completed in 2003 with an interim 3-foot-thick monolithic soil cover. The Cocopah Landfill property encompasses an area of 192 acres of which approximately 138 acres were used for placement of waste materials. Disposal operations were restricted to two separate units of 105 acres and 33 acres each, designated as the North Fill Area and the South Fill Area, respectively. A combined total of approximately 2.5 million tons of waste are known to have been deposited in the two disposal units.

Between 2010 and 2016, EPA worked with the Tribe and Republic to develop and reach agreement on an overall landfill closure plan. During this time, EPA also reviewed the SSFRs to determine whether they met technical and regulatory requirements. On September 5, 2017, the Tribe submitted Republic's "Final Closure and Post-Closure Maintenance Plan and Site-Specific Flexibility Requests for the Cocopah Landfill" (Final Closure Plan) to EPA, requesting that EPA take appropriate action to ensure that the Final Closure Plan and accompanying SSFRs satisfy US EPA's requirements. EPA provided final comments on the Plan on April 26, 2019, which Republic addressed in an updated Final Closure Plan dated November 2019. The Final Closure Plan submitted to EPA includes two SSFRs. The requests seek EPA approval to use an alternative final cover meeting the performance requirements of 40 CFR 258.60(a), and approval to use an alternative location for the storage of facility records pursuant to 40 CFR 258.29(a).

III. Basis for Proposal

EPA is basing its tentative determination to approve the SSFRs on the Tribe's concurrence, dated September 5, 2017, on the SSFRs as included in the Closure Plan, as well as EPA's determination that the SSFRs meet the requirements in 40 C.F.R. Part 258, and on EPA's independent review of the Final Closure Plan.

A. Alternative Final Cover SSFR: Alternative Final Cover System

The regulations require the installation of a final cover system specified in 40 CFR 258.60(a), which consists of an infiltration layer with a minimum of 18 inches of compacted clay with a permeability of 1×10^{-5} cm/sec, covered by an erosion layer with a minimum six inches of topsoil. Republic seeks approval for an alternative final cover designed to satisfy the performance criteria specified in 40 CFR 258.60(b); Republic proposes an alternative cover,

called an evapotranspiration cover, which would consist of two and a half feet of native soil to control infiltration covered by six inches of a soil gravel mixture to control erosion.

EPA is basing its tentative determination on a number of factors, including: 1) Research showing that the prescriptive, self-implementing requirements for final covers, comprised of low permeability compacted clay, do not perform well in the arid west. The clay dries out and cracks, which allows increased infiltration along the cracks; 2) Research showing that in arid environments thick soil covers comprised of native soil can perform as well or better than the prescriptive cover; and 3) Republic's analysis demonstrating, based on site-specific climatic conditions and soil properties, that the proposed alternative soil final cover will achieve equivalent reduction in infiltration as the prescriptive cover design and that the proposed erosion layer provides equivalent protection from wind and water erosion. This analysis is provided in Appendix A, B, C and M of the Final Closure Plan for the Cocopah Landfill dated November 2019.

B. Records Storage SSFR: Alternative Location for the Storage of Facility Records

The regulations at 40 CFR 258.29(a) require that the owner or operator of a MSWLF unit must record and retain operating records at or near the facility or at an approved alternative location. Republic does not have administrative facilities at the Cocopah Landfill where records can be maintained. As a result, Republic requested approval to store all required documentation relating to the operating record of the Cocopah Landfill at the Copper Mountain Landfill (CML), which is Republic's closest operating facility to the Cocopah Landfill. The address of Copper Mountain Landfill is 34853 East County 12th Street, Wellton, Arizona 85356, which is 36 miles from the Cocopah Landfill.

EPA is basing its tentative determination on factors including: 1) The Cocopah Landfill is no longer operational, and Republic does not have administrative facilities there; and 2) Republic's proposed alternative records storage location, the Copper Mountain Landfill, is only 36 miles away.

IV. Additional Findings

In order to comply with the National Historic Preservation Act, 54 U.S.C. 100101 *et seq.*, Republic will coordinate with the Tribe to arrange for a qualified Native American monitor to be present during any work. If buried or previously unidentified cultural resources are encountered during project activities, all work within the vicinity of the find will cease, and the provisions pursuant to 36 CFR 800.13(b) will be implemented. If, during the Landfill closure activities, previously undocumented archaeological material or human remains are encountered, all work shall cease in the immediate area and a qualified archaeologist shall be retained to evaluate the significance of the find and recommend further management actions.

Though no known threatened or endangered species or their habitat exist on the site, a preconstruction survey will be conducted prior to cover installation to ensure no threatened or endangered species are present. Following closure and vegetation restoration activities, the Site may become suitable for threatened and endangered species. This would be a beneficial effect.

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB).

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.*) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in Section 203 of UMRA.

Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, “Federalism,” (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

This rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is EPA's conservative analysis of the potential risks posed by Republic's proposal and the controls and standards set forth in the application.

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

As required by section three of Executive Order 12988, “Civil Justice Reform,” (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate

drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments,” (65 FR 67249, November 9, 2000), calls for EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” *See* also “EPA Policy for the Administration of Environmental Programs on Indian Reservations,” (November 8, 1984) and “EPA Policy on Consultation and Coordination with Indian Tribes,” (May 4, 2011). EPA consulted with the Tribe throughout Republic’s development of its Final Closure Plan for the Cocopah Landfill. EPA specifically solicits any additional comment on this tentative determination from officials of the Tribe.

List of Subjects in 40 CFR Part 258

Environmental protection, Municipal landfills, Final Cover, Post-closure Care, Groundwater Monitoring, Reporting and Recordkeeping Requirements, Waste Treatment and Disposal, Water Pollution Control.

Dated: April 23, 2020

Jeffrey Scott
Director,
Land, Chemicals and Redevelopment Division,
Region IX.

For the reasons stated in the preamble, 40 CFR Part 258, is proposed to be amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

Subpart F -- Closure and Post-Closure Care

2. Section 258.62 is amended by adding paragraph (d) to read as follows:

§ 258.62 Approval of Site-specific flexibility requests in Indian Country.

* * * * *

(d) Cocopah Municipal Solid Waste Landfill – Alternative final cover and alternative location for the storage of facility records. This paragraph (d) applies to the Cocopah Landfill, a Municipal Solid Waste landfill operated by Republic on the Cocopah Indian Reservation near Somerton, Arizona.

(1) In accordance with 40 CFR 258.60(b), the owner or operator may replace the prescriptive final cover set forth in 40 CFR 258.60(a), with an alternative final cover as follows:

(i) The owner or operator may install an evapotranspiration cover system as an alternative final cover for the 135-acre site.

(ii) The alternative final cover system shall be constructed to achieve an equivalent reduction in infiltration as the infiltration layer specified in §258.60(a)(1) and (2) and provide an equivalent protection from wind and water erosion as the erosion layer specified in §258.60(a)(3). Top-deck cover slopes shall have a minimum slope of 2%. All side slopes in the South Fill Area shall be regraded to a maximum 3 horizontal to 1 vertical (3H:1V). The existing side slope of 2.5H:1V in the North Fill Area will remain; however, drainage benches shall be installed on portions of the slope where the vertical height exceeds 50 feet.

(iii) The final cover system shall consist of a minimum three-foot-thick multi-layer cover system comprised, from bottom to top, of:

(A) A minimum 30-inch thick infiltration layer consisting of:

(1) Existing intermediate cover; and

(2) Additional cover soil from on-site sources, which, prior to placement, shall be wetted to optimal moisture and thoroughly mixed to near uniform condition, and the material shall then be placed in lifts with an uncompacted thickness of six to eight inches, spread evenly and compacted to 90 percent of the maximum dry density, and shall:

(i) Exhibit a grain size distribution that excludes particles in excess of three inches in diameter;

(ii) Have a minimum fines content (percent by weight passing U.S. No. 200 Sieve) of 12 percent for the average of ten consecutive tests; and

(iii) Have a grain size distribution with a minimum of six percent finer than five microns for the average of ten consecutive tests; and

(B) A surface erosion layer comprised of a rock/soil admixture for top deck slopes and rock armoring for side slopes. The surface erosion layer requirements for top-deck slopes and side slopes are detailed below:

(1) Top deck slope surface erosion layer requirements: The top deck slope surface erosion layer shall be a minimum six-inch surface erosion layer comprised of a rock/soil admixture. The top deck surface erosion layer shall achieve the following gradation specification:

(i) Exclude particles in excess of three inches in diameter;

(ii) 40% to 75% passing No. 4 sieve

(iii) 10% to 50% passing No. 40 sieve

(iv) Less than or equal to 15% passing No. 200 sieve

(2) Side slope surface erosion layer: The side slope surfaces erosion layer shall consist of a 4-inch thick rock armor underlain by an 8 ounce per square yard (oz/sy) non-woven geotextile filter fabric. The side slope surface erosion rock armor layer shall achieve the following gradation specification:

(i) Exclude particles in excess of three inches in diameter;

(ii) 10% to 40% passing No. 4 sieve

(iii) 0% to 10% passing No. 40 sieve

(2) In accordance with 40 CFR 258.29(a), the owner operator may retain all required documentation relating to the operating record of the Cocopah Landfill at the administrative offices of Copper Mountain Landfill. The address of Copper Mountain Landfill is 34853 East County 12th Street, Wellton, Arizona 85356.

(3) The owner or operator shall place documentation demonstrating compliance with the provisions of this Section in the operating record.

(4) All other applicable provisions of 40 CFR Part 258 remain in effect.