

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

CITE AUTHORITY W.Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 23

TITLE OF RULE BEING PROPOSED: "To Prevent and Control Emissions From Municipal
Solid Waste Landfills"

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

JOHN E. CAFFREY
COMMISSIONER

July 28, 1997

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

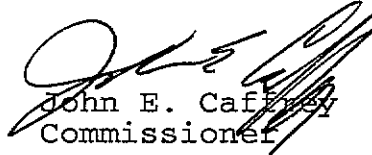
RE: 45CSR23 - To Prevent and Control Emissions From
Municipal Solid Waste Landfills

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing of the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as an agency-approved rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers at 759-0515.

Sincerely yours,


John E. Caffrey
Commissioner

JEC:cc

Attachment

DATE: August 1, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: JOHN H. JOHNSTON
CHIEF, OFFICE OF AIR QUALITY
DIVISION OF ENVIRONMENTAL PROTECTION

LEGISLATIVE RULE TITLE: Series 23 - "To Prevent and Control Emissions From Municipal Solid Waste Landfills"

1. Authorizing statute(s) citation W. Va. Code §§22-5-1 et seq. &

2.
 - a. Date filed in State Register with Notice of Hearing:
June 17, 1997
 - b. What other notice, including advertising, did you give of the hearing?
Class I legal advertisement filed in the Charleston Daily Mail
and the Charleston Gazette

 - c. Date of hearing(s): July 21, 1997

 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received _____
 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
August 1, 1997

- f. Name and phone number of agency person to contact for additional information:

John H. Johnston, Chief

Office of Air Quality

Phone: 558-2496

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing: _____ N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

- d. Attach findings and determinations and reasons:

Attached _____ N/A

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 45 CSR 23 - "To Prevent and Control Emissions from Municipal Solid Waste Landfills"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq.

B. SUMMARY OF RULE:

This rule establishes standards of performance and emission guidelines for municipal solid waste landfills pursuant to section 111 of the federal Clean Air Act as amended in 1990 (CAA). It is the intent of the Director to adopt these standards by reference. These standards require facilities with municipal solid waste landfill emissions exceeding 50 megagrams per year (approximately 55.12 tons) to install an air pollution control system within 2.5 years. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The proposed rule is required to control air pollutant emissions from municipal solid waste landfills pursuant to section 111 of the federal Clean Air Act of 1990. USEPA promulgated the New Source Performance Standard (Subpart WWW) and Emission Guidelines (Subpart Cc) for municipal solid waste landfills on March 12, 1996. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

W. Va. Code §22-1-3 in conjunction with W. Va. Code §22-1-3a requires, in part, the Director of the Division of Environmental Protection, to determine if a new or amended environmental provision should be the same in substance as a counterpart federal regulation. If the new rule should be the same in substance, as the counterpart federal regulation, then the Director shall incorporate by reference, to the greatest extent possible, the federal counterpart rule. If the Director determines the rule should not be the same in substance as the federal counterpart rule, then the Director shall file a statement

setting forth the difference between the proposed rule and the counterpart federal regulation. W. Va. Code §22-1-3a requires the Director to conduct the "stringency" determination and provide specific reasons for deviation of the proposed state rule from the federal counterpart regulation.

The Director hereby finds there is justification for 45 CSR 23 to be more stringent in some respects than the federal regulation. This finding is based upon the following reasons:

1. The more stringent record keeping standard of the proposed state rule requires municipal solid waste landfills to keep records on-site. The federal counterpart allows facilities to keep records off-site provided those records can be retrieved within 4 hours. While technically more stringent, on-site record keeping will reduce the burden of compliance on a landfill operator who could otherwise be required to leave work and return with the requested records within 4 hours. The more stringent record keeping standard is reasonably necessary to protect, preserve, and enhance the quality of West Virginia's environment and human health, to-wit:

a. The examination of records is the primary means of ensuring compliance with emission standards. This standard is less enforceable when an inspector does not have ready access to those records. As a consequence, West Virginia's environment would suffer from possible emission standard violations - undetected due to the difficulty in obtaining records.

b. The majority of industries regulated by the Office of Air Quality are required to keep records on-site. Inconsistency in applying this requirement from one industry to the next increases the likelihood that the private sector will misunderstand environmental requirements. This confusion increases the risk that environmental standards will not be met and that West Virginia's environment will be harmed.

c. Environmental protection officers will be forced to inspect fewer facilities if they must wait 4 hours before reviewing record keeping. The quality of West Virginia's environmental protection effort is diminished as fewer industrial facilities are inspected. A less effective environmental enforcement program results in increased risk to West Virginia's environment and human health.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION
ADVISORY COUNCIL:**

At their July 2, 1997 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule - there were no substantive changes as a result of their discussion. (See attached minutes of that meeting.)

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 2, 1997 - Office of Air Quality's Conference Room

The seventh meeting of the DEP Advisory Council was held July 2, 1997 in the Office of Air Quality's Conference Room in Charleston. The meeting was called to order at 1:00 p.m. by Chairman Jack Caffrey.

Attending:

Advisory Council Members:

Jack Caffrey, Chairman
Jacqueline Hallinan
Larry Harris
Martha Moore
William Raney
Rick Roberts
William Samples

DEP:

Mark Scott	John Johnston
Cap Smith	John Benedict
Mike Dorsey	Lucy Pontiveros
Russ Hunter	Karen Watson
Ted Streit	
Gene Coccari	

Discussion:

1. Review minutes of May 5, 1997 meeting.

The minutes of the May 5 meeting were approved without amendment.

2. Review Proposed DEP Rules.

In accordance with WV Code §22-1-3(c) which requires the Director of the Division of Environmental Protection to consult with the Advisory Council members prior to proposing any new rule (or amendments to a rule), the following rules were presented to the members. Mark Scott told the Council members that if they have comments concerning the amendments to the rules they will be made part of the rule package when it is filed with Legislative Rule-Making and the Secretary of State's Office August 1. The Council members may also submit written comments to Carrie Chambers until the close of each respective public hearings. These will also be made part of the rule package when filed.

a) Office of Mining and Reclamation - 38CSR2 "Surface Mining Reclamation Rule":

Russ Hunter, Counsel for OMR, explained the proposed amendments to the Surface Mining Rule. He said the amendments mainly relate to four areas: 1) to allow for coal removal incidental to commercial development of real estate; 2) remining provisions; 3) special reclamation costs; and 4) ownership and control issues.

Gene Coccari, Manager of the Ownership and Control Unit in the Office of Mining and Reclamation, briefed Council members on amendments to that section of the rule. He explained that the proposed state rules appear to be more stringent than the interim federal rule currently in place in that the proposed rules allow DEP to link and block parent companies of permittee, which is not specifically addressed in the federal rule.

b) Office of Waste Management - 33CSR20 "Hazardous Waste Management Rule":

Mike Dorsey, Office of Waste Management, explained that the Hazardous Waste rule is updated annually to reflect changes in the federal regulations and were not substantive changes. He said there are two other amendments in the rule: 1) the appendix that currently contains a synopsis of the small quantity generator rule has been eliminated; and 2) a change in the groundwater monitoring requirements for hazardous waste permits (which is being done in conjunction with a change in the groundwater rule). Also, the rule is amended by clarifying what information is to be included in the administrative record of a permit.

In response to a question by Bill Raney, Mike explained that the proposed rule differs from existing federal requirements in three ways: 1) We require all generators of hazardous waste to notify of their activity, EPA does not require conditionally-exempt small quantity generators (CESQGS) to notify; 2) The EPA regulations say that CESQGS can put their wastes into municipal landfills if they are permitted to accept that waste. West Virginia's Solid Waste rule states that no hazardous waste may go into the state's landfills; therefore, none are permitted to accept the waste; and 3) In the permitting requirements, we have given the chief of Waste Management greater latitude in deciding what sampling parameters must be utilized and what frequently may be required at permitted facilities than the federal rule.

c) Office of Oil and Gas: 35CSR1 "Miscellaneous Water Pollution Control Rule"; 35CSR2 "Oil and Gas Operations - Solid Waste Rule"; 35CSR3 "Coalbed Methane Wells Rule"; 35CSR4 "Oil and

Gas Wells and Other Wells Rule"; 35CSR5 "Designation of Future Use and Inactive Status for Oil and Gas Wells Rule"; and 35CSR6 "Abandoned Wells Rule":

Ted Streit, Chief of the Office of Oil and Gas, stated that Series 1 through 6 of the Oil and Gas rules were not part of DEP's 1997 Technical Cleanup Bill. Therefore, they are being filed this session to update code references, provisions that are contrary to current law, office, names, titles, punctuation, etc. There are no substantive changes to these rules.

Ted said two additional oil and gas rules - 38CSR16 "Certification of Gas Wells" and 38CSR14 "Dam Safety" are being repealed. 38CSR16 is being repealed because the underlying state and federal statute that required the agency to classify the wells no longer exists, and 38CSR14 is being repealed and a comparable rule in the Office of Water Resources (47CSR34 - "Dam Safety") enforces dam safety.

d) Office of Air Quality - 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage or Disposal Facilities"; 45CSR33 "Acid Rain Provisions and Permits"; 45CSR44 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"; 45CSR23 "To Prevent and Control Emissions From Municipal Solid Waste Landfills"; and 45CSR7 "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations":

John Johnston, Chief of the Office of Air Quality, presented Air Quality's proposed rule amendments to the Council. He stated that 45CSR25, 45CSR33, and 45CSR34 were amended to incorporate by reference federal requirements that are necessary to keep the program up to date under Title 5, and that they do not contain any substantive changes.

John said the proposed new rule, 45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills" will establish standards of performance and emission guidelines for municipal solid waste landfills. The standards will require facilities with municipal solid waste landfill emissions exceeding approximately 55 tons per year to install an air pollution control system within 2.5 years. These standards will also be adopted by reference. The advisory council inquired about the stringency of the rule, the difference between non-municipal and municipal solid wastes, and if the rule will impact landfills that are closed.

John said the agency filed 45CSR7 - "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations" as an emergency rule on June 27 as authorized in HB 2333. This emergency rule will establish specific emissions performance

standards for pot and marble fiberglass operations, and will only affect one existing fiberglass production facility located in Vienna, Wood County. A counterpart, permanent rule effecting the same amendment, has also been filed.

After discussion of OAQ's rules, John Johnston asked John Benedict, Assistant OAQ Chief, to discuss the ongoing Ozone Transport Assessment Group (OTAG) issue and the outcome of meetings with EPA and other affected states.

The Council members inquired about the non-attainment situation in the Weirton area (and other areas in West Virginia). John Benedict briefly discussed the current status of that situation and the possible EPA-imposed sanctions within one year if West Virginia's SO² and PM¹⁰ SIP are deficient.

The Council members were then briefed by Earl Billingsley of the Air Quality Office on the application by Virginia Power for an opacity variance at their Mt. Storm Power plant.

3) Consideration of issues raised at May 5, 1997 meeting.

(1) Mr. Caffrey informed the Council that DEP will hold a training session for DEP staff on how to more effectively work with the Legislature.

(2) Mark explained that the list of policies and procedures requested by the Council members is in the process of being completed. He distributed a list of policies compiled to date. After a brief discussion, Council requested that Mark provide a list of DEP policies and procedures, the title, effective date, policy number, and the name of DEP's office contact for the Council's review.

(3) Mark updated the Council members on the pay equity issue raised in the last meeting and informed them that DEP's EEO coordinator would be undertaking a more detailed study later this year to clarify if DEP has a problem in this area.

(4) The Council members expressed concern over the TMDL issue and why there was such a change in the ranking of streams between the 1994 and 1996 303(d) lists provided to EPA. Council requested an update on this issue at a future meeting.

4) The following issues were discussed for upcoming meetings:

(1) Regulation of the timbering industry - Mark Scott suggested that Bill Maxey, Director of the Division of Forestry, be invited to attend a future Council meeting to discuss this issue;

- (2) The Legislative agenda for the 1998 Session;
- (3) Presentation by DEP's Manager of Information Services on DEP's one-stop grant and our vision of future computer capabilities;
- (4) Acid mine drainage;
- (5) Valley fills and mountain top removal practices at mining operations;
- (6) Industry's concerns about the Office of Oil and Gas as a regulatory agency;
- (7) Status of the Elkins landfill;
- (8) Corps of Engineers nationwide permits and conditions required by DEP in those permits;
- (9) An update of the Volunteer Remediation and Development program;
- (10) Regulation of chicken waste in the poultry industry in the eastern panhandle;
- (11) DEP's proposed consolidated building; and
- (12) Status of the coal mining mitigation, including council consideration of supporting studies funded by DEP's mitigation fund.

A brief discussion was held concerning date and place of the next Council meeting. Bill Raney suggested incorporating the next meeting with the national AML Conference scheduled at Canaan Valley August 17-20.

The meeting concluded at 4:30 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45 CSR 23 - "To Prevent and Control Emissions From Municipal Solid Waste Landfills"

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
Estimated Total Cost	Increase	Decrease	Current	Next	There-after
	\$ 500	\$ -0-	\$ 1000	\$ 500	\$ 500
Personal Services	500	-0-	1000	500	500
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: "To Prevent and Control Emissions From Municipal Solid Waste Landfills" is a proposed new rule. Most costs anticipated to be incurred in the implementation of Subpart WWW promulgated under 40CFR60 on March 12, 1996 will be covered under prior budget estimates for implementing Title V of the Clean Air Act, as amended, under 45CSR30 authorized by the Legislature during the 1994 session and approved (interim approval) by the U.S. Environmental Protection Agency by Final Rule issued on November 16, 1995. The program cost estimates in Item 1 reflect only those increased costs for state implementation of those newly adopted standards which may affect minor sources. Staff time representing approximately 0.01 FTE is anticipated for the regulation of these additional facilities.

Appendix B
Fiscal Note For Proposed Rules
Page Two

3. Objectives of these rules:

The proposed rule is required to control air pollutant emissions from MSW landfills pursuant to section 111 of the federal Clean Air Act of 1990. USEPA promulgated the NSPS (Subpart WWW) for MSW Landfills on March 12, 1996. The Director intends to adopt associated reference methods, performance specifications and other test methods which are appended to such standards. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended.

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

See Section 2.

B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

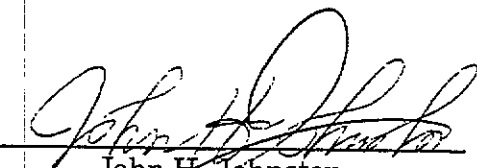
No impact above that from the currently applicable federal requirements.

C. Economic impact on citizens/public at large.

No impact above that from the currently applicable federal requirements.

Date: June 17, 1997

Signature of agency head or authorized representative:


John H. Johnston
Chief, Office of Air Quality

45CSR23

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TITLE 45
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 23
TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS

§45-23-1. General.

1.1. Scope.--This rule establishes standards of performance and emission guidelines for municipal solid waste landfills pursuant to Section 111 of the federal Clean Air Act as amended in 1990 (CAA). It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards.

1.2. Authority.--W.Va. Code §§22-5-1 et seq.

1.3. Filing Date.--

1.4. Effective Date.--

1.5. Incorporate by Reference -- Federal Counterpart Regulation. The Director has determined that a federal counterpart rule exists, in accordance with the Director's recommendation, and with limited exception, this rule incorporates by reference, 40 CFR Part 60 Subpart WWW effective on March 12, 1996.

§45-23-2. Definitions.

2.1. Definitions of all terms used, but not defined in this subsection, shall have the meaning given them in 40 CFR Part 60 Subpart WWW, as amended. Terms not defined therein shall have the meaning given to them in the federal Clean Air Act, 40 CFR Subparts A and B, or this Rule.

2.2. "Administrator" shall mean the Administrator of the United States Environmental Protection Agency or his or her designated representative.

2.3. "Director" shall mean the Director of the West Virginia Division of Environmental Protection or his or her designated representative.

2.4. "Existing" shall mean each MSW landfill that commenced construction, reconstruction or modification before May 30, 1991 and has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition. Physical or operational changes made to an existing MSW landfill solely to comply with this rule shall not subject that landfill to the requirements of section 3.2.

2.5. "Municipal solid waste landfill" or "MSW landfill" shall mean an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (40 CFR §257.2) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator

waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

2.6. "Municipal solid waste landfill emissions" or "MSW landfill emissions" shall mean gas generated by the decomposition of organic waste deposited in a MSW landfill or derived from the evolution of organic compounds in the waste.

2.7. "New" shall mean each MSW landfill that commenced construction, reconstruction, or modification or began accepting waste on or after May 30, 1991.

2.8. "NMOC", 'Non Methane Organic Compounds' shall mean nonmethane organic compounds, as measured according to the provisions of 40 CFR 60.754.

§45-23-3. Requirements.

3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, modified, or operated a MSW landfill which results in a violation of this rule.

3.2. Each new MSW landfill shall comply with all of the applicable standards, requirements and provisions of 40 CFR Part 60 Subpart WWW, as amended including any reference methods, performance specifications and other test methods associated with Subpart WWW, which are herein incorporated by reference with the exceptions as follows:

3.2.a. In lieu of 40 CFR 60.758(a), the following provision applies: Each owner or operator of a MSW landfill subject to the provisions of 40 CFR 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, surface monitoring design plan, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Either paper copy or electronic format records are acceptable.

3.3. Each existing MSW landfill shall comply with all of the applicable standards, requirements and provisions of 40 CFR Part 60 Subpart WWW, as amended including any reference methods, performance specifications and other test methods associated with Subpart WWW, which are herein incorporated by reference with the exceptions as follows:

3.3.a. §40-60.750

3.3.b. In lieu of 40 CFR 60.752(b)(2)(i)(B), the following provision applies: The collection and control system design plan shall include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, record keeping or reporting provisions of 40 CFR 60.753 through 40 CFR 60.758 proposed by the owner or operator. In addition, the collection and control design plan must specify:

3.3.b.1. The date by which contracts for control system/process modifications shall be awarded, (which shall be no later than 20 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).

3.3.b.2. The date by which on-site construction or installation of the air pollution control device(s) or process changes will begin (which shall be no later than 24 months after the date the NMOC emission rate is first

calculated to meet or exceed 50 megagrams per year).

3.3.b.3. The date by which the construction or installation of the air pollution control device(s) or process changes will be complete (which shall be no later than 30 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).

3.3.b.4. The date by which the MSW landfill will achieve compliance with 40 CFR 60.753 (which shall be no later than 32 months [except where 40 CFR 60 indicates otherwise] after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).

3.3.c. In lieu of 40 CFR 60.752(b)(2)(ii), the provisions of paragraphs 1. and 2. below shall apply.

3.3.c.1. Install a collection and control system that effectively captures the gas generated within the landfill as required by 40 CFR 60.752(b)(2)(i) within 30 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year, unless Tier 2 or Tier 3 calculations demonstrate that the NMOC emission rate is less than 50 megagrams per year, as specified in 40 CFR 60.757(c)(1) or (2).

3.3.c.2. The provisions of 40 CFR 60.752(b)(2)(ii)(A) and (B) apply as stated therein.

3.3.d. In lieu of 40 CFR 60.757(a)(1) the following provision applies: The initial design capacity report shall be submitted by the effective date of this rule plus 90 days.

3.3.e. In lieu of 40 CFR 60.757(b)(1)(i), the following provision applies: The initial NMOC emission rate report shall be submitted by the effective date of this rule plus 90 days and may be combined with the initial design capacity report required in 40 CFR 60.757(a). Subsequent NMOC emission rate reports shall be submitted annually, thereafter, except as provided for in 40 CFR 60.757(b)(1)(ii) and 40 CFR 60.757(b)(3).

3.3.f. In lieu of 40 CFR 60.758(a), the following provision applies: Each owner or operator of a MSW landfill subject to the provisions of 40 CFR 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, surface monitoring design plan, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Either paper copy or electronic format records are acceptable.

§45-23-4. Director.

4.1. Any and all references in 40 CFR Part 60 to the "Administrator" are amended to be the "Director" except in the following references which shall remain "Administrator." as follows:

4.1.a. Where the federal regulations specifically provide that the Administrator shall retain authority and not transfer such authority to the State.

4.1.b. Where provisions occur which refer to:

- 4.1.b.1. alternate means of emission limitations
- 4.1.b.2. alternate control technologies
- 4.1.b.3. innovative technology waivers
- 4.1.b.4. alternate test methods
- 4.1.b.5. alternate monitoring methods
- 4.1.b.6. waivers/adjustments to record keeping and reporting
- 4.1.b.7. applicability determinations
- 4.1.c. where the context of the regulation clearly requires otherwise.
- 4.1.d. Part 60.752(b)(2)(i)
- 4.1.e. Part 60.752(b)(2)(i)(C)
- 4.1.f. Part 60.752(b)(2)(i)(D)
- 4.1.g. Part 60.757(c)

§45-23-5. Permits.

5.1. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way limited or inapplicable with the exception as follows:

5.1.a. A control system installed at a MSW landfill solely to comply with this rule and 40 CFR 60.752(b)(2)(iii), shall not be defined as a stationary source under §45-13-2.25.a. for purposes of applicability of §45-13 permit requirements.

§45-23-6. Inconsistency Between Rules.

6.1. In the event of any inconsistency between this rule and any other existing rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.



DIVISION OF ENVIRONMENTAL PROTECTION

CECIL H. UNDERWOOD
GOVERNOR

1558 Washington Street East
Charleston, WV 25311-2599

JOHN E. CAFFREY
DIRECTOR

June 16, 1997

Ms. Robin Clark
Charleston Newspapers
Legal Ad Department
1001 Virginia Street, East
Charleston, WV 25301

Dear Ms. Clark:

Please publish the attached "Notice of Public Hearing and Public Comment Period" as soon as possible as a Class I legal advertisement. The publication must occur no later than Friday, June 20, 1997 and must not be published on Sunday as a matter of law. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

John H. Johnston
John H. Johnston
Chief, Office of Air Quality

JHJ/tlm

Enclosure

Office of Air Quality
Phone: (304) 558-4022 Fax: (304) 558-3287

NOTICE OF PUBLIC HEARING AND
PUBLIC COMMENT PERIOD

On Monday, July 21, 1997 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on proposed revisions to the following legislative rules:

- | | |
|----------------|--|
| <u>45CSR23</u> | "To Prevent and Control Emissions from Municipal Waste Solid Landfills" |
| <u>45CSR25</u> | "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities" |
| <u>45CSR33</u> | "Acid Rain Provisions and Permits" |
| <u>45CSR34</u> | "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63" |

Upon authorization and promulgation of revisions to 45CSR33 and 45CSR34, the Office of Air Quality will seek federal delegation of authority from the U. S. Environmental Protection Agency to implement and enforce the revised standards.

Upon authorization and promulgation of revisions to 45CSR23 and 45CSR25, the rule will be submitted to the U. S. Environmental Protection Agency as part of the State Hazardous Waste Management Program.

The hearing will be held in the Office of Air Quality's Conference Room located at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral comments by the public will be accepted during the hearing on July 21st and will be made a part of the rulemaking record. The public may also submit written comments by mail or other delivery to the Office of Air Quality through July 21st for inclusion in the rulemaking record at the following address:

John Johnston, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 19, 1997 at the Office of Air Quality's Charleston office. The proposed legislative rules will also be available for public review on or before June 19, 1997 at the Office of Air Quality's regional offices located at 109 Adams Street, Room M-2, Fairmont; 1911 Warwood Avenue, Wheeling; and New Creek, WV.



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State of West Virginia.

AFFIDAVIT OF PUBLICATION

I, Danica Leary of
THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,
THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,
published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:
PUBLIC HEARING
was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County
West Virginia, on the 20TH day of JUNE 1997. Published during the following dates: 06/19/97-06/19/97
Subscribed and sworn to before me this 23 day of June
Printers fee \$ 91.38

Notary Public of Kanawha County, West Virginia

NOTICE OF HEARING AND PUBLIC COMMENT PERIOD

On Monday, July 21, 1997
beginning at 6:00 p.m., the
West Virginia Division of En-
vironmental Protection, Of-
fice of Air Quality will hold a
public hearing on proposed
revisions to the following leg-
islative rules:

45CSR23 "To Prevent and
Control Emissions from Mu-
nicipal Waste Solid Land-
fills"

45CSR25 "To Prevent and
Control Air Pollution From
Hazardous Waste Treatment,
Storage, or Disposal Facili-
ties"

45CSR33 "Acid Rain Provi-
sions and Permits"

45CSR34 "Emission Stan-
dards for Hazardous Air Pol-
lutants Pursuant to 40 CFR
Part 63"

Upon authorization and
promulgation of revisions to
45CSR33 and 45CSR34, the Of-
fice of Air Quality will seek
federal delegation of authori-
ty from the U.S. Environ-
mental Protection Agency to
implement and enforce the
revised standards.

Upon authorization and
promulgation of revisions to
45CSR23 and 45CSR25, the
rule will be submitted to the
U.S. Environmental Protec-
tion Agency as part of the
State Hazardous Waste Man-
agement Program.

The hearing will be held in
the Office of the Air Quality's
Conference Room located at
1558 Washington Street East,
Charleston, West Virginia.
The hearing is open to the
public. Written and oral com-
ments by the public will be
accepted during the hearing
on July 21st and will be made
a part of the rulemaking re-
cord. The public may also
submit written comments by
mail or other delivery to the
Office of Air Quality through
July 21st for inclusion in the
rulemaking record at the fol-
lowing address:

John Johnston
Office of Air Quality
1558 Washington Street, E.
Charleston, WV 25311-2599

Copies of the proposed leg-
islative rules will be avail-
able for public review on or
before June 19, 1997 at the Of-
fice of Air Quality's Charles-
ton office; the proposed legis-
lative rules will also be avail-
able for public review on or
before June 19, 1997 at the Of-
fice of Air Quality's regional
offices located at 109 Adams
Street, Room M-2, Fairmont;
Warwood Avenue, Wheeling;
and New Creek, WV.

(37133)

The items listed herein conform to specification, were received and approved for payment.
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Division of Environmental Protection

Sign-In

Hearing on 45CSR23, 45CSR25,
45CSR33, & 45CSR34

Name (please print)

Address

July 21, 1997

1. JOHN JOHNSTON	WVDEP - OAG
2. STEPHEN L. CARPENTER	" "
3. Karen Watson	" "
4. Lucy Pontiveros	" "
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BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

ORIGINAL

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 23 "To Prevent and Control Emissions from
Municipal Solid Waste Landfills"

Transcript of proceedings had at a public hearing in the above-styled matter taken by Paula J. Moore, Certified Court Reporter and Notary Public, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 1558 Washington Street, East, Charleston, West Virginia, 25305, commencing at 6:00 p.m. and concluding at 6:05 p.m., on the 21st day of July 1997, pursuant to notice.



1 **P R O C E E D I N G S**

2 MS. CHANDLER: This public hearing will
3 now come to order on this 21st day of July, 1997, in the
4 conference room of the West Virginia Division of
5 Environmental Protection, Office of Air Quality, located
6 at 1558 Washington Street, East, Charleston, West
7 Virginia.

8 The purpose of the public hearing is to
9 hear discussions on the proposed rules filed in the
10 Secretary of State's Office on June 17, 1997 and noticed
11 in the State Register on June 19, 1997. The legislative
12 rules are 45 CSR 23, 45 CSR 25, 45 CSR 33 and 45 CSR 34.
13 The rules were noticed in a Class I legal advertisement in
14 both the Charleston Daily Mail and Charleston Gazette, and
15 notice was also sent to various individuals and
16 organizations. This public hearing is being held pursuant
17 to the provisions of 29A of the West Virginia Code and
18 Section 110 of the Clean Air Act.

19 By way of introduction, my name is Jeanne
20 Chandler of the Public Information Office of the West
21 Virginia Division of Environmental Protection. I will be
22 the moderator for these proceedings.

23 In order to obtain separate transcripts

1 for each of the rules, the hearing procedure this evening
2 will be to introduce each rule individually, allow time
3 for oral comments and close the hearing for that
4 particular rule. Written comments for any rule may be
5 submitted at the end of the public hearing tonight.

6 For those of you wishing to make formal
7 comments, a sign-up sheet was provided on the counter at
8 the front desk. Please sign up now if you have not
9 already done so. I remind you that the comment period
10 will end at the close of the public hearing.

11 The court reporter is Paula J. Moore,
12 Q & A Court Reporters, Incorporated. If anyone desires a
13 transcript of these proceedings, please contact Ms. Moore
14 at 937-2555.

15 The purpose of the public hearing is to
16 hear discussions on proposed rule 45 CSR 23, "To Prevent
17 and Control Emissions from Municipal Solid Waste
18 Landfills." This rule establishes standards of
19 performance and emission guidelines for municipal solid
20 waste landfills pursuant to Section 111 of the federal
21 Clean Air Act, as amended in 1990.

22 It is the intent of the Director to adopt
23 these standards by reference. These standards require

1 facilities with municipal solid waste landfill emissions
2 exceeding 50 megagrams per years, approximately 55.12
3 tons, to install an air pollution control system within
4 two and a half years. It is also the intent of the
5 Director to adopt associated reference methods,
6 performance specifications and other test methods which
7 are appended to such standards.

8 The proposed rule is required to control
9 air pollutant emissions from municipal solid waste
10 landfills pursuant to Section 111 of the federal Clean Air
11 Act of 1990. The United States Environmental Protection
12 Agency promulgated the New Source Performance Standard
13 (Subpart WWW) and Emission Guidelines (Subpart Cc) for
14 municipal solid waste landfills on March 12, 1996.
15 Promulgation of this rule by the Legislature is necessary
16 for the State to fulfill its responsibilities under the
17 Clean Air Act, as amended.

18 Upon authorization and promulgation of
19 revisions to 45 CSR 23, the rule will be submitted to the
20 United States Environmental Protection Agency as part of
21 the State Hazardous Waste Management Program.

22 The floor is now open for any public
23 comment. Please identify yourself and affiliation, if

1 any, prior to making comments.

2 (No public comment.)

3 There being nothing further, this public
4 meeting for 45 CSR 23 is concluded.

5 (WHEREUPON, the public hearing
6 was concluded at 6:05 p.m.)

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

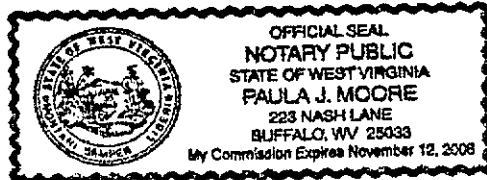
STATE OF WEST VIRGINIA,
COUNTY OF PUTNAM, to-wit:

I, the undersigned, Paula, J. Moore, a
Certified Court Reporter and Notary Public within and for
the State of West Virginia, duly commissioned and
qualified, do hereby certify that the foregoing is, to the
best of my skill and ability, a true and accurate
transcript of all the proceedings had in the
aforementioned matter.

Given under my hand and official seal this
24th day of July 1997.

Paula J. Moore

Certified Court Reporter
Notary Public



My commission expires November 12, 2006.



Original - Tammy
Copy - John F.
Kallen
Lucy
7/17/97 sfa

U.S. ENVIRONMENTAL PROTECTION
AGENCY
OFFICE OF AIR QUALITY

BROWNING-FERRIS INDUSTRIES

AMT JUL 16 P 1:41

RECEIVED

July 2, 1997

John H. Johnston, Chief
Office of Air Quality
1558 Washington Street, East
Charleston, West Virginia 25311

RE: Proposed Legislative Rule to Prevent and Control Emissions
From Municipal Solid Waste Landfills

Dear Mr. Johnston:

Browning-Ferris Industries ("BFI") appreciates the opportunity to comment on the above-referenced proposed regulation.

We support the incorporation into the West Virginia rules of the EPA's NSPS and the Section 111(d) emission guidelines for municipal solid waste landfills. However, we believe that the Division should examine the extent to which all such landfills are appropriately regulated. The reason for our recommendation is simple--an expansion of the scope of the Federal NSPS/EG to encompass "smaller" landfills is arguably an important step toward ensuring that landfill emissions are appropriately regulated. Protective yet reasonable emission criteria for the "smallest" landfills--those that are not required to install collection and emission reduction equipment pursuant to the Federal standards--are arguably necessary to ensure that such facilities operate in a manner that is protective of human health and the environment and to avoid the disparate and discriminatory impacts that would result from the imposition of environmentally protective standards exclusively upon competing facilities, including those municipal solid waste landfills and incinerators that are regulated pursuant to the EPA standards.

The need to prevent discrimination in the application of the regulatory requirements to facilities that dispose or incinerate municipal solid waste is another justification for the promulgation of standards that extend effective air pollution control requirements to "smaller" landfills. Both "larger" municipal solid waste landfills and "larger" incinerators are subject to specific, environmentally protective emission standards. However, in the absence of a revision to the proposed standards, the smallest landfills will not, and those facilities will place regulated entities at a distinct competitive disadvantage. The Equal Protection Clause of the fourteenth amendment of the U.S. Constitution provides that "(n)o state shall. . .deny to any person

within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, Section 1.

One century ago, the first Justice Harlan admonished this Court that the Constitution "neither knows nor tolerates classes among citizens." Unheeded then, those words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake. The Equal Protection Clause enforces this principle. . . .¹

With these words, Justice Kennedy, joined by Justices Stevens, O'Connor, Souter, Ginsburg, and Breyer, began the majority opinion in Romer v. Evans. The Court invalidated a Colorado constitutional provision which preempted any ordinances enacted by political subdivisions that sought to prohibit "discrimination on the basis of 'homosexual, lesbian or bisexual orientation, conduct, practices, or relationships.'"² The Court's decision was, not surprisingly, greeted with applause by human rights organizations³ and with derision by others.⁴ Romer is, to many, a victory for fundamental fairness and common sense. Some commenters have suggested that the majority opinion is rich in emotion and rhetoric but short on reasoning.⁵ It would, however, be a mistake to

¹ Romer v. Evans, 1996 U.S. LEXIS 3245 (U.S. May 20, 1996) (citing Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (dissenting opinion)). The Equal Protection Clause of the U.S. Constitution provides that "(n)o state shall. . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, sec. 1.

² Id. (citing Colo. Const., Art. II, Sec. 30b).

³ See, e.g., A Battle, Not the War, Newsweek, June 3, 1996, at 25 (quoting Elizabeth Birch, Executive Director of the Human Rights Campaign, as stating that "I thought of Thurgood Marshall and all of the civil-rights lawyers who struggled to achieve Brown v. Board of Education"); Court: 'Animus' in Colo. Gay Law, National Law Journal, June 3, 1996, at A11.

⁴ Id.

⁵ See, e.g., Newsweek, supra note 3, at 30 ("The majority opinion of Justice Anthony Kennedy--a Reagan appointee--is emotional and grand. He opened with a quote from Justice Marshall Harlan's impassioned dissent 100 years ago in Plessy v. Ferguson, the infamous ruling upholding 'separate but equal' for blacks and whites. . . . The problem is that Kennedy's opinion reads more like a political manifesto than a piece of judicial reasoning. Americans have faith in the Supreme Court because they believe it is neutral, something more than the gut feeling of nine well-connected lawyers.")

classify Romer as a narrow "politically correct" aberration, or to suggest that the Court did not intend to espouse generally applicable principles for equal protection jurisprudence. Indeed, as others have noted, "in the long run, Romer v. Evans may do as much to restrict government as to help homosexuals."⁶

Putting the "Bite" Back Into Rational Basis Review

Perhaps the most significant aspect of Romer is the Court's willingness to emphatically reject, using the most deferential standard of review under the Equal Protection Clause--the so-called "rational basis test"--purportedly non-discriminatory justifications offered by governmental defendants. Historically, the Supreme Court and lower federal courts have emphasized that "a state classification scheme that does not rely on suspect or 'quasi-suspect' classifications and does not infringe upon fundamental rights",⁷ is subject to a deferential "rational basis" review. When the rational basis standard is applicable, the activity in question satisfies the Equal Protection Clause if it "is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy."⁸ Moreover, in several decisions the Court has held that, in the words of the Tenth Circuit, "(i)t is well settled that economic and social legislation generally is presumed valid."⁹

⁶ Homosexuals: A Victory for Rationality, The Economist, May 25, 1996, at 30.

⁷ LaFrance, Constitutional Implications of Acquisition-Value Real Property Taxation: The Elusive Rational Basis, 1994 Utah L. Rev. 817, 829-833 (1994).

⁸ Allegheny Pittsburgh Coal Co. v. County Comm'n, 488 U.S. 336, 344 (1989).

⁹ Oklahoma Educ. Ass'n v. Alcoholic Beverage Laws Enforcement Comm'n, 889 F.2d 929, 932 (10th Cir. 1989). See FCC v. Beach Communications, Inc., 113 S. Ct. 2096 (1993); United States R.R. Retirement Bd. v. Fritz, 449 U.S. 166 (1980); City of New Orleans v. Dukes, 427 U.S. 297 (1976). In Beach Communications, the Court "stated that a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against any equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification". Annotation, Government Regulation of Telecommunications as Violating Equal Protection Under Federal Constitution--Supreme Court Cases, 124 L. Ed. 2d 703, 712. See also Buchanan, A Very Rational Court, 30 Hou. L. Rev. 1509 (1993).

Traditionally, except in instances in which the governmental classification infringes upon a fundamental right¹⁰ or a "suspect" or "semi-suspect" class¹¹ courts have merely sought to determine whether the governmental activity "bears a rational relationship to legitimate legislative goals."¹² The "standard of review is typically quite deferential; legislative classifications are 'presumed to be valid', largely for the reason that the 'drawing lines that create distinctions is peculiarly a legislative task and an unavoidable one.'"¹³

Rational basis review has been viewed as prohibiting "the judiciary sit(ting) as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines."¹⁴ Indeed, as Justice Marshall once noted, previous courts did not hesitate to "dream up rational bases".¹⁵ It is not surprising, accordingly, that commenters have largely agreed that rational basis review authorizes courts to act as "little more than lunacy commissions".¹⁶ Increased reliance upon state constitutional provisions seemed to be the only way to ensure that claims involving economic impacts and non-suspect classifications would be

¹⁰ Such as the right to travel and to vote, see, e.g., Dunn v. Blumstein, 405 U.S. 330 (1972); Shapiro v. Thompson, 394 U.S. 618 (1969).

¹¹ Note, Impermissible Purposes and the Equal Protection Clause, 86 Colum. L. Rev. 1184 (1986).

¹² Califano v. Jobst, 434 U.S. 47, 53-54 (1977). See also Weinberger v. Salfi, 422 U.S. 749 (1975).

¹³ Lyng v. International Union, 485 U.S. 360, 370 (1988) (citing Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307 (1976)); Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483 (1955); Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952).

¹⁴ Heller v. Doe, 113 S. Ct. 2637, 2642 (1993) (quoting City of New Orleans v. Dukes, 427 U.S. 297, 303 (1976)).

¹⁵ Dandridge v. Williams, 397 U.S. 471, 520 (1970) (Marshall, J., dissenting).

¹⁶ Aman, Administrative Law in a Global Era: Progress, Deregulatory Change, and the Rise of the Administrative Presidency, 73 Cornell L. Rev. 1101, 1129-30 & n.135 (1988); Sunstein, Naked Preferences and the Constitution, 84 Colum. L. Rev. 1689, 1696 (1984) ("The Supreme Court demands only the weakest link between a public value and the measure in question, and it is sometimes willing to hypothesize legitimate ends not realistically attributable to the enacting legislature.").

scrutinized with any degree of rigor.¹⁷ Romer may have the impact of elevating equal protection analysis and could have a significant impact upon environmental laws and regulations that differentiate between otherwise similarly situated groups.

The Romer Court, to the delight of many opponents of the Colorado provision--who had, assuming that non-suspect class review would not be helpful to their cause, urged the Court to apply a more exacting standard¹⁸--invalidated the measure by applying the rational basis test. While the majority had no need to determine whether homosexuals comprise a suspect or semi-suspect class, the justices did not hesitate to reject every purportedly "rational" defense proffered by the State and the dissenting justices. The degree of judicial independence demonstrated by the Court and its unwillingness to accept, as dispositive, any "non-crazy" justification for the governmental classification is striking. Romer is, therefore, not simply a victory for gay rights advocates--it is an unequivocal and triumphant return to the "rational basis with bite" approach that briefly surfaced in the early 1980's and had its high-water mark with the the Court's 1985 opinion in City of Cleburne v. Cleburne Living Center.¹⁹

¹⁷ See, e.g., Enrich, Leaving Equality Behind: New Directions in School Finance Reform, 48 Vand. L. Rev. 100 (1995); Iijima, Minnesota Equal Protection in the Third Millennium: "Old Formulations" or "New Articulations"?, 20 Wm. Mitchell L. Rev. 337 (1994); Berry, Equal Protection--The Louisiana Experience in Departing From Generally Accepted Federal Analysis, 49 La. L. Rev. 903 (1989); Williams, Equality Guarantees in State Constitutional Law, 63 Tex. L. Rev. 1195 (1985); Note, Developments in the Law: The Interpretation of State Constitutional Rights, 95 Harv. L. Rev. 1324 (1982); Note, To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation, 75 Va. L. Rev. 1639 (1989).

¹⁸ For pre-Romer v. Evans evaluations of the need and desirability of a finding that laws that discriminate against homosexuals are deserving of high or intermediate-level scrutiny, see, e.g., Baggert, Constitutional Law--Suspect Class Status and Equal Access to the Political Process Under the Equal Protection Clause of the Fourteenth Amendment--Laws Precluding Anti-Discrimination Legislation for Homosexuals, 63 Tenn. L. Rev. 239 (1995); Chrisman, Evans v. Romer: An "Old" Right Comes Out, 72 Den. U.L. Rev. 519 (1995); Zamansky, Colorado's Amendment 2 and Homosexuals' Right to Equal Protection of the Law, 35 B.C. L. Rev. 221 (1993); Culverhouse & Lewis, Homosexuality as a Suspect Class, 34 S. Tex. L. Rev. 205 (1993).

¹⁹ 473 U.S. 432 (1985).

In several opinions issued during the 1980's, the Court applied the rational basis test to invalidate state and local classifications with economic impacts.²⁰ In Metropolitan Life Ins. Co. v. Ward,²¹ the Court applied the Equal Protection Clause to invalidate an Alabama statute that imposed a differential tax on out-of-state insurance companies, although the tax did not implicate strict scrutiny review. The Court rejected the State's assertions that the tax provided a needed source of income and that other non-discriminatory reasons justified the levy. Likewise, the Court struck down an Alaska program that sought to allocate income from mining on the basis of duration of residency,²² a tax on automobiles that were purchased in another jurisdiction,²³ a tax exemption for certain veterans of the Vietnam conflict,²⁴ and civil service benefits that were preferentially distributed to veterans.²⁵

In Cleburne, the Court rejected a zoning determination that denied a special use permit to the operator of a proposed group home for the handicapped. In these cases, the Court, while applying rational basis scrutiny, either repudiated or ignored the justifications advanced (whether concocted before or subsequent to the action in question) and utilized what some commenters termed "rational basis with bite" review.²⁶ Several post-Cleburne decisions by lower Federal courts likewise demonstrated that judges would purposefully review governmental classifications and reach

²⁰ See, e.g., Note, Constitutional Law: The Rational Basis Guessing Game, 25 U. Memphis L. Rev. 329 (1994).

²¹ 407 U.S. 869 (1985).

²² Zobel v. Williams, 457 U.S. 55 (1982).

²³ Williams v. Vermont, 472 U.S. 14 (1985).

²⁴ Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985).

²⁵ Attorney Gen. v. Soto-Lopez, 476 U.S. 898 (1986).

²⁶ See, e.g., Mauro, Commercial Speech After Posadas and Fox: A Rational Basis Wolf in Intermediate Sheep's Clothing, 66 Tul. L. Rev. 1931 (1992); Tabari, Equal Protection and Rational Basis Analysis, 12 Harv. J. of Law & Public Policy 235 (1992); Pettinga, Rational Basis With Bite: Intermediate Scrutiny By Any Other Name, 62 Ind. L.J. 779 (1987); Note: A Changing Equal Protection Standard? The Supreme Court's Application of a Heightened Rational Basis Test, 20 Loy. L.A. L. Rev. 921 (1987); Note, Rational Basis With a Bite?, 20 U.S.F. L. Rev. 927 (1986).

independent determinations of their reasonableness and effectiveness.²⁷

Shortly thereafter, however, the "new" rational basis standard turned out to be mostly bark. In a series of decisions, culminating in the 1993 decisions in Heller v. Doe²⁸ and FCC v. Beach Communications, Inc.²⁹ the Supreme Court, while never rejecting the rationale of the Cleburne line or the notion of "rational basis with bite", seemed to roll back the equal protection carpet. In Heller, the Court declared that "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data."³⁰ In Beach Communications, the Court ignored the existence of First Amendment concerns in a case involving the regulation of satellite antenna systems by holding that "equal protection is not a license for courts judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenges if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."³¹

Both courts made clear that economic classifications--i.e., those state and local actions that had primarily a fiscal impact--should in the absence of a fundamental right or suspect group involvement be reviewed through the rational basis approach. And several lower courts signaled their dissatisfaction with independent judicial review by noting, in the words of the Seventh Circuit, that a determination is not irrational even if it is "opposed by argument and opinion of serious strength."³²

²⁷ See, e.g., Sullivan v. City of Pittsburgh, 811 F.2d 171 (3d Cir.), cert. denied, 108 S. Ct. 148 (1987); Phan v. Commonwealth of Va., 806 F.2d 516 (4th Cir. 1986); Coburn v. Agustin, 627 F. Supp. 983 (D. Kan. 1985); Oklahoma Broadcasters Ass'n v. Crisp, 636 F. Supp. 978 (W.D. Okla. 1985).

²⁸ 113 S. Ct. 2637 (1993).

²⁹ 113 S. Ct. 2096 (1993).

³⁰ 113 S. Ct. at 2643.

³¹ 113 S. Ct. at 2101.

³² Northside Sanitary Landfill v. Indianapolis, 902 F.2d 521, 523 (7th Cir. 1990) (citing Rast v. Van Deman & Lewis Co., 240 U.S. 342, 357 (1916)). See also Familystyle of St. Paul v. City of St. Paul, 923 F.2d 91 (8th Cir. 1991).

Environmental laws and regulations have traditionally been reviewed pursuant to the highly deferential strand of rational basis review. For example, in Mannington Mills, Inc. v. Shinn,³³ District Judge Ireanas--in whose court a lawsuit regarding the constitutionality, under the Commerce Clause, of New Jersey's municipal solid waste flow control system is pending³⁴--rejected an allegation that the pursuit of a site remediation mandate by the New Jersey Department of Environmental Protection was improper. The plaintiff unsuccessfully argued that the Equal Protection Clause was transgressed because the Department's decision to pursue remediation was based largely upon the apparent ability of the defendant to pay for the cleanup, rather than the actual extent of contamination as compared to other sites. The court emphasized that "(w)hile environmental cleanup should to some extent be based on the level of environmental contamination at a site, it may be based on other factors as well. The Equal Protection Clause does not require the government to regulate at a level of 'mathematical nicety.'"³⁵ The rational basis test has been applied in other "selective enforcement" contexts to justify prosecutorial discretion.³⁶ Facial challenges to state and local environmental laws and regulations have typically met with the same fate.³⁷ These decisions, whether pre- or post-Cleburne, have largely accepted any articulated justification, no matter how seemingly fanciful or ad hoc, for the classification in question.

³³ 877 F. Supp. 921 (D.N.J. 1995).

³⁴ See, e.g., Turner, The Flow Control of Solid Waste and the Commerce Clause: Carbone and its Progeny, 7 Vill. Env. L.J. 701 (1996).

³⁵ Id. (citing Lindsley v. National Carbonic Gas Co., 220 U.S. 61, 78 (1911)). The court also referred to Hameetman v. City of Chicago, 776 F.2d 636 (7th Cir. 1985), in which the Seventh Circuit opined that "(t)he Constitution does not require states to enforce their laws. . . with Prussian thoroughness as the price of being allowed to enforce them at all. . . . Selective, incomplete enforcement of the law is the norm in this country."

³⁶ See, e.g., State of Texas v. Malone Service Co., 829 S.W.2d 763 (Tex.), cert. denied, 113 S. Ct. 464 (1992); Dept. of Env't'l Prot. v. Lewis, 215 N.J. Super. 564, 522 A.2d 585 (1987); City of Peekskill v. Williams, 124 A.D.2d 584, 507 N.Y.S.2d 730 (1986); Medusa Corp. v. Commonwealth Dep't of Env. Res., 415 A.2d 105, 110 (Pa. Cmwlth. 1980); Frame Factory, Inc. v. Dept. of Ecology, 21 Wash. App. 50, 583 P.2d 660 (1978).

³⁷ Examples include Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981), which involved the constitutionality of a Minnesota law governing the sale of non-recycled plastic containers.

The Romer majority had the opportunity, as the dissenting opinion contended, to seize upon any number of seemingly "rational" justifications for the Colorado provision. Justice Scalia, in yet another "vigorous" dissent, chastized the majority for issuing a decision that was "so long on emotive utterance and so short on relevant legal citation." He accused the majority of not recognizing that, even with the provision, "general laws and policies that prohibit arbitrary discrimination" would continue to protect homosexuals, under State if not Federal law. Moreover, the effect of the provision was, according to Justice Scalia, limited in that homosexuals would merely be prohibited from obtaining preferential treatment. He found it "obvious" that one or more rational justifications supported the provision.

Not surprisingly, the dissent placed considerable emphasis upon the not-yet-overturned 1986 decision of the Court in Bowers v. Hardwick,³⁸ which held, in Justice Scalia's words, "that the Constitution does not prohibit what virtually all States had done from the founding of the Republic until very recent years--making homosexual conduct a crime. That holding is unassailable, except by those who think that the Constitution changes to suit current fashions." Accordingly, "(i)f it is constitutionally permissible for a State to make homosexual conduct criminal, surely it is constitutionally permissible for a State to enact other laws merely disfavoring homosexual conduct." The unwillingness of the majority to validate a state constitutional provision--which was enacted by a majority vote of the electorate--in the face of seemingly "rational" justifications amply demonstrates that the Court has returned to the "rational basis with bite" approach. It is too early to detect whether and to what extent lower courts be again be willing to chew on articulated justifications and engage in the type of scrutiny employed by the Romer majority. But there is little justification for the notion that the reasoning employed by the majority should somehow be restricted to cases in which a "right" to petition the government is arguably involved--particularly since the majority did not hold that any fundamental right was infringed by the constitutional provision.

Applying Rational Basis With Bite Review to the Proposed Exemption

The Romer analysis makes clear several important points:

(1) It is highly doubtful that an approach that fails to incorporate protective emission standards for smaller landfills that compete with larger landfills and "regulated" incinerators for waste volumes could be justified by a simple assertion that environmental, safety, or health concerns will be minimal. Indeed, there is simply no reliable evidence that a differential favorable

³⁸ 478 U.S. 186 (1986).

regulatory program the class of small landfills will foster environmental, safety and health goals to the same extent as the standards for non-preferred facilities.

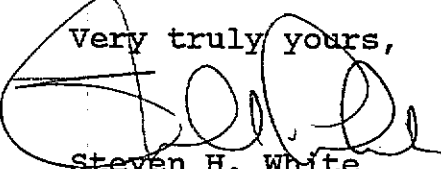
(2) Cost savings, in and of itself, is highly unlikely to be an insufficient justification for the imposition of more rigorous standards upon other classes of facilities.

(3) It would be up to the Division to both allege and demonstrate the existence of a truly "rational" justification--and even then the purported rationale can readily be rejected or otherwise second-guessed by a reviewing court.

The Division should act promptly to ensure that all municipal waste landfills are regulated so that emissions do not adversely affect human health and the environment. In doing so, the Division could look to the Federal Section 111(d) criteria in crafting a flexible and cost-effective, yet environmentally protective, standard for "existing" smaller landfills.³⁹

We would be pleased to further discuss our recommendation at any time.

Very truly yours,



Steven H. White
Divisional Vice-President, Government Affairs

cc: John Turner
John Hodges

³⁹ The Section 111(d) factors provide that a state may adopt or apply less stringent requirements for "particular designated facilities or classes of facilities, if the state shows one or more of the following": (1) "(u)nreasonable cost of control resulting from plant age, location, or basic process design"; (2) "(p)hysical impossibility of installing necessary control equipment"; or (3) "(o)ther factors specific to the facility (or class of facilities) that makes application of a less stringent standard or final compliance time significantly more reasonable".

45CSR23

TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS RESPONSE TO COMMENTS

At the public hearing on proposed revisions to 45CSR23 conducted on July 21, 1997, no one submitted oral comments. The Division of Environmental Protection Office of Air Quality (OAQ) did, however, receive one written comment on the rule from Browning-Ferris Industries. The OAQ has summarized this comment and provides the following response.

Commenter: Browning-Ferris Industries

COMMENT: Coverage of the Rule.
The commenter supported the rule's incorporation by reference of the federal NSPS and Section 111(d) standards for municipal solid waste landfills. However, the commenter recommended that the scope of the rule be expanded to cover all landfills, no matter how small. (The proposed rule only applies to municipal solid waste landfills with permitted capacity exceeding 2.5 million Mg or 2.5 million m³).

RESPONSE: The sole basis for the recommendation is an Equal Protection argument based on the Fourteenth Amendment to the U.S. Constitution. The commenter expounded upon various Supreme Court decisions which have dealt with state legislation and equal protection implications. The commenter suggested that 45CSR23 could not withstand an Equal Protection challenge with today's Supreme Court, and opined that it is doubtful that the agency could justify under a "rational basis" argument its failure to regulate the smaller landfills based upon economic, health, safety, or environmental concerns.

The OAQ notes that it is simply adopting the federal NSPS rules under the federal Clean Air Act, and that under these rules, the U.S. Environmental Protection Agency (EPA) has chosen only to regulate certain-sized facilities. In so deciding, EPA considered both the economic and the environmental impacts of its decision. (See discussion in Fed. Reg., Vol.61, No.49, March 12, 1996, pp.9910-9911, Sec.VI.A. and B.) The OAQ is not inclined to "second-guess" EPA with regard to this issue, and believes a reviewing court would likely uphold EPA's approach as a "rational" one.

Furthermore, the OAQ is constrained by the provisions of W.Va. Code §§22-5-4, 22-1-3 and 22-1-3a with respect to its adoption of federal regulations. The State rules cannot be more stringent than the federal unless the State makes a specific written finding that there exists scientifically supportable evidence or other factors unique to West

Virginia supporting such a departure. In this case, the commenter has not presented any factual evidence to support such departure, and the agency is unaware of any such evidence. Absent such factual evidence, the agency cannot expand the scope of the rule as requested by the commenter.

LEGISLATIVE

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

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JUN 17 4 00 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45
 RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§22-5-1 et seq.
 AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: "To Prevent and Control Emissions From Municipal
Solid Waste Landfills"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 21, 1997 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street, East
Charleston, West Virginia 25311

COMMENTS LIMITED TO: ORAL _____, WRITTEN _____, BOTH X
 COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

John H. Johnston, Chief
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

The Department requests that persons wishing to make
 comments at the hearing make an effort to submit written
 comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

John H. Johnston
 Authorized Signature

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #1

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JUN 17 3 59 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45
 RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§22-5-1 et seq. & §§22-18-1 et seq.
 AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from Hazardous
Waste Treatment, Storage, or Disposal Facilities"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 21, 1997 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality
1558 Washington Street, East
Charleston, West Virginia 25311

COMMENTS LIMITED TO: ORAL _____, WRITTEN _____, BOTH X
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 Authorized Signature



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Administrative Law Division

*Judy Cooper
Director*

*Lisa Blake
Leah Powell
Administrative Assistants*

*Secretary of State
Administrative Law Division
Bldg. 1, Suite 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305-0770*

(304)558-6000

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§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1805.

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex 1, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex 1, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. annex 1, sec. 3(a)	Percentage horizontal separation attained
USS PAUL HAMILTON	DDG 60	X	X	X	20.4

Dated: February 25, 1996.

R. R. Pixa,
Captain, JAGC, U.S. Navy, Deputy Assistant
Judge Advocate General (Admiralty).
[FR Doc. 96-5837 Filed 3-11-96; 8:45 am]
BILLING CODE 3810-FF-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 60

[AD-FRL-5437-8]

RIN 2060-AC42

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and guideline.

SUMMARY: This action adds subparts WWW and Cc to 40 CFR part 60 by promulgating standards of performance for new municipal solid waste landfills and emission guidelines for existing municipal solid waste landfills. This action also adds the source category "municipal solid waste landfills" to the priority list in 40 CFR Part 60, § 60.16, for regulation under section 111 of the Clean Air Act. These standards and emission guidelines implement section 111 of the Clean Air Act and are based on the Administrator's determination that municipal solid waste landfills cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. The emissions of concern are non-methane organic compounds

(NMOC) and methane. NMOC include volatile organic compounds (VOC), hazardous air pollutants (HAPs), and odorous compounds. VOC emissions contribute to ozone formation which can result in adverse effects to human health and vegetation. Ozone can penetrate into different regions of the respiratory tract and be absorbed through the respiratory system. The health effects of exposure to HAPs can include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. The intended effect of the standards and guidelines is to require certain municipal solid waste landfills to control emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts. **EFFECTIVE DATE:** Effective on March 12, 1996.

ADDRESSES: Background Information Document. The background information document for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to: "Air Emissions from Municipal Solid Waste Landfills—Background Information for Final Standards and Emission Guidelines," EPA-453/R-94-021. The Background Information Document contains: (1) A summary of all the public comments made on the proposed standards and the Notice of Data Availability as well as the Administrator's response to these

comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. Docket No. A-88-09, containing supporting information used in developing the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, except for Federal holidays at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC-6102), 401 M Street SW., Washington, DC 20460 [phone: (202) 260-7548]. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information on the regulation of municipal solid waste landfills, contact Ms. Martha Smith, Waste and Chemical Processes Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2421.

SUPPLEMENTARY INFORMATION:

Judicial Review

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by 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 rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged

later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The following outline is provided to aid in locating information in the introductory text (preamble) to the final standards.

I. Acronyms, Abbreviations, and Measurement Units

A. Acronyms

B. Abbreviations and Measurement Units

C. Conversion Factors and Commonly Used Units

II. Background

III. Summary of Considerations in Developing the Standards and Emission Guidelines

A. Purpose of the Regulation

B. Technical Basis of the Regulation

C. Stakeholders and Public Involvement

IV. Summary of the Standards, Emission Guidelines, and Methods

V. Impacts of the Standards and Emission Guidelines

A. Environmental Impacts

B. Cost and Economic Impacts

VI. Significant Changes to the Proposed Standards and Emission Guidelines

A. Design Capacity Exemption

B. Emission Rate Cutoff

C. Collection System Design Specifications

D. Timing for Well Placement

E. Operational Standards

F. Surface Emission Monitoring

G. Model Default Values

VII. Permitting

A. New Source Review Permits

B. Operating Permits

VIII. Administrative Requirements

A. Docket

B. Paperwork Reduction Act

C. Executive Order 12866

D. Executive Order 12875

E. Unfunded Mandate Reform Act

F. Regulatory Flexibility Act

G. Miscellaneous

I. Acronyms, Abbreviations, and Measurement Units

The following definitions, acronyms, and measurement units are provided to clarify the preamble to the final rule.

A. Acronyms

BDT—best demonstrated technology

BID—background information document

CAA—Clean Air Act

CERCLA—Comprehensive

Environmental Response,

Compensation, and Liability Act

EG—emission guideline(s)

EPA—Environmental Protection Agency

FR—Federal Register

HAP—hazardous air pollutant

LFG—landfill gas

MSW—municipal solid waste

NMOC—nonmethane organic compounds

NPV—net present value

NSPS—new source performance

standards

NSR—new source review

OMB—Office of Management and Budget

PSD—prevention of significant deterioration

RCRA—Resource Conservation and Recovery Act

VOC—volatile organic compound(s)

B. Abbreviations and Measurement Units

J/scm—joules per standard cubic meter

m—meter

Mg—megagram

mm—millimeter

ppm—parts per million

ppmv—parts per million by volume

tpy—tons per year

yr—year

C. Conversion Factors and Commonly Used Units

1 meter = 3.2808 feet

1 megagram = 1.1023 tons = 2204.6 pounds

1 cubic meter = 35.228 cubic feet = 1.3069 cubic yards

1 cubic meter = 0.0008101 acre-foot
Degrees Celsius = (degrees Fahrenheit - 32)/1.8

II. Background

The United States Environmental Protection Agency (EPA) originally considered regulating MSW landfill emissions under a RCRA subtitle D rulemaking. However, the Administrator decided to regulate MSW landfill emissions under the authority of the CAA, and announced the decision in the Federal Register on August 30, 1988 (53 FR 33314). The EPA decided to propose regulation of new MSW landfills under section 111(b) of the CAA and to propose EG for existing MSW landfills under section 111(d).

The EPA published a proposal of this NSPS and EG in the Federal Register on May 30, 1991 (56 FR 24468).

Following the receipt of new data and changes in the modeling techniques, the EPA published a Notice of Data Availability in the Federal Register on June 21, 1993 (56 FR 33790).

Under the authority of section 111(b)(1)(A) of the CAA, today's notice adds the source category MSW landfills to the priority list in 40 CFR 60.16 because, in the judgement of the Administrator, it contributes significantly to air pollution which may reasonably be anticipated to endanger public health and welfare. Further rationale for this finding is contained in section 1.1.1 of the promulgation BID (EPA-453/R-94-021).

Today's notice promulgates the final NSPS and EG for MSW landfills. The promulgation BID "Air Emissions from

Municipal Solid Waste Landfills—Background Information for Final Standards and Guidelines" (EPA 453/R-94-021) summarizes all public comments on the proposed NSPS and EG and the EPA responses. For further discussion of stakeholder and public involvement in the development of the rules see section III.C. of this preamble.

Recent information suggests that mercury might be emitted from landfills. The EPA is still looking at the possibility and will take action as appropriate in the future under the landfill national emission standards for hazardous air pollutants.

III. Summary of Considerations in Developing the Standards and Emission Guidelines

A. Purpose of the Regulation

Landfill gas emissions contain methane, carbon dioxide, and more than 100 different NMOC, such as vinyl chloride, toluene, and benzene. Studies indicate that MSW landfill gas emissions can at certain levels have adverse effects on both public health and welfare. The EPA presented concerns with the health and welfare effects of landfill gases in the preamble to the proposed regulations (56 FR 24468).

Briefly, specific health and welfare effects from LFG emissions are as follows: NMOC contribute to ozone formation; some NMOC are known or suspected carcinogens, or cause other noncancer health effects; NMOC can cause an odor nuisance; methane emissions present a well-documented danger of fire and explosion on-site and off-site, and contribute to global climate change as a major greenhouse gas. Today's rules will serve to significantly reduce these potential problems associated with LFG emissions.

B. Technical Basis of the Regulation

Today's regulations are based on extensive data analysis and consideration of several alternatives. Prior to proposal, the EPA developed an extensive data base, using survey information from approximately 1,200 landfills, along with emissions information from literature, State and local agencies, and industry test reports. The preamble to the proposed regulations presented a detailed discussion of the data used to develop the rule and the regulatory alternatives considered (56 FR 24476).

After proposal, the EPA continued to gather new information and received new data through public comments. The EPA published this new information in a Notice of Data Availability on June 21, 1993 (56 FR 33790). In addition to

public comments, the EPA held consultations with industry under the authority of Executive Order 12875 (See section VIII of this document for a detailed discussion of the Executive Order).

Based on the new information, the EPA re-assessed the impacts of the alternatives and made changes to the final regulation. The most significant changes to the regulation are summarized in section VI of this preamble. Detailed rationales for these changes as well as more minor changes are provided in the final BID (EPA 453/R-94-021).

In keeping with the EPA's common sense initiative, several of the changes were made to streamline the rule and to provide flexibility. Examples of this streamlining and increased flexibility include focusing control on the largest landfills, removing the gas collection system prescriptive design specifications, and more reasonable timing for the installation of collection wells. All of these changes are discussed further in section VI of this preamble.

C. Stakeholders and Public Involvement

Prior to proposal, in accordance with section 117 of the CAA, the EPA had consultations with appropriate advisory committees, independent experts, Federal departments and agencies. In addition, numerous discussions were held with industry representatives and trade associations.

After proposal, the EPA provided interested persons the opportunity to comment at a public hearing and through a written comment period. Comment letters were received from 60 commenters including industry representatives, governmental entities, environmental groups, and private citizens. A public hearing was held in Research Triangle Park, North Carolina, on July 2, 1991. This hearing was open to the public and five persons presented oral testimony on the proposed NSPS and EG.

On June 21, 1993, a supplemental notice of data availability to the May 30, 1991 proposal appeared in the Federal Register (58 FR 33790). The notice announced the availability of additional data and information on changes in the EPA's modelling methodology being used in the development of the final NSPS and EG for MSW landfills. Public comments were requested on the new data and comment letters were received from seven commenters.

Since the Notice of Data Availability, the EPA has held several consultations with State, local, and industry representatives in accordance with the October 26, 1993 Executive Order 12875

on Enhancing the Intergovernmental Partnership.

Major concerns expressed by participants in the consultations were identified by the EPA. These concerns included: the design capacity exemption level, collection system design and monitoring flexibility, and timing of well placement. These concerns and others raised at proposal and clarified in the consultations were addressed by revising the rule as described in section VI of this preamble.

IV. Summary of the Standards, Emission Guidelines, and Methods

The affected facility under the NSPS is each new MSW landfill. MSW landfills are also subject to the requirements of RCRA (40 CFR 257 and 258). A new MSW landfill is a landfill for which construction, modification, or reconstruction commences on or after the proposal date of May 30, 1991 or that began accepting waste on or after that date.

The EG require control for certain existing MSW landfills. An existing MSW landfill is a landfill for which construction commenced prior to May 30, 1991. An existing MSW landfill may be active, i.e., currently accepting waste, or have additional capacity available to accept waste, or may be closed, i.e., no longer accepting waste nor having available capacity for future waste deposition. The designated facility under the EG is each existing MSW landfill that has accepted waste since November 8, 1987.

The final rules (both the NSPS and EG) require affected and designated MSW landfills having design capacities below 2.5 million Mg or 2.5 million cubic meters to file a design capacity report. Affected and designated MSW landfills having design capacities greater than or equal to 2.5 million Mg or 2.5 million cubic meters are subject to the additional provisions of the standards or EG.

The final standards and EG for MSW landfill emissions require the periodic calculation of the annual NMOC emission rate at each affected or designated facility with a maximum design capacity greater than or equal to 2.5 million Mg or 2.5 million cubic meters. Those that emit more than 50 Mg/yr are required to install controls.

The final rules provide a tier system for calculating whether the NMOC emission rate is less than or greater than 50 Mg/yr using a first order decomposition rate equation. The tier system does not need to be used to model the emission rate if an owner or operator has or intends to install controls that would achieve compliance.

Chapter 1 of the promulgation BID (EPA 453/R-94-021) presents a complete discussion of the components of the tier system.

The BDT for both the NSPS and the EG requires the reduction of MSW landfill emissions from new and existing MSW landfills emitting 50 Mg/yr of NMOC or more with: (1) A well-designed and well-operated gas collection system and (2) a control device capable of reducing NMOC in the collected gas by 98 weight-percent.

A well-designed and well-operated collection system would, at a minimum: (1) Be capable of handling the maximum expected gas generation rate; (2) have a design capable of monitoring and adjusting the operation of the system; and (3) be able to collect gas effectively from all areas of the landfill that warrant control. Over time, new areas of the landfill will require control, so collection systems should be designed to allow expansion by the addition of further collection system components to collect gas, or separate collections systems will need to be installed as the new areas require control.

The BDT control device is a combustion device capable of reducing NMOC emissions by 98 weight-percent. While energy recovery is strongly recommended, the cost analysis is based on open flares because they are applicable to all affected and designated facilities regulated by the standards and EG. If an owner or operator uses an enclosed combustor, the device must demonstrate either 98-percent NMOC reduction or an outlet NMOC concentration of 20 ppmv or less. Alternatively, the collected gas may be treated for subsequent sale or use, provided that all emissions from any atmospheric vent from the treatment system are routed to a control device meeting either specification above.

The standards and EG require that three conditions be met prior to capping or removal of the collection and control system: (1) The landfill must be permanently closed under the requirements of 40 CFR 258.60; (2) the collection and control system must have been in continuous operation a minimum of 15 years; and (3) the annual NMOC emission rate routed to the control device must be less than the emission rate cutoff on three successive dates, between 90 and 180 days apart, based upon the site-specific landfill gas flow rate and average NMOC concentration.

Section VI.E. of this preamble describes a new section of the NSPS, § 60.753, "Operational Standards for Collection and Control Systems." The EG also refer to this section. The

provisions in this section include: (1) Collection of gas from each area, cell or group of cells in which non-asbestos degradable solid waste has been placed for a period of 5 years or more for active areas or 2 years or more for closed areas; (2) operation of the collection system with each wellhead under negative pressure, with a nitrogen level less than or equal to 20 percent (revised from 1 percent in the proposal, based on public comments) or an oxygen level less than or equal to 5 percent (a new provision); (3) operation with a landfill gas temperature less than 55 °C (a new provision) at each well transporting the collected gases to a treatment or control device designed and operated in compliance with § 60.752(b)(2)(iii) of the NSPS and operated at all times when the collected gas is vented to it; and (4) a requirement that the collection system be operated to limit the surface methane concentration to 500 ppm or less over the landfill as determined according to a specified monitoring pattern.

Owners and operators must determine compliance with the standards for the collection systems and control devices according to § 60.755. Changes made to the final compliance determination and monitoring procedures as a result of comments are discussed in detail in the BID (EPA 453/R-94-021). The §§ 60.757 and 60.758 of the NSPS and § 60.35(c) of the EG contain recordkeeping and reporting requirements. Changes have been made to the recordkeeping and reporting requirements to allow for

consistency with the final compliance requirements.

V. Impacts of the Standards and Emission Guidelines

A. Environmental Impacts of Promulgated Action

The estimated environmental impacts have changed somewhat from those presented in the preamble to the proposed regulations as a result of changes in the final rules and changes in the estimation methodology. These changes were made in response to public comments. Additional data were also incorporated and are described in the supplemental Notice of Data Availability (56 FR 33790). The analysis of environmental impacts presented in this document, along with the proposal and promulgation BID's, and memoranda in the docket constitute the Environmental Impact Statement for the final standards and guidelines.

For most NSPS, emission reductions and costs are expressed in annual terms. In the case of the NSPS and EG for landfills, the final regulations require controls at a given landfill only after the increasing NMOC emission rate reaches the level of the regulatory cutoff. The controls are applied when the emissions exceed the threshold, and they must remain in place until the emissions drop below the cutoff. However, this process could take as long as 50 to 100 hundred years for some landfills. During the control period, costs and emission reductions will vary from year to year. Therefore, the annualized numbers for any impact will change from year to

year. Because of the variability of emission reductions and costs of the final standards and EG over time, the EPA judged that the NPV of an impact is a more valuable tool in the decision process for landfills and has used NPV in the development of both the proposal and final nationwide impacts. The NPV is computed by discounting the capital and operating costs and emission reductions that will be incurred throughout the control periods to arrive at a measure of their current value. In this way, the NPV accounts for the unique emission patterns of landfills when evaluating nationwide costs and benefits over different discrete time periods for individual sources. Thus, the impacts presented include both annualized estimates and estimates expressed in terms of NPV in 1992.

1. Air Emissions

The methodology for estimating the impacts of the NSPS and EG is discussed in the proposal BID and in memoranda in the docket. The analysis of impacts for the NSPS is based on new landfills (beginning construction after May 30, 1991) that are projected to begin accepting waste over the first 5 years of the standards. The NPV of the emission reduction achieved by the final standards is estimated to be 79,300 Mg, which reflects a 50 percent reduction from the NPV of the baseline emissions of 160,000 Mg. Substantial reduction of methane emissions is also achieved. Table 1 presents the emission reductions of the final NSPS in annualized values as well as NPV.

TABLE 1.—SUMMARY OF EMISSION REDUCTION AND COST IMPACTS FOR THE NSPS

	NPV	Annualized
Baseline NMOC Emissions ^a (Mg)	160,000	13,400
NMOC Emission Reductions (Mg)	79,300	4,860
% NMOC Emission Reduction	50%	36%
Baseline Methane Emissions ^a (Mg)	10,600,000	899,000
Methane Emission Reduction ^b (Mg)	3,890,000	193,000
% Methane Emission Reduction	37%	21%
Cost (Million \$)	97	4

^a In the absence of an NSPS. This does not include landfills closed prior to November 8, 1987.

^b This does not include landfills expected to undertake profitable energy recovery.

For existing landfills, the NPV of the NMOC emission reduction achieved by the final EG is estimated to be 1.1 million Mg, or a 53 percent reduction from a baseline of 2.07 million Mg (NPV). The NPV of the methane reduction is estimated to be 47 million

Mg. Table 2 presents the emission reductions of the final EG in annualized values as well as NPV. Note that the baseline methane emissions do not include landfills closed prior to November 8, 1987, and that methane reductions shown in Tables 1 and 2 do

not include landfills expected to undertake profitable energy recovery. Total methane reductions are anticipated to be on the order of 7 million megagrams in the year 2000.

TABLE 2.—SUMMARY OF EMISSION REDUCTION AND COST IMPACTS FOR THE EMISSION GUIDELINES

	NPV	Annualized
Baseline NMOC Emissions* (Mg)	2,070,000	145,000
NMOC Emission Reductions (Mg)	1,100,000	77,600
% NMOC Emission Reduction	53%	54%
Baseline Methane Emissions* (Mg)	120,000,000	8,440,000
Methane Emission Reduction (Mg)	47,000,000	3,370,000
% Methane Emission Reduction	39%	40%
Cost (Million \$)	1,278	90

*In the absence of EG. This does not include landfills closed prior to November 8, 1987.

^bThis does not include landfills expected to undertake profitable energy recovery.

As existing landfills are filled, closed, and replaced by new landfills, the actual annual emissions reductions achieved by the guidelines will decrease, while the reductions achieved by the standards will increase.

Certain by-product emissions, such as NO_x, CO, SO_x, and particulates, may be generated by the combustion devices used to reduce air emissions from MSW landfills. The types and quantities of these by-product emissions vary depending on the control device. However, by-product emissions are very low compared to the achievable NMOC and methane emission reductions. Chapters 4 and 6 of the proposal BID (EPA-450/3-90-011a) present additional information about the magnitude of potential secondary air impacts.

2. Water

Landfill leachate is the primary potential source of water pollution from a landfill. Although there is no data on the effect of gas collection on leachate composition, the amount of water pollution present as NMOC in the leachate may be reduced under these standards and guidelines.

When LFG is collected, organics and water are condensed inside the header pipes of the gas collection system. This waste also contains NMOC and various toxic substances present in the LFG. The pH of this condensate is normally adjusted by adding caustic at the landfill and then routing it to a public treatment works where it would be treated and discharged. At this time, there is insufficient data available to quantify the effects of the rule on leachate.

3. Solid Waste

The final NSPS and EG will likely have little impact on the quantity of solid waste generated nationwide. Aside from the disposal of the collection and control system equipment once it can be removed from the landfill, no other solid wastes are expected to be generated by the required controls. The increased cost of landfill operation

resulting from the control requirements may cause greater use of waste recycling and other alternatives to landfill disposal, leading to a decrease in landfill use. However, quantification of such an impact is not possible at this time.

4. Superfund Sites

Municipal solid waste landfill sites comprise approximately 20 percent of the sites placed by the EPA on the national priorities list. Often, remedial actions selected at these sites include venting methane and volatile organic contaminants, which would be controlled as necessary to protect human health and the environment.

The final NSPS and EG may affect remedial actions under Superfund for MSW landfills. Section 121(d)(2) of CERCLA requires compliance with the substantive standards of applicable or relevant and appropriate requirements (ARAR) of certain provisions in other environmental laws when selecting and implementing on-site remedial actions. "Applicable" requirements specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a Superfund site. "Relevant and appropriate" requirements are not legally applicable, but may address problems or situations sufficiently similar to those encountered so that their use is well suited to a particular site. See 40 CFR 300.5 (55 FR 8814, 8817, March 8, 1990).

These air emission rules will apply to new MSW landfills, as well as to those facilities that have accepted waste since November 8, 1987, or that have capacity available for future use. For CERCLA municipal landfill remediations, these requirements would be potential ARAR for all Records of Decision signed after the date of promulgation. These NSPS and EG will be applicable for those MSW landfill sites on the national priorities list that accepted waste on or after November 8, 1987, or that are operating and have capacity for future use. These standards may also be

determined relevant and appropriate for sites that accepted wastes prior to November 8, 1987. The determination of relevance and appropriateness is made on a site-specific basis pursuant to 40 CFR 300.400(g) (55 FR 8841, March 8, 1990). Because the NSPS and EG apply only to landfills with design capacities greater than or equal to 2.5 million Mg or 2.5 million cubic meters, the collection and control requirements may not be relevant and appropriate for smaller landfills.

Given the significant public policy benefits that result from the collection and processing of landfill gas, Congress, as part of the 1986 SARA Amendments, enacted CERCLA Section 124 to provide broad liability protection for companies engaged in landfill gas recovery or processing. Landfill gas emissions, in addition to being a significant source of air pollution, can leach underground and cause explosions in nearby residences. If recovered, landfill gas could supply as much as 1 percent of the U.S. energy requirements.

CERCLA Section 124 states that owners or operators of equipment installed "for the recovery or processing (including recirculation of condensate) of methane" shall not be liable as a CERCLA "owner or operator" under CERCLA Section 101 (20) nor shall they be deemed "to have arranged for disposal or treatment of any hazardous substance" * * * pursuant to CERCLA Section 107. Exceptions are provided (1) where a release is primarily caused by activities of the landfill gas owner/operator or (2) where such owner/operator would be otherwise liable due to activities unrelated to methane recovery.

Since passage of CERCLA section 124, methane emissions have been targeted by the EPA as a large contributor to global warming (18 percent) and landfills are one of the largest source of methane emissions (36 percent). Because of this, the EPA's Atmospheric Pollution Prevention Division has initiated the Landfill Methane Outreach Program to promote landfill gas

collection projects at the 750 landfills where methane could profitably be recovered. Methane recovery, as compared with collection and flaring of landfill gas without recovery, results in significantly less emissions. It also can greatly reduce the financial burden on local governments (as well as taxpayers) since the energy recovered can be sold to utilities or other consumers and thereby create a revenue stream that may cover the costs of collection and recovery.

The EPA is aware that the standards and guidelines promulgated today for control of emissions at municipal solid waste landfills may change the focus of the landfill gas collection and processing for methane recovery. The landfill gas owner/operator will now need to consider how the collection and recovery of methane will impact on controlling the MSW landfill emissions. It is also likely that the landfill gas owner/operator will be asked to advise and in some cases help implement the MSW landfill's compliance obligations. These related objectives, the control of emissions at municipal solid waste landfills in order to comply with the Clean Air Act Amendments and the reduction of methane emissions in order to mitigate global warming, will need to be coordinated in carrying out common activities such as laying a system of collection piping at a given landfill.

In promulgating today's standards and guidelines, the EPA wants to promote the policy incorporated in CERCLA Section 124. Recognizing the chilling effect that potential CERCLA liability might otherwise have on landfill gas collection or processing activities, the EPA interprets CERCLA Section 124 in a manner that will encourage the beneficial recovery of methane. Specifically, EPA believes that Congress intended Section 124 to provide liability protection to owners and operators of equipment for the recovery or processing of methane with respect to all phases involved in landfill gas collection and methane processing. This includes any assistance (related to recovery or processing of methane) provided by the landfill gas equipment owner or operator to the landfill owner/operator for achieving compliance with the emission standards promulgated today or similar Federal, State, or local controls on landfill emissions. In general, Section 124 will be interpreted in a manner to provide owners and operators of equipment for the recovery or processing of methane with comprehensive protection from CERCLA liability, unless the release or threatened release was primarily caused by activities of the owners and operators

of the equipment, or unless such owners or operators would be otherwise liable under CERCLA.

B. Energy and Economic Impacts of Promulgated Action

The energy and economic impacts are summarized in chapter 1 and fully discussed in chapter 3 and appendix A of the promulgation BID (EPA-453/R-94-021). The estimated impacts have changed somewhat as a result of changes in the final rules and changes in the impacts estimation methodology made in response to public comments.

1. Energy Impacts

Affected and designated landfills with NMOC emission rates of 50 Mg/yr or more are required to install a gas collection system and control device. The gas collection system would require a relatively small amount of energy to run the blowers and the pumps. If a flare is used for control, auxiliary fuel should not be necessary because of the high heat content of LFG, commonly 1.86×10^7 J/scm or more. If a recovery device such as an internal combustion (I.C.) engine or a gas turbine is used, an energy savings would result.

The EPA evaluated the overall energy impacts resulting from the use of flares, I.C. engines, or gas turbines for control of collected emissions at all affected landfills. The least cost control option was identified by taking the NPV costs of the three control options (flares, I.C. engines, and turbines), including any cost savings from the use of recovered landfill gas, and determining the option that costs the least. If landfills use the least cost control device, it is estimated that the NSPS will produce \$170 million of energy revenue as NPV in 1992. The EG are estimated to generate \$1.5 billion of energy revenue as NPV in 1992, if the least cost control device is used.

2. Control Costs and Economic Impacts

Nationwide annualized costs for collection and control of air emissions from new MSW landfills are estimated to be \$4 million. The nationwide cost of the EG would be approximately \$90 million. These values are annualized costs. Tables 1 and 2 present costs in both annualized and NPV values. In comparison to other solid waste-related rules, the nationwide costs of the recently promulgated RCRA Subtitle D (40 CFR 257 and 258) rule are estimated to be \$300 million per year and the estimated nationwide costs of the MWC rules promulgated in 1991 are estimated to be \$170 million per year for new combustors and \$302 million per year

for existing combustors (56 FR 5488 and 5514).

The incremental costs and benefits of the different options are presented in tables 3, 4, 5, and 6 in section VIII.E. For NMOC, the average cost effectiveness is approximately \$1,200/Mg for both the NSPS and the EG. Preliminary economic analysis indicates that the annual cost of waste disposal may increase by an average of approximately \$0.60 per Mg for the NSPS and \$1.30 per Mg for the EG. Costs per household would increase approximately \$2.50 to \$5.00 per year, when the household is served by a new or existing landfill, respectively. Additionally, less than 10 percent of the households would face annual increases of \$15 or more per household as a result of the final EG. However, the EPA anticipates that many landfills will elect to use energy recovery systems, and costs per household for those areas would be less. The EPA has concluded that households would not incur severe economic impacts. For additional information, please refer to the regulatory impact analysis (Docket No. A-88-09, Item No. IV-A-7) and chapter 3 of the promulgation BID (EPA-453/R-94-021).

VI. Significant Changes to the Proposed Standards and Emission Guidelines

All of the significant public comments received on the proposed standards and EG and the Notice of Data Availability are addressed in the promulgation BID (EPA-453/R-94-021). This section of the preamble reviews the major changes to the standards and EG resulting from public comments. A more detailed rationale for these changes is provided in chapters 1 and 2 of the promulgation BID (EPA-453/R-94-021).

A. Design Capacity Exemption

A design capacity exemption of 100,000 Mg was included in the proposed NSPS and EG to relieve owners and operators of small landfills that the EPA considered unlikely to emit NMOC above the emission rate cutoff requiring control from undue recordkeeping and reporting responsibilities. Commenters indicated that the exemption level was too low, and would still impact many small businesses and municipalities. In response to these comments and as a result of changes to the nationwide impacts analysis, the design capacity exemption in the final NSPS was revised to 2.5 million Mg. The 2.5 million Mg exemption level would exempt 90 percent of the existing landfills while only losing 15 percent of the total NMOC emission reduction. Most of the exempt landfills are owned

by municipalities. The 2.5 million Mg level was chosen to relieve as many small businesses and municipalities as possible from the regulatory requirements while still maintaining significant emission reduction.

This cutoff excludes those landfills who would be least able to afford the costs of a landfill gas collection and control system and are less likely to have successful energy recovery projects. However, depending on site-specific factors including landfill gas characteristics and local markets, some landfills smaller than the design capacity exemption level may be able to make a profit by installing collection and control systems that recover energy. While the rule does not require control of landfills smaller than 2.5 million Mg, the EPA encourages energy recovery in cases where it is profitable. The EPA has developed a Landfill Methane Outreach Program to encourage more widespread utilization of landfill gas as an energy source. Information can be obtained by calling the Landfill Methane Outreach Program Hotline at (202) 233-9042. Available publications are identified in section 1.2.1 of the promulgation BID.

Since some landfills record waste by volume and have their design capacities calculated in volume, the EPA also established an equivalent design capacity exemption of 2.5 million m³ of waste. The density of solid waste within different landfills varies depending on several factors, including the compaction practices. Any landfill that reports waste by volume and wishes to establish a mass design capacity must document the basis for their density calculation.

B. Emission Rate Cutoff

Some commenters asserted that the proposed emission rate cutoff of 150 Mg/yr should be made more stringent, while others favored the proposal cutoff or higher. The commenters favoring the more stringent level indicated that the EPA's data on NMOC concentration, the benefits of energy recovery and reduced global warming, and the reduced health risks all supported an increased stringency level.

The Climate Change Action Plan, signed by the President in October, 1993, calls for EPA to promulgate a "tough" landfill gas rule as soon as possible. This initiative also supports a more stringent emission rate cutoff that will achieve greater emission reduction.

Due to the small-size exemption, only landfills with design capacities greater than 2.5 million Mg of waste or 2.5 million cubic meters of waste will be affected by this rule. It is estimated that a landfill of 2.5 million Mg design

capacity corresponds to cities greater than about 125,000 people. On the whole, large landfills service areas with large population. A reasonable assumption is that many of these large landfills are in the 400 counties that have been designated as urban ozone nonattainment areas and are developing plans to address ozone nonattainment.

Finally, the new data and modeling methodologies, which were published in the Notice of Data Availability on June 21, 1993, significantly reduced the emission reduction and corresponding effectiveness of the rule. Therefore, a more stringent emission rate cutoff would achieve similar emission reductions at similar cost effectiveness to the proposed rule.

Based on all of these reasons, the EPA reevaluated the stringency level and chose an emission rate cutoff of 50 Mg/yr of NMOC for the final rules. This revision would affect more landfills than the proposal value of 150 Mg/yr of NMOC; however, the 50 Mg/yr of NMOC will only affect less than 5 percent of all landfills and is estimated to reduce NMOC emissions by approximately 53 percent and methane emissions by 39 percent. The 150 Mg/yr emission rate cutoff would have reduced NMOC emissions by 45 percent and methane emissions by 24 percent. The incremental cost effectiveness of control of going from a 150 Mg/yr cutoff level to a 50 Mg/yr cutoff level is \$2,900/Mg NMOC reduction for new landfills and \$3,300/Mg for existing landfills.

The values for NMOC cost effectiveness do not include any credit for the benefits for toxics, odor, explosion control, or the indirect benefit of methane control. A revised cost effectiveness could be calculated with an assumed credit value for one or more of the other benefits. As an example, assuming a \$30/Mg credit for the methane emission reduction, the incremental cost effectiveness from the proposal cutoff of 150 Mg/yr to the final cutoff of 50 Mg/yr would be reduced to \$660/Mg NMOC.

C. Collection System Design Specifications

Commenters indicated that the proposed design specifications for the collection system were overly prescriptive, discouraged innovation, and did not prevent off-site migration of LFG. In the new § 60.759 for design specifications, certain criteria still require proper landfill gas collection; however, the proposed design specifications for the LFG collection system were removed from the final regulations. Instead, the final rule

allows sources to design their own collection systems. Design plans must meet certain requirements and be signed by a registered professional engineer, and are subject to agency approval. These changes were made to provide flexibility and encourage technological innovation.

D. Timing for Well Placement

The proposed regulations required the installation of collection wells at applicable landfills within 2 years of initial waste placement. Commenters indicated that the installation of wells within 2 years was not practiced at many landfills, because many cells were still active (receiving waste) 2 years after initial placement. Collection wells installed at these cells would have to be covered over, which would decrease the operational life of the well and be costly and inefficient.

The proposed timing for the placement of collection wells has been revised to reduce costs and better coincide with common operational practices at MSW landfills. The final regulation allows for well installation up to 5 years from initial waste placement for active cells. An area that reaches final grade or closure must install collection wells within 2 years of initial waste placement.

E. Operational Standards

In response to commenters concerns about the operation of collection systems, the final NSPS contains a new section, § 60.753, "Operational Standards for Collection and Control Equipment." Various operational provisions that had previously been located throughout the proposed rule have been organized under this one section, and new provisions on collection and control systems have been added. The new section addresses the following areas: (1) Collection of gas from active areas containing solid waste older than 5 years (changed from 2 years at proposal); (2) operation of the collection system with negative pressure at each wellhead (except as noted in the rule); (3) operation of the collection system with a landfill temperature less than 55° (or a higher established temperature) and either an N₂ level less than or equal to 20 percent or an O₂ level less than or equal to 5 percent; (4) operation of the collection system with a surface concentration less than 500 ppm methane; (5) venting all collected gases to a treatment or control device; and (6) operation of the treatment or control device at all times when the collected gas is routed to the control device. The numerical requirements (for the N₂ or O₂ levels, landfill temperature,

and surface concentration) are new requirements that will verify that the system is being adequately operated and maintained. In conjunction with the new operational provisions, the compliance, testing and monitoring sections were revised to reference and support these new or relocated provisions.

F. Surface Emission Monitoring

Numerous commenters asserted that the proposed rules did not address surface methane emissions resulting from insufficient well spacing or from breaks in the cover material. The commenters recommended that monitoring of surface emissions be required to ensure the proper operation of collection system equipment. Upon further analysis, the EPA decided to require surface emission monitoring and the maintenance of negative pressure at all wells, except under specified conditions, to ensure proper collection system design and operation. Based on information submitted by commenters, a maximum surface concentration of 500 ppm methane should be demonstrated to indicate proper operation of the collection system. Monitoring is to be done quarterly, with provisions for increasing monitoring and corrective procedures if readings above 500 ppm are detected. Instrumentation specifications, monitoring frequencies, and monitoring patterns have been structured to provide clear and straightforward procedures that are the minimum necessary to assure compliance.

G. Model Default Values

The EPA received additional data after proposal on the model defaults that were included in the tier system calculations. These default values are used to calculate whether the NMOC concentration is above the cutoff level for control requirements of 50 Mg/yr. The new information received lead the EPA to revise the default values for the site-specific methane generation rate constant (k), the methane generation potential (L_0), and the NMOC concentration (C_{NMOC}). In the absence of site-specific data, the landfill owner or operator would use the default values for k , L_0 , and C_{NMOC} in order to estimate the annual NMOC emission rate. More information on the model defaults may be found in the final BID (EPA-453/R-94-021) and the memorandum "Documentation of Small-Size Exemption Cutoff Level and Tier 1 Default Values (Revised)," October 21, 1993, (Docket No. A-88-09, Item No. IV-B-5).

The Tier 1 default values of k , L_0 , and C_{NMOC} tend to overstate NMOC emission rates for most landfills, and are intended to be used to indicate the need to install a collection and control system or perform a more detailed Tier 2 analysis. It is recommended that these default values not be used for estimating landfill emissions for purposes other than the NSPS and EG. The EPA document "Compilation of Air Pollution Emission Factors" (AP-42) provides emission estimation procedures and default values that can be used for emissions inventories and other purposes.

VII. Permitting

A. New Source Review Permits

Today's rulemaking under section 111(b) establishes a new classification of pollutants subject to regulation under the CAA: "MSW landfill emissions." Therefore, PSD rules now apply to all subject stationary sources which have increases in landfill gas above the significance level, 50 tpy or more of NMOC. Landfills below the 2.5 million Mg design capacity exemption, which are not required by the regulations to install controls, may exceed this significance level. In this case, the State will need to determine if controls should be installed for purposes of PSD or NSR compliance.

The proposed significance level for MSW landfill emissions of 40 tpy of NMOC was changed to 50 tpy after consideration of public comments. The PSD significance level for VOC emissions is 40 tpy. At proposal, the landfill gas emission level was set at 40 tpy of NMOC to be consistent with the 40 tpy level for VOC. However, NMOC contains organic compounds that are not VOC. An NMOC emission rate of roughly 50 tpy corresponds to a VOC emission rate of 40 tpy.

The components of MSW landfill emissions that are regulated as pollutants or precursors of an air pollutant listed under section 108 of the CAA are also regulated by other provisions of CAA as applicable. For example, the components of MSW landfill emissions that are emitted as photochemically reactive VOCs are regulated, as applicable, under the nonattainment provisions for ozone contained in part D of title I of the CAA.

B. Operating Permits

Section 502 of the CAA and § 70.3(a) require any source subject to standards or regulations under section 111 of the CAA to obtain part 70 operating permits. However, landfills below 2.5 million Mg design capacity are not

subject to standards under section 111 because they are not required to put on controls and are not subject to emission limits. These landfills are subject to a reporting requirement under the section 111 rule; however, this requirement determines applicability of the standard and does not make them "subject" for the purposes of part 70. Consequently, landfills below 2.5 million Mg design capacity are not subject to part 70, provided they are not major sources; and this is stated in § 60.752(a) of the rule. If landfills below 2.5 million Mg design capacity are major sources, they must obtain a part 70 permit under the same deadlines and requirements that apply to any other major source. States may request additional information to verify whether landfills have the potential to emit at major source levels.

For landfills above the 2.5 million Mg design capacity exemption, part 70 operating permits are required. These landfills are subject to emission limits and will most often be major sources. Since landfill emissions increase over time, a landfill over 2.5 million Mg may not be major in the beginning; however, as the landfill progresses to capacity, it may become major. Many of the landfills above the 2.5 million Mg exemption will be required to collect and control the gas under the regulation. The issuance of a permit will also help enforce and implement the standard. Therefore, the EPA has decided to require permits for all landfills with design capacities above 2.5 million Mg, whether or not the landfill will be required to install a collection and control system.

The regulation also provides for termination of operating permits. Landfill emissions, unlike emissions from other source categories, decrease over time after the landfill is closed. If a landfill has closed and a control system was never required or the conditions for control system removal specified in the regulation have been met, an operating permit is no longer necessary.

VIII. Administrative Requirements

A. Docket

The docket (Docket No. A-88-09) is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with

the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1557.03) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, or by calling (202) 260-2740. The information requirements are not effective until OMB approves them.

The information required to be collected by this rule is necessary to identify the regulated entities who are subject to the rule and to ensure their compliance with the rule. The recordkeeping and reporting requirements are mandatory and are being established under authority of section 114 of the Act. All information submitted as part of a report to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976, amended by 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

The total annual reporting and recordkeeping burden for this collection, averaged over the first 3 years of the NSPS applicability to new MSW landfills, is estimated to be 3,379 person hours per year. This is the estimated burden for 299 respondents (e.g., MSW landfill owners/operators) per year, at an estimated annual reporting and recordkeeping burden averaging 11.3 hours per respondent. The rule requires an initial one-time notification of landfill design capacity. If the landfill is larger than the design capacity cutoff, annual reports are required. The capital cost to purchase required monitoring equipment is \$8,100 per monitor. The total annualized capital and startup costs for purchase of monitoring equipment are \$80,250. The total national annual cost burden including all labor costs and annualized capital costs for

recordkeeping and reporting is \$188,850.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Executive Order 12856

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the 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 effect 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 entitlement, grants, user fees, or loan programs or the rights and obligations 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, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

D. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued E.O. 12875 on October 26, 1993. Under E.O. 12875, the EPA is required to consult with representatives of affected State, local, and tribal governments. Because this regulatory action imposes costs to the private sector and government entities in excess of \$100 million per year, the EPA pursued the preparation

of an unfunded mandates statement, consultations, and other requirements of the Unfunded Mandates Reform Act. The requirements are met as presented under the following unfunded mandates section (section VIII.E of this notice).

E. Unfunded Mandate Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the 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. Section 203 requires the Agency to establish a plan for informing and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires that the Agency "to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments . . . to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates". Under section 205(a), the EPA must select the "least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule" and is consistent with statutory requirements.

The unfunded mandates statement under section 202 must include: (1) A citation of the statutory authority under which the rule is proposed, (2) an assessment of the costs and benefits of the rule including the effect of the mandate on health, safety and the environment, and the Federal resources available to defray the costs, (3) where feasible, estimates of future compliance costs and disproportionate impacts upon particular geographic or social segments of the nation or industry, (4) where relevant, an estimate of the effect on the national economy, and (5) a description of the EPA's consultation with State, local, and tribal officials.

Because this rule is estimated to impose costs to the private sector and governments entities in excess of \$100 million per year (based on tenth or fifteenth year annualized values), it is considered a significant regulatory action.

The EPA has thus prepared the following statement with respect to sections 202 through 205 of the Unfunded Mandates Act.

1. Statutory Authority

As discussed in section II of this preamble, the statutory authority for this rulemaking is section 111 of the CAA. The rule establishes emission guidelines

for existing MSW landfills and standards of performance for new MSW landfills. Section 111(a)(1) of the requires that standards of performance for new sources reflect the—

• • • degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Section 111(d) requires emission guidelines for existing sources to reflect a similar degree of emission reduction.

These systems are referred to as BDT for new and existing sources.

Properly operated gas collection and control systems achieving 98 percent emission reduction have been demonstrated on landfills of the size affected by the standards and EG, and represent BDT. Control technologies and their performance are discussed in the preamble to the proposed rules (56 FR 24476, May 30, 1991).

In selecting BDT, the EPA also considered which landfills should be required to apply collection and control systems. A range of landfill design capacity and emission rate cutoffs were evaluated, as described below in section 2.b "Regulatory Alternatives Considered." The promulgated standards contain a design capacity exemption of 2.5 million Mg or 2.5 million cubic meters and an emission rate cutoff of 50 Mg NMOC/yr.

The EPA considered emission reduction, costs, and energy requirements, as required by the statutory language of section 111 of the CAA, in selecting the promulgated standards and EG. The promulgated standards represent BDT. They achieve significant reductions in landfill gas emissions—a 53 percent reduction in NMOC emissions, and a 39 percent reduction in methane reduction emissions nationwide. The cost impacts of the standards are presented in section V.B and in section VII.E.2 (below). The public entities and affected industries who were consulted, as required by the Unfunded Mandates Reform Act, understand the cost impacts and

support the final rules (see Section 4. "Consultation with Government Officials" below). The energy impacts are discussed in section V.B of this notice. To the extent energy recovery devices are used to comply with the rules, the rules will result in a net energy savings (production of energy).

Compliance with section 205(a): Regarding the EPA's compliance with section 205(a), the EPA did identify and consider a reasonable number of alternatives, and presents a summary of these below. The EPA has chosen to adopt the alternative with a size cutoff of 2.5 million Mg capacity, and 50 Mg/yr emissions. The incremental cost effectiveness of this 50 Mg/yr option is \$6,250 per ton of NMOC reduced (versus the less stringent 75 Mg/yr option). This cost effectiveness is much higher than is typical for NMOC (or VOC) controls in NSPSs. However, the EPA also considers the reductions in methane achieved by this 50 Mg/yr option as necessary to "achieve the objectives" of section 111. The additional methane reductions achieved by this option are also an important part of the total carbon reductions identified under the Administration's 1993 Climate Change Action Plan. The EPA thus concludes that the chosen alternative is the most cost-effective to achieve the objectives of section 111, as called for in section 205(a).

2. Social Costs and Benefits

This assessment of the cost and benefits to State, local, and tribal governments of the guidelines is based on EPA's "Economic Impact Analysis for Proposed Emission Standards and Guidelines for Municipal Solid Waste Landfills" and updates to the analysis contained in "Air Emissions from Municipal Solid Waste Landfills—Background Information for Final Standards and Guidelines" (EPA-453/R-94-021). Measuring the social costs of the guidelines requires identification of the affected entities by ownership (public or private), consideration of regulatory alternatives, calculation of the regulatory compliance costs for each affected entity, and assessment of the market implications of the additional pollution control costs. Considering the social benefits of the guidelines requires

estimating the anticipated reductions in emissions at MSW landfills due to regulation and identifying the harmful effects of exposure to MSW landfill emissions. Quantitative valuation of the expected benefits to society was not done for this rule.

a. Affected Entities. The standards of performance for new sources will require control of approximately 43 new landfills constructed in the first 5 years the standards are in effect. The EG will require control of approximately 312 existing landfills. This represents less than 5 percent of the total number of landfills in the U.S.

Of the landfills required to install controls, about 30 percent of the existing landfills and 20 percent of the new landfills are privately owned. The remainder are publicly owned. (These percentages are taken from section 3.2.1 of the promulgation BID (EPA-453/R-94-021). While that analysis used a design capacity exemption level of 1 million Mg rather than the 2.5 million Mg exemption level contained in the final rule, the percentage of private versus publicly owned landfills would be similar.

b. Regulatory Alternatives Considered. Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with the law.

A number of alternatives were considered. These included design capacity exemption levels of 1, 2.5, and 3 million Mg and emission rate cutoffs of 50, 75, 100, and 150 Mg/year. Table 3 presents the impacts of alternative design capacity exemption levels for existing landfills. Table 4 presents the impacts of alternative emission rate cutoffs for existing landfills. Tables 5 and 6 present alternative design capacity exemption levels and emission rate cutoffs for new landfills.

TABLE 3.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE EMISSION GUIDELINES ^{a,b}

Small size cutoff (millions Mg)	Number landfills affected	Annual ^c NMOC emission reduction (Mg/yr)	Annual ^c methane emission reduction (Mg/yr)	Annual cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC incremental cost eff. (\$/Mg)
Baseline ^a 3,000,000	273	73,356	3,220,000	84	1,145	1,145

TABLE 3.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE EMISSION GUIDELINES ^{a,b}—Continued

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

^a Emission rate cutoff level of 50 Mg NMOC/yr.^b All values are fifth year annualized.^c NMOC emission reductions are from a baseline of 145,000 Mg NMOC/yr.^d Methane emission reductions are from a baseline of 8,400,000 Mg methane/yr.^e In the absence of an emission guidelines.^f No emission rate cutoff and no design capacity exemption level.TABLE 4.—ALTERNATIVE NMOC EMISSION RATE STRINGENCY LEVEL OPTIONS FOR THE EMISSION GUIDELINES ^{a,b}

Emission rate cutoff (Mg NMOC/yr)	Number landfills affected	Annual ^c NMOC emission reduction (Mg/yr)	Annual ^d methane emission reduction (Mg/yr)	Annual cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC incremental cost eff. (\$/Mg)
Baseline ^e						
150	142	66,600	2,210,000	51	766	766
100	201	72,700	2,720,000	66	908	2,459
75	250	76,000	3,080,000	79	1,039	3,939
50	312	77,600	3,370,000	89	1,147	6,250
No cutoff ^f	7,299	142,000	8,270,000	719	5,063	9,783

^a Design capacity exemption level of 2,500,000 Mg of refuse.^b All values are fifth year annualized.^c NMOC emission reductions are from a baseline of 145,000 Mg NMOC/yr.^d Methane emission reductions are from a baseline of 8,400,000 Mg methane/yr.^e In the absence of an emission guidelines.^f No emission rate cutoff and no design capacity exemption level.TABLE 5.—ALTERNATIVE DESIGN CAPACITY EXEMPTION LEVEL OPTIONS FOR THE NEW SOURCE PERFORMANCE STANDARDS ^{a,b}

Small size cutoff (millions Mgr)	Number landfills affected	Annual ^c NMOC emission reduction (Mg/yr)	Annual ^d methane emission reduction (Mg/yr)	Annual ^e cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC ^f incremental cost eff. (\$/Mg)
Baseline ^a						
3,000,000	41	4,900	193,000	4	816	N/A
2,500,000	43	4,900	193,000	4	816	N/A
1,000,000	89	4,900	193,000	4	816	N/A
No cutoff ^b	872	13,115	881,000	81	6,176	N/A

^a Emission rate cutoff level of 50 Mg NMOC/yr.^b All values are fifth year annualized.^c NMOC emission reductions are from a baseline of 13,400 Mg NMOC/yr.^d Methane emission reductions are from a baseline of 899,000 Mg methane/yr.^e 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.^f 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.^a In the absence of a standard.^b No emission rate cutoff and no design capacity exemption level.TABLE 6.—ALTERNATIVE NMOC EMISSION RATE STRINGENCY LEVEL OPTIONS FOR THE NEW SOURCE PERFORMANCE STANDARDS ^{a,b}

Emission rate cutoff (Mg NMOC/yr)	Number landfills affected	Annual ^{c,d} NMOC emission reduction (Mg/yr)	Annual ^{c,e} methane emission reduction (Mg/yr)	Annual ^f cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC ^a incremental cost eff. (\$/Mg)
Baseline ^b						
150	14	5,200	187,000	4	769	NA
100	25	5,100	203,000	4	784	NA
75	33	5,000	194,000	4	800	NA

TABLE 6.—ALTERNATIVE NMOC EMISSION RATE STRINGENCY LEVEL OPTIONS FOR THE NEW SOURCE PERFORMANCE STANDARDS^{a,b}—Continued

Emission rate cutoff (Mg NMOC/yr)	Number landfills affected	Annual ^{c,d} NMOC emission reduction (Mg/yr)	Annual ^{c,e} methane emission reduction (Mg/yr)	Annual ^f cost (million \$/yr)	NMOC average cost eff. (\$/Mg)	NMOC incremental cost eff. (\$/Mg)
50	43	4,900	193,000	4	816	NA
No Cutoff ^h	872	13,115	881,000	81	6,176	NA

^a Design capacity exemption level of 2,500,000 Mg of refuse.

^b All values are fifth year annualized.

^c Because of the small number of landfills and the longer time period of control for a given landfill at a more stringent option, the average annual emission reduction appears to decrease for a more stringent option. However, the emission reduction for a given year increase for more stringent options.

^d NMOC emission reductions are from a baseline of 13,400 Mg NMOC/yr.

^e Methane emission reductions are from a baseline of 899,000 Mg NMOC/yr.

^f 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.

^g 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.

^h In the absence of a standard.

ⁱ No emission rate cutoff and no design capacity exemption level.

The design capacity cutoff of 2.5 million Mg or 2.5 million cubic meters was chosen as a result of changes to the nationwide impacts analysis and to relieve as many small businesses and municipalities as possible from the regulatory requirements while still maintaining significant emission reduction. The 2.5 million Mg cutoff level exempts landfills that serve populations of less than about 125,000 people from periodic reporting and control requirements. This cutoff excludes those landfills who would be least able to afford the costs of a landfill gas collection and control system. A less stringent design capacity exemption level (e.g., 3 million Mg) was not selected because it would result in less emissions reductions. A more stringent design capacity exemption level (e.g., 1 million Mg) was not selected because it would increase the number of landfills required to apply control by over 80 percent (572 vs. 312 existing landfills) while only achieving an additional 25 percent NMOC emission reduction (see table 3). It would also increase national costs and subject smaller government entities to the regulatory requirements, since smaller governments typically operate smaller landfills.

The emission rate cutoff of 50 Mg/yr of NMOC was chosen because, in conjunction with the 2.5 million Mg design capacity cutoff, it will require control of less than 5 percent of all landfills, yet is estimated to reduce NMOC emissions by approximately 53 percent and methane emissions by 39 percent. The Climate Change Action Plan, signed by the President in October 1993, calls for the EPA to promulgate a "tough" landfill gas rule as soon as possible.

The average cost effectiveness is about \$1,150/Mg NMOC (see table 4). While the incremental cost effectiveness for NMOC control of going from a cutoff of 75 Mg/yr to a 50 Mg/yr cutoff is high (\$6,250/Mg NMOC), this value does not include any credit for the benefits of toxics, odor, explosion control, or the indirect benefit of methane control. The economic analysis indicated that the final rule (including the 50 Mg/yr cutoff level) would cause a relatively small increase in waste disposal costs compared to the current costs and would not result in severe economic impacts on households (see section C. "Social Costs" below).

A more stringent option (e.g., no cutoff) was not chosen because the average and incremental cost and cost effectiveness was not reasonable (see table 4). Less stringent emission rate cutoff levels were not chosen because they result in less NMOC and methane reduction, and would not be consistent with the section 111 statutory requirement to base emission standards on BDT.

The public entities with whom the EPA consulted understood the EPA's concerns regarding the loss of emission reductions by changing the proposed capacity exemption level from 100,000 Mg to 5 million Mg and agreed that 2.5 million relieved 90 percent of the landfills from the burden of regulation and was reasonable.

c. *Social Costs.* The regulatory compliance costs of reducing air emissions from MSW landfills include the total and annualized capital costs; operating and maintenance costs; monitoring, inspection, recordkeeping, and reporting costs; and total annual costs. The annualized capital cost is calculated using a 7 percent discount

rate. The total annual cost is calculated as the sum of the annualized capital cost; operating and maintenance costs; and the monitoring, inspection, recordkeeping, and reporting costs.

The total nationwide annualized cost for collection and control of air emissions from new MSW landfills are estimated to be \$4 million. The nationwide costs of the EG for existing landfills is estimated to be about \$90 million. The annual cost of waste disposal is estimated to increase by an average of \$0.60/Mg for the NSPS and \$1.30/Mg for the EG. Costs per household would increase by approximately \$2.50 to \$5.00 per year for households served by a new or existing landfill, respectively, that is required to install a collection and control system. Because the rule requires control of only about 5 percent of the landfills in the U.S., many households would experience no increase in disposal costs. Furthermore, if affected landfills choose to use energy recovery systems, the cost per household in those areas would be less. The EPA has concluded that households would not incur severe economic impacts. For additional information, please refer to the regulatory impacts analysis (Docket No. A-88-09, Item IV-A-7) and chapter 3 of the promulgation BID (EPA-453/R-94-021). There are no Federal funds available to assist State and local governments in meeting these costs.

d. *Social Benefits.* Society will benefit from the NSPS and EG through the reduction of landfill gas emissions, including NMOC and methane reductions. The total nationwide annualized emission reduction of the EG is estimated to be 77,600 Mg/yr of NMOC and 3,370,000 Mg/yr of methane.

The total nationwide annualized emission reduction for the NSPS is about 4,900 Mg/yr of NMOC and 881,000 Mg/yr of methane.

The NMOC's present several hazards to human health. The NMOC's participate in chemical reactions leading to the formation of ozone, which causes health effects. Also, certain NMOC's have cancer risks and cause noncancer health effects.

Ozone is created by sunlight acting on NO_x and NMOC's in ambient air. Ozone leads to alterations in pulmonary function, aggravation of pre-existing respiratory disease, damage to lung structure, and adverse effects on blood enzymes, the central nervous system, and endocrine systems. Ozone also warrants control due to its welfare effects, specifically, reduced plant growth, decreased crop yield, necrosis of plant tissue, and deterioration of certain synthetic materials such as rubber (Docket No. A-88-09, Item Nos. II-A-26, II-I-16, etc.).

There is also concern about cancer risks from landfill NMOC emissions. In reviewing limited emissions data from MSW landfills, EPA identified both known and suspected carcinogens such as benzene, carbon tetrachloride, chloroform, ethylene dichloride, methylene dichloride, perchloroethylene, trichloroethylene, vinyl chloride, and vinylidene chloride. Prior to proposal, the EPA attempted to apply statistical methods to the limited data to generate the average annual increased cancer incidence and the maximum individual risk (MIR). In evaluating the result of the calculations for annual incidence and MIR, the EPA could not determine reasonable estimates of either an annual incidence or the MIR. The EPA concluded, at proposal, that the uncertainties in the database are too great to calculate credible estimates of the cancer risks associated with MSW landfills.

Another benefit of the NSPS and EG is reduced fire explosion hazard through reduction of methane emissions. The EPA has documented many cases of acute injury and death caused by explosions and fires related to municipal landfill gas emissions. In addition to these health effects, the associated property damage is a welfare effect. Furthermore, when the migration of methane and the ensuing hazard are identified, adjacent property values can be adversely affected (Docket No. A-88-09, Item Nos. II-I-6, II-I-7, etc.).

Another aspect of MSW landfill emissions is the offensive odor associated with landfills. While the nature of the wastes themselves contribute to the problem of odor, the

gaseous decomposition products are often characteristically malodorous and unpleasant. Various welfare effects may be associated with odors, but due to the subjective nature of the impact and perception of odor, it is difficult to quantify these effects. Studies indicate that unpleasant odors can discourage capital investment and lower the socioeconomic status of an area. Odors have been shown to interfere with daily activities, discourage facility use, and lead to a decline in property values, tax revenues, and payroll (Docket No. A-88-09, Item Nos. II-I-6, II-I-7, etc.).

An ancillary benefit from regulating air emissions from MSW landfills is a reduction in the contribution of MSW landfill emissions to global emissions of methane. Methane is a major greenhouse gas, and is 20 to 30 times more potent than CO₂ on a molecule-per-molecule basis. This is due to the radiative characteristics of methane and other effects methane has on atmospheric chemistry. There is a general concern within the scientific community that the increasing emissions of greenhouse gases could lead to climate change, although the rate and magnitude of these changes are uncertain.

In conclusion, while the social benefits of the rule have not been quantified, significant health and welfare benefits are expected to result from the reduction in landfill gas emissions caused by the rule.

3. Effects on the National Economy

The Unfunded Mandates Act requires that the EPA estimate "the effect" of this rule—

"on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of the U.S. goods and services, if and to the extent that the EPA in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material."

As stated in the Unfunded Mandates Act, such macroeconomic effects tend to be measurable, in nationwide econometric models, only if the economic impact of the regulation reaches 0.25 to 0.5 percent of gross domestic product (in the range of \$1.5 billion to \$3 billion). A regulation with a smaller aggregate effect is highly unlikely to have any measurable impact in macroeconomic terms unless it is highly focused on a particular geographic region or economic sector. For this reason, no estimate of this rule's effect on the national economy has been conducted.

4. Consultation with Government Officials

The Unfunded Mandates Act requires that the EPA describe the extent of the EPA's consultation with affected State, local, and tribal officials, summarize the officials' comments or concerns, and summarize the EPA's response to those comments or concerns. These goals were addressed through meetings held with a number of public entities over the course of six months. Those entities included the US Conference of Mayors, the National League of Cities, the National Governor's Association, the National Association of Counties, and the Solid Waste Association of North America (SWANA). Through these meetings, these entities were informed of the rule, educated about it, and advised as to whether or not they would be impacted by it. These initial education and information sharing meetings were followed by meetings in which consultations and analysis of various alternatives took place. Documentation of all meetings and public comments can be found in Docket A-88-09.

Various concerns were discussed during the meetings. These concerns included: (1) The design capacity cutoff; (2) collection wells, their costing and installation requirements; (3) design specifications for collection systems; (4) well head nitrogen measurement of 20 percent; and (5) the surface monitoring requirements.

As a result of these consultations, the EPA decided to modify the final regulatory package to address these concerns. In the final regulatory package promulgated today: (1) The design capacity cutoff has been raised from the proposed level of 100,000 to 2.5 million Mg; (2) Changes were made to the way the costing algorithm calculates the number of vertical collection wells. The rule was also changed to require active areas to install wells 5 years from initial waste placement instead of 2 years. Closed areas or areas at final grade must install a collection system within 2 years; (3) Prescriptive design specifications have been removed from the rule and replaced with general criteria. The EPA is developing an Enabling Document to assist State and local permitting agencies in their review of designs; (4) Well head pressure monitoring can meet either 20 percent nitrogen or 5 percent oxygen; (5) Surface monitoring is to be done quarterly instead of monthly, not to exceed 500 ppm methane above background.

These changes were made in response to consultations held regarding burden of the regulation and as a result of new

data presented by the entities with whom the EPA met. A letter from the Solid Waste Management of North America and SWAC to the EPA demonstrates their support of this decision. Detailed summaries of the meetings and the letter can be obtained from the Docket A-88-09.

Documentation of the EPA's consideration of comments on the proposed standards and guidelines is provided in the BID's for the proposed and final standards and guidelines. Refer to the ADDRESSES section of this preamble for information on how to acquire copies of these documents.

The final rule reflects a minimization of burden on small landfills and does not create an unreasonable burden for large public entities. The EPA has considered the purpose and intent of the Unfunded Mandate Act and has determined the landfill NSPS and EG are needed.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to give special consideration to the impact of regulation on small businesses, small organizations, and small governmental units. The Regulatory Flexibility Act specifies that EPA must prepare an initial regulatory flexibility analysis if a regulation will have a significant economic impact on a substantial number of small entities.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The final NSPS and EG exempt small landfills that have a design capacity below 2.5 million Mg of MSW. This design capacity exemption will exempt landfills that serve communities of 125,000 people or less, assuming the typical waste generation rate of 5 lb of waste per person per day and an average landfill age of 20 years. Section 601 of the Regulatory Flexibility Act defines a "small governmental jurisdiction" as governments of cities, counties, towns, or other districts with a population less than 50,000. The design capacity exemption will exempt landfills that serve small governmental jurisdictions. Therefore, the landfills NSPS and EG will have no impact on small entities.

The NSPS and EG will require periodic emissions calculations or control of emissions from only the largest 10 percent of landfills in the U.S. By controlling these large landfills, the rules will significantly reduce landfill gas emissions, which have adverse effects on human health and welfare,

contribute to global warming, and can create odors and explosion hazards. In consideration of the potential regulatory burden on small entities and in response to public comment, the landfill design capacity in the proposed rule was raised to 2.5 million Mg/yr, thereby exempting small entities.

G. Miscellaneous

The effective date of this regulation is March 12, 1996. Section 111(b)(1)(B) of the CAA provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal, May 31, 1991.

As prescribed by section 111, the promulgation of these standards was preceded by the Administrator's determination that MSW landfills contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the CAA, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the CAA. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining the BDT. The economic impact assessment is included in the BID for the proposed standards and in Chapter 3 of the promulgation BID.

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control.

40 CFR Part 52

Air pollution control.

40 CFR Part 60

Environmental protection, Air pollution control. Intergovernmental relations, reporting and recordkeeping

requirements, Municipal solid waste landfills, Municipal solid waste.

Dated: March 1, 1996.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter 1, parts 51, 52 and 60 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 7401-7671q.

2. Section 51.166(b)(23)(i) is amended by adding an entry to the end of the *Pollutant and Emission Rate* list to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(b) * * *

(23) * * *

(i) * * * Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

3. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

4. Section 52.21(b)(23)(i) is amended by adding an entry to the end of the *Pollutant and Emission Rate* list to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

(b) * * *

(23) * * *

(i) * * * Municipal solid waste landfills emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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

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

6. Section 60.16 of subpart A is amended by adding an entry to the end to read under *Other Source Categories* as follows:

§ 60.16 Priority list.**Other Source Categories****Municipal solid waste landfills.***

7. Section 60.30 is amended by adding a new paragraph (c) to read as follows:

§ 60.30 Scope.**(c) Subpart Cc—Municipal Solid Waste Landfills.**

8. Part 60 is further amended by adding the Subpart Cc to read as follows:

Subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills**Sec.****60.30c Scope.****60.31c Definitions.****60.32c Designated facilities.****60.33c Emission guidelines for municipal solid waste landfill emissions.****60.34c Test methods and procedures.****60.35c Reporting and recordkeeping guidelines.****60.36c Compliance times.****Subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills****§ 60.30c Scope.**

This subpart contains emission guidelines and compliance times for the control of certain designated pollutants from certain designated municipal solid waste landfills in accordance with section 111(d) of the Act and subpart B.

§ 60.31c Definitions.

Terms used but not defined in this subpart have the meaning given them in the Act and in subparts A, B, and WWW of this part.

Municipal solid waste landfill or MSW landfill means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA

Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill or a lateral expansion.

§ 60.32c Designated facilities.

(a) The designated facility to which the guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.

(b) Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of subpart WWW [see § 60.750 of Subpart WWW].

§ 60.33c Emission guidelines for municipal solid waste landfill emissions.

(a) For approval, a State plan shall include control of MSW landfill emissions at each MSW landfill meeting the following three conditions:

(1) The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition;

(2) The landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. 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; and

(3) The landfill has a nonmethane organic compound emission rate of 50 megagrams per year or more.

(b) For approval, a State plan shall include the installation of a collection and control system meeting the conditions provided in § 60.752(b)(2)(ii) of this part at each MSW landfill meeting the conditions in paragraph (a) of this section. The State plan shall include a process for State review and approval of the site-specific design plans for the gas collection and control system(s).

(c) For approval, a State plan shall include provisions for the control of collected MSW landfill emissions through the use of control devices meeting the requirements of paragraph (c)(1), (2), or (3) of this section, except as provided in § 60.24.

(1) An open flare designed and operated in accordance with the parameters established in § 60.18; or

(2) A control system designed and operated to reduce NMOC by 98 weight percent; or

(3) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

§ 60.34c Test methods and procedures.

For approval, a State plan shall include provisions for the calculation

of the landfill NMOC emission rate listed in § 60.754, as applicable, to determine whether the landfill meets the condition in § 60.33c(a)(3); the operational standards in § 60.753; the compliance provisions in § 60.755; and the monitoring provisions in § 60.756.

§ 60.35c Reporting and recordkeeping guidelines.

For approval, a State plan shall include the recordkeeping and reporting provisions listed in §§ 60.757 and 60.758, as applicable, except as provided under § 60.24.

§ 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 effective date of a State emission standard for MSW landfills.

(b) For each existing MSW landfill meeting the conditions in § 60.33c(a)(1) and § 60.33c(a)(2) whose NMOC emission rate is less than 50 megagrams per year on the effective date of the State emission standard, installation of collection and control systems capable of meeting emission guidelines in § 60.33c shall be accomplished within 30 months of the date when the condition in § 60.33c(a)(3) is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).

9. Part 60 is amended by adding a new subpart WWW to read as follows:

Subpart WWW—Standards of Performance for Municipal Solid Waste Landfills**Sec.****60.750 Applicability, designation of affected facility, and delegation of authority.****60.751 Definitions.****60.752 Standards for air emissions from municipal solid waste landfills.****60.753 Operational standards for collection and control systems.****60.754 Test methods and procedures.****60.755 Compliance provisions.****60.756 Monitoring of operations.****60.757 Reporting requirements.****60.758 Recordkeeping requirements.****60.759 Specifications for active collection systems.****Subpart WWW—Standards of Performance for Municipal Solid Waste Landfills****§ 60.750 Applicability, designation of affected facility, and delegation of authority.**

(a) The provisions of this subpart apply to each municipal solid waste

* Not prioritized, since an NSPS for this major source category has already been promulgated.

landfill that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991. Physical or operational changes made to an existing MSW landfill solely to comply with Subpart Cc of this part are not considered construction, reconstruction, or modification for the purposes of this section.

(b) The following authorities shall be retained by the Administrator and not transferred to the State: None.

§ 60.751 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in subpart A of this part.

Active collection system means a gas collection system that uses gas mover equipment.

Active landfill means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

Closed landfill means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under § 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of § 258.60 of this title.

Closure means that point in time when a landfill becomes a closed landfill.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

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 either:

- (1) A notification of intent to install a collection and control system or
- (2) 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 specified in the construction or operating permit issued by the State, local, or Tribal agency responsible for regulating the landfill.

Disposal facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Emission rate cutoff means the threshold annual emission rate to which a landfill compares its estimated emission rate to determine if control under the regulation is required.

Enclosed combustor means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

Flare means an open combustor without enclosure or shroud.

Gas mover equipment means the equipment (i.e., fan, blower, compressor) used to transport landfill gas through the header system.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act, parts 264 and 265 of this title. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

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

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under § 257.2 of this title.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless

it results in an increase in the design capacity of the landfill.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (§ 257.2 of this title) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

Municipal solid waste landfill emissions or *MSW landfill emissions* means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

NMOC means nonmethane organic compounds, as measured according to the provisions of § 60.754.

Nondegradable waste means any waste that does not decompose through chemical breakdown or microbiological activity. Examples are, but are not limited to, concrete, municipal waste combustor ash, and metals.

Passive collection system means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

Sludge means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

Solid waste means any garbage, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Sufficient density means any number, spacing, and combination of collection

system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this part.

Sufficient extraction rate means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

§ 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. For purposes of part 70 permitting, a landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters does not require an operating permit under part 70 of this chapter. 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), when there is any increase in the design capacity of a landfill subject to the provisions of this subpart, whether the increase results from an increase in the area or depth of the landfill, a change in the operating procedures of the landfill, or any other means.

(2) If any 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 or 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 or 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 or 2.5 million cubic meters is subject to part 70 permitting requirements. When a landfill is closed, and either never needed control or meets the conditions for control system removal specified in § 60.752(b)(2)(v) of this subpart, a part 70 operating permit is no longer required.

(1) If the calculated NMOC emission rate is less than 50 megagrams per year, the owner or operator shall:

(i) Submit an annual emission report to the Administrator, except as provided for in § 60.757(b)(1)(ii); and

(ii) Recalculate the NMOC emission rate annually using the procedures specified in § 60.754(a)(1) until such time as the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, or the landfill is closed.

(A) If the NMOC emission rate, upon recalculation required in paragraph (b)(1)(ii) of this section, is equal to or greater than 50 megagrams per year, the owner or operator shall install a collection and control system in compliance with paragraph (b)(2) of this section.

(B) If the landfill is permanently closed, a closure notification shall be submitted to the Administrator as provided for in § 60.757(d).

(2) If the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, the owner or operator shall:

(i) Submit a collection and control system design plan prepared by a professional engineer to the Administrator within 1 year;

(A) The collection and control system as described in the plan shall meet the design requirements of paragraph (b)(2)(ii) of this section.

(B) The collection and control system design plan shall include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of §§ 60.753 through 60.758 proposed by the owner or operator.

(C) The collection and control system design plan shall either conform with specifications for active collection systems in § 60.759 or include a demonstration to the Administrator's satisfaction of the sufficiency of the alternative provisions to § 60.759.

(D) The Administrator shall review the information submitted under

paragraphs (b)(2)(i) (A), (B) and (C) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems.

(ii) Install a collection and control system within 18 months of the submittal of the design plan under paragraph (b)(2)(i) of this section that effectively captures the gas generated within the landfill.

(A) An active collection system shall:

(1) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control or treatment system equipment;

(2) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of:

(i) 5 years or more if active; or
(ii) 2 years or more if closed or at final grade;

(3) Collect gas at a sufficient extraction rate;

(4) Be designed to minimize off-site migration of subsurface gas.

(B) A passive collection system shall:

(1) Comply with the provisions specified in paragraphs (b)(2)(ii), (A) (1), (2), and (4) of this section.

(2) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners shall be installed as required under § 258.40 of this title.

(iii) Route all the collected gas to a control system that complies with the requirements in either paragraph (b)(2)(iii) (A), (B) or (C) of this section.

(A) An open flare designed and operated in accordance with § 60.18;

(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, required under § 60.8 using the test methods specified in § 60.754(d).

(1) If a boiler or process heater is used as the control device, the landfill gas

stream shall be introduced into the flame zone.

(2) The control device shall be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in § 60.756;

(C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or use. All emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of paragraph (b)(2)(iii) (A) or (B) of this section.

(iv) Operate the collection and control device installed to comply with this subpart in accordance with the provisions of § 60.753, 60.755 and 60.756.

(v) The collection and control system may be capped or removed provided that all the conditions of paragraphs (b)(2)(v) (A), (B), and (C) of this section are met:

(A) The landfill shall be no longer accepting solid waste and be permanently closed under the requirements of § 258.60 of this title. A closure report shall be submitted to the Administrator as provided in § 60.757(d);

(B) The collection and control system shall have been in operation a minimum of 15 years; and

(C) Following the procedures specified in § 60.754(b) of this subpart, the calculated NMOC gas produced by the landfill shall be less than 50 megagrams per year on three successive test dates. The test dates shall be no less than 90 days apart, and no more than 180 days apart.

§ 60.753 Operational standards for collection and control systems.

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

(a) Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for:

- (1) 5 years or more if active; or
- (2) 2 years or more if closed or at final grade;

(b) Operate the collection system with negative pressure at each wellhead except under the following conditions:

(1) A fire or increased well temperature. The owner or operator shall record instances when positive pressure occurs in efforts to avoid a fire. These records shall be submitted with the annual reports as provided in § 60.757(f)(1);

(2) Use of a geomembrane or synthetic cover. The owner or operator shall develop acceptable pressure limits in the design plan;

(3) A decommissioned well. A well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes shall be approved by the Administrator;

(c) Operate each interior wellhead in the collection system with a landfill gas temperature less than 55 °C and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent. The owner or operator may establish a higher operating temperature, nitrogen, or oxygen value at a particular well. A higher operating value demonstration shall show supporting data that the elevated parameter does not cause fires or significantly inhibit anaerobic decomposition by killing methanogens.

(1) The nitrogen level shall be determined using Method 3C, unless an alternative test method is established as allowed by § 60.752(b)(2)(i) of this subpart.

(2) Unless an alternative test method is established as allowed by § 60.752(b)(2)(i) of this subpart, the oxygen shall be determined by an oxygen meter using Method 3A except that:

(i) The span shall be set so that the regulatory limit is between 20 and 50 percent of the span;

(ii) A data recorder is not required;

(iii) Only two calibration gases are required, a zero and span, and ambient air may be used as the span;

(iv) A calibration error check is not required;

(v) The allowable sample bias, zero drift, and calibration drift are ±10 percent.

(d) Operate the collection system so that the methane concentration is less than 500 parts per million above

background at the surface of the landfill. To determine if this level is exceeded, the owner or operator shall conduct surface testing around the perimeter of the collection area 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. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan shall be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30 meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

(e) Operate the system such that all collected gases are vented to a control system designed and operated in compliance with § 60.752(b)(2)(iii). In the event the collection or control system is inoperable, the gas mover system shall be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere shall be closed within 1 hour; and

(f) Operate the control or treatment system at all times when the collected gas is routed to the system.

(g) If monitoring demonstrates that the operational requirement in paragraphs (b), (c), or (d) of this section are not met, corrective action shall be taken as specified in § 60.752(a) (3) through (5) or § 60.755(c) of this subpart. If corrective actions are taken as specified in § 60.755, the monitored exceedance is not a violation of the operational requirements in this section.

§ 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. 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} .

(i) The following equation shall be used if the actual year-to-year solid waste acceptance rate is known.

$$M_{NMOC} = \sum_{i=1}^n 2kL_0M_i(e^{-kt_i})(C_{NMOC})(3.6 \times 10^{-9})$$

where.

M_{NMOC} = Total NMOC emission rate from the landfill, megagrams per year

k = methane generation rate constant, year⁻¹

L_0 = methane generation potential, cubic meters per megagram solid waste

M_i = mass of solid waste in the i^{th} section, megagrams

t_i = age of the i^{th} section, years

C_{NMOC} = concentration of NMOC, parts per million by volume as hexane

3.6×10^{-9} = conversion factor

The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value for M_i , if the documentation provisions of § 60.758(d)(2) are followed.

(ii) The following equation shall be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_0 R (e^{-kt} - e^{-kt}) (C_{NMOC}) (3.6 \times 10^{-9})$$

where,

M_{NMOC} = mass emission rate of NMOC, megagrams per year

L_0 = methane generation potential, cubic meters per megagram solid waste

R = average annual acceptance rate, megagrams per year

k = methane generation rate constant, year⁻¹

t = age of landfill, years

C_{NMOC} = concentration of NMOC, parts per million by volume as hexane

c = time since closure, years. For active landfill $c = 0$ and $e^{-kc} = 1$

3.6×10^{-9} = conversion factor

The mass of nondegradable solid waste may be subtracted from the average annual acceptance rate when calculating a value for R , if the documentation provisions of § 60.758(d)(2) are followed.

(2) *Tier 1.* The owner or operator shall compare the calculated NMOC mass emission rate to the standard of 50 megagrams per year:

(i) If the NMOC emission rate calculated in paragraph (a)(1) of this section is less than 50 megagrams per year, then the landfill owner shall submit an emission rate report as provided in § 60.757(b)(1), and shall recalculate the NMOC mass emission rate annually as required under § 60.752(b)(1).

(ii) If the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, then the landfill owner shall either comply with § 60.752(b)(2), or determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the procedures provided in paragraph (a)(3) of this section.

(3) *Tier 2.* The landfill owner or operator shall determine the NMOC concentration using the following sampling procedure. The landfill owner or operator shall install at least two sample probes per hectare of landfill

surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator shall collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using Method 25C of appendix A of this part or Method 18 of appendix A of this part. If using Method 18 of appendix A of this part, the minimum list of compounds to be tested shall be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42). If composite sampling is used, equal volumes shall be taken from each sample probe. If more than the required number of samples are taken, all samples shall be used in the analysis. The landfill owner or operator shall divide the NMOC concentration from Method 25C of appendix A of this part by six to convert from C_{NMOC} as carbon to C_{NMOC} as hexane.

(i) The landfill owner or operator shall recalculate the NMOC mass emission rate using the equations provided in paragraph (a)(1)(i) or (a)(1)(ii) of this section and using the average NMOC concentration from the collected samples instead of the default value in the equation provided in paragraph (a)(1) of this section.

(ii) If the resulting mass emission rate calculated using the site-specific NMOC concentration is equal to or greater than 50 megagrams per year, then the landfill owner or operator shall either comply with § 60.752(b)(2), or determine the site-specific methane generation rate constant and recalculate the NMOC emission rate using the site-specific methane generation rate using the procedure specified in paragraph (a)(4) of this section.

(iii) If the resulting NMOC mass emission rate is less than 50 megagrams per year, the owner or operator shall submit a periodic estimate of the emission rate report as provided in § 60.757(b)(1) and retest the site-specific NMOC concentration every 5 years using the methods specified in this section.

(4) *Tier 3.* The site-specific methane generation rate constant shall be determined using the procedures provided in Method 2E of appendix A of this part. The landfill owner or operator shall estimate the NMOC mass emission rate using equations in paragraph (a)(1)(i) or (a)(1)(ii) of this section and using a site-specific methane generation rate constant k , and the site-specific NMOC concentration as determined in paragraph (a)(3) of this section instead of the default values

provided in paragraph (a)(1) of this section. The landfill owner or operator shall compare the resulting NMOC mass emission rate to the standard of 50 megagrams per year.

(i) If the NMOC mass emission rate as calculated using the site-specific methane generation rate and concentration of NMOC is equal to or greater than 50 megagrams per year, the owner or operator shall comply with § 60.752(b)(2).

(ii) If the NMOC mass emission rate is less than 50 megagrams per year, then the owner or operator shall submit a periodic emission rate report as provided in § 60.757(b)(1) and shall recalculate the NMOC mass emission rate annually, as provided in § 60.757(b)(1) using the equations in paragraph (a)(1) of this section and using the site-specific methane generation rate constant and NMOC concentration obtained in paragraph (a)(3) of this section. The calculation of the methane generation rate constant is performed only once, and the value obtained is used in all subsequent annual NMOC emission rate calculations.

(5) The owner or operator may use other methods to determine the NMOC concentration or a site-specific k as an alternative to the methods required in paragraphs (a)(3) and (a)(4) of this section if the method has been approved by the Administrator as provided in § 60.752(b)(2)(i)(B).

(b) After the installation of a collection and control system in compliance with § 60.755, the owner or operator shall calculate the NMOC emission rate for purposes of determining when the system can be removed as provided in § 60.752(b)(2)(v), using the following equation:

$$M_{NMOC} = 1.89 \times 10^{-3} Q_{LFG} C_{NMOC}$$

where,

M_{NMOC} = mass emission rate of NMOC, megagrams per year

Q_{LFG} = flow rate of landfill gas, cubic meters per minute

C_{NMOC} = NMOC concentration, parts per million by volume as hexane

(1) The flow rate of landfill gas, Q_{LFG} , shall be determined by measuring the total landfill gas flow rate at the common header pipe that leads to the control device using a gas flow measuring device calibrated according to the provisions of section 4 of Method 2E of appendix A of this part.

(2) The average NMOC concentration, C_{NMOC} , shall be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate

removal equipment using the procedures in Method 25C or Method 18 of appendix A of this part. If using Method 18 of appendix A of this part, the minimum list of compounds to be tested shall be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42). The sample location on the common header pipe shall be before any condensate removal or other gas refining units. The landfill owner or operator shall divide the NMOC concentration from Method 25C of appendix A of this part by six to convert from C_{NMOC} as carbon to C_{NMOC} as hexane.

(3) The owner or operator may use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the Administrator as provided in § 60.752(b)(2)(i)(B).

(c) 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. If a collection system, which complies with the provisions in § 60.752(b)(2) is already installed, the owner or operator shall estimate the NMOC emission rate using the procedures provided in paragraph (b) of this section.

(d) For the performance test required in § 60.752(b)(2)(iii)(B), Method 25 or Method 18 of appendix A of this part shall be used to determine compliance with 98 weight-percent efficiency or the 20 ppmv outlet concentration level, unless another method to demonstrate compliance has been approved by the Administrator as provided by § 60.752(b)(2)(i)(B). If using Method 18 of appendix A of this part, the minimum list of compounds to be tested shall be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42). The following equation shall be used to calculate efficiency:

$$\text{Control Efficiency} = (\text{NMOC}_{\text{in}} - \text{NMOC}_{\text{out}}) / (\text{NMOC}_{\text{in}})$$

where,

NMOC_{in} = mass of NMOC entering control device

NMOC_{out} = mass of NMOC exiting control device

§ 60.755 Compliance provisions.

(a) Except as provided in § 60.752(b)(2)(i)(B), the specified methods in paragraphs (a)(1) through (a)(6) of this section shall be used to determine whether the gas collection system is in compliance with § 60.752(b)(2)(ii).

(1) For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with § 60.752(b)(2)(ii)(A)(1), one of the following equations shall be used. The k and L_0 kinetic factors should be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42) or other site specific values demonstrated to be appropriate and approved by the Administrator. If k has been determined as specified in § 60.754(a)(4), the value of k determined from the test shall be used. A value of no more than 15 years shall be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(i) For sites with unknown year-to-year solid waste acceptance rate:

$$Q_m = 2L_0 R (e^{-kt} - e^{-k'})$$

where,

Q_m = maximum expected gas generation flow rate, cubic meters per year

L_0 = methane generation potential, cubic meters per megagram solid waste

R = average annual acceptance rate, megagrams per year

k = methane generation rate constant, year⁻¹

t = age of the landfill at equipment

installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill, whichever is less. If the equipment is installed after closure, t is the age of the landfill at installation, years

c = time since closure, years (for an active landfill $c = 0$ and $e^{-kt} = 1$)

(ii) For sites with known year-to-year solid waste acceptance rate:

$$Q_m = \sum_{i=1}^n 2kL_0 M_i (e^{-kt_i})$$

where,

Q_m = maximum expected gas generation flow rate, cubic meters per year

k = methane generation rate constant, year⁻¹

L_0 = methane generation potential, cubic meters per megagram solid waste

M_i = mass of solid waste in the i^{th} section, megagrams

t_i = age of the i^{th} section, years

(iii) If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, the equations in paragraphs (a)(1) (i) and (ii) of this section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using the equations in paragraphs (a)(1) (i) or (ii) or other methods shall be used to predict the maximum expected gas generation rate

over the intended period of use of the gas control system equipment.

(2) For the purposes of determining sufficient density of gas collectors for compliance with § 60.752(b)(2)(ii)(A)(2), the owner or operator shall design a system of vertical wells, horizontal collectors, or other collection devices, satisfactory to the Administrator, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

(3) For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with § 60.752(b)(2)(ii)(A)(3), the owner or operator shall measure gauge pressure in the gas collection header at each individual well, monthly. If a positive pressure exists, action shall be initiated to correct the exceedance within 5 calendar days, except for the three conditions allowed under § 60.753(b). If negative pressure cannot be achieved without excess air infiltration within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial measurement of positive pressure. Any attempted corrective measure shall not cause exceedances of other operational or performance standards.

(4) Owners or operators are not required to install additional wells as required in paragraph (a)(3) of this section during the first 180 days after gas collection system start-up.

(5) For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator shall monitor each well monthly for temperature and nitrogen or oxygen as provided in § 60.753(c). If a well exceeds one of these operating parameters, action shall be initiated to correct the exceedance within 5 calendar days. If correction of the exceedance cannot be achieved within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial exceedance. Any attempted corrective measure shall not cause exceedances of other operational or performance standards.

(6) An owner or operator seeking to demonstrate compliance with § 60.752(b)(2)(ii)(A)(4) through the use of a collection system not conforming to the specifications provided in § 60.759 shall provide information satisfactory to the Administrator as specified in § 60.752(b)(2)(i)(C) demonstrating that off-site migration is being controlled.

(b) For purposes of compliance with § 60.753(a), each owner or operator of a controlled landfill shall place each well or design component as specified in the approved design plan as provided in § 60.752(b)(2)(i). Each well shall be installed within 60 days of the date in which the initial solid waste has been in place for a period of:

- (1) 5 years or more if active; or
- (2) 2 years or more if closed or at final grade.

(c) The following procedures shall be used for compliance with the surface methane operational standard as provided in § 60.753(d).

(1) After installation of the collection system, the owner or operator shall monitor surface concentrations of methane along the entire perimeter of the collection area and along a serpentine pattern spaced 30 meters apart (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in paragraph (d) of this section.

(2) The background concentration shall be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

(3) Surface emission monitoring shall be performed in accordance with section 4.3.1 of Method 21 of appendix A of this part, except that the probe inlet shall be placed within 5 to 10 centimeters of the ground. Monitoring shall be performed during typical meteorological conditions.

(4) Any reading of 500 parts per million or more above background at any location shall be recorded as a monitored exceedance and the actions specified in paragraphs (c)(4)(i) through (v) of this section shall be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of § 60.753(d).

(i) The location of each monitored exceedance shall be marked and the location recorded.

(ii) Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance shall be made and the location shall be re-monitored within 10 calendar days of detecting the exceedance.

(iii) If the re-monitoring of the location shows a second exceedance, additional corrective action shall be taken and the location shall be monitored again within 10 days of the second exceedance. If the re-monitoring shows a third exceedance for the same

location, the action specified in paragraph (c)(4)(v) of this section shall be taken, and no further monitoring of that location is required until the action specified in paragraph (c)(4)(v) has been taken.

(iv) Any location that initially showed an exceedance but has a methane concentration less than 500 ppm methane above background at the 10-day re-monitoring specified in paragraph (c)(4)(ii) or (iii) of this section shall be re-monitored 1 month from the initial exceedance. If the 1-month re-monitoring shows a concentration less than 500 parts per million above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month re-monitoring shows an exceedance, the actions specified in paragraph (c)(4)(iii) or (v) shall be taken.

(v) For any location where monitored methane concentration equals or exceeds 500 parts per million above background three times within a quarterly period, a new well or other collection device shall be installed within 120 calendar days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the Administrator for approval.

(5) The owner or operator shall implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

(d) Each owner or operator seeking to comply with the provisions in paragraph (c) of this section shall comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

(1) The portable analyzer shall meet the instrument specifications provided in section 3 of Method 21 of appendix A of this part, except that "methane" shall replace all references to VOC.

(2) The calibration gas shall be methane, diluted to a nominal concentration of 500 parts per million in air.

(3) To meet the performance evaluation requirements in section 3.1.3 of Method 21 of appendix A of this part, the instrument evaluation procedures of section 4.4 of Method 21 of appendix A of this part shall be used.

(4) The calibration procedures provided in section 4.2 of Method 21 of appendix A of this part shall be followed immediately before commencing a surface monitoring survey.

(e) The provisions of this subpart apply at all times, except during periods of start-up, shutdown, or malfunction, provided that the duration of start-up, shutdown, or malfunction shall not exceed 5 days for collection systems and shall not exceed 1 hour for treatment or control devices.

§ 60.756 Monitoring of operations.

Except as provided in § 60.752(b)(2)(i)(B),

(a) Each owner or operator seeking to comply with § 60.752(b)(2)(ii)(A) for an active gas collection system shall install a sampling port and a thermometer or other temperature measuring device at each wellhead and:

(1) Measure the gauge pressure in the gas collection header on a monthly basis as provided in § 60.755(a)(3); and

(2) Monitor nitrogen or oxygen concentration in the landfill gas on a monthly basis as provided in § 60.755(a)(5); and

(3) Monitor temperature of the landfill gas on a monthly basis as provided in § 60.755(a)(5).

(b) Each owner or operator seeking to comply with § 60.752(b)(2)(iii) using an enclosed combustor shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ± 1 percent of the temperature being measured expressed in degrees Celsius or ± 0.5 °C, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity greater than 44 megawatts.

(2) A gas flow rate measuring device that provides a measurement of gas flow to or bypass of the control device. The owner or operator shall either:

(i) Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; or

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(c) Each owner or operator seeking to comply with § 60.752(b)(2)(iii) using an open flare shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or

thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame.

(2) A device that records flow to or bypass of the flare. The owner or operator shall either:

(i) Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; or

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(d) Each owner or operator seeking to demonstrate compliance with § 60.752(b)(2)(iii) using a device other than an open flare or an enclosed combustor shall provide information satisfactory to the Administrator as provided in § 60.752(b)(2)(i)(B) describing the operation of the control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator shall review the information and either approve it, or request that additional information be submitted. The Administrator may specify additional appropriate monitoring procedures.

(e) Each owner or operator seeking to install a collection system that does not meet the specifications in § 60.759 or seeking to monitor alternative parameters to those required by § 60.753 through § 60.756 shall provide information satisfactory to the Administrator as provided in § 60.752(b)(2)(i)(B) and (C) describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator may specify additional appropriate monitoring procedures.

(f) Each owner or operator seeking to demonstrate compliance with § 60.755(c), shall monitor surface concentrations of methane according to the instrument specifications and procedures provided in § 60.755(d). Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 ppm or more above background detected during the annual monitoring returns the frequency for that landfill to quarterly monitoring.

§ 60.757 Reporting requirements.

Except as provided in

§ 60.752(b)(2)(i)(B),

(a) Each owner or operator subject to the requirements of this subpart shall submit an initial design capacity report to the Administrator.

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

(i) 90 days of the issuance of the State, Local, Tribal, or RCRA construction or operating permit; or

(ii) 30 days of the date of construction or reconstruction as defined under § 60.15; or

(iii) 30 days of the initial acceptance of solid waste.

(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 provisions of the State, local, Tribal, or RCRA construction or operating permit;

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the State or local construction or RCRA permit, 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 such parameters as depth of solid waste, solid waste acceptance rate, and compaction practices 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 any increase in the design capacity of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill above 2.5 million megagrams or 2.5 million cubic meters. The amended design capacity report shall be submitted within 90 days of the issuance of an amended construction or operating permit, or the placement of waste in additional land, or the change in operating procedures which will

result in an increase in maximum design capacity, whichever occurs first.

(b) Each owner or operator subject to the requirements of this subpart shall submit an NMOC emission rate report to the Administrator initially and annually thereafter, except as provided for in paragraphs (b)(1)(ii) or (b)(3) of this section. The Administrator may request such additional information as may be necessary to verify the reported NMOC emission rate.

(1) The NMOC emission rate report shall contain an annual or 5-year estimate of the NMOC emission rate calculated using the formula and procedures provided in § 60.754(a) or (b), as applicable.

(i) The initial NMOC emission rate report shall be submitted within 90 days of the date waste acceptance commences and may be combined with the initial design capacity report required in paragraph (a) 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.

(ii) If the estimated NMOC emission rate as reported in the annual report to the Administrator is less than 50 megagrams per year in each of the next 5 consecutive years, the owner or operator may elect to submit an estimate of the NMOC emission rate for the next 5-year period in lieu of the annual report. This estimate shall include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based shall be provided to the Administrator. This estimate shall be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate shall be submitted to the Administrator. The revised estimate shall cover the 5-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(2) The NMOC emission rate report shall include all the data, calculations, sample reports and measurements used to estimate the annual or 5-year emissions.

(3) Each owner or operator subject to the requirements of this subpart is exempted from the requirements of paragraphs (b)(1) and (2) of this section, after the installation of a collection and control system in compliance with § 60.752(b)(2), during such time as the collection and control system is in

operation and in compliance with §§ 60.753 and 60.755.

(c) Each owner or operator subject to the provisions of § 60.752(b)(2)(i) shall submit a collection and control system design plan to the Administrator within 1 year of the first report, required under paragraph (b) of this section, in which the emission rate exceeds 50 megagrams per year, except as follows:

(1) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in § 60.754(a)(3) and the resulting rate is less than 50 megagrams per year, annual periodic reporting shall be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated emission rate is equal to or greater than 50 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated emission rate based on NMOC sampling and analysis, shall be submitted within 180 days of the first calculated exceedance of 50 megagrams per year.

(2) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant (k), as provided in Tier 3 in § 60.754(a)(4), and the resulting NMOC emission rate is less than 50 Mg/yr, annual periodic reporting shall be resumed. The resulting site-specific methane generation rate constant (k) shall be used in the emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of § 60.754(a)(4) and the resulting site-specific methane generation rate constant (k) shall be submitted to the Administrator within 1 year of the first calculated emission rate exceeding 50 megagrams per year.

(d) Each owner or operator of a controlled landfill shall submit a closure report to the Administrator within 30 days of waste acceptance cessation. The Administrator may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of 40 CFR 258.60. If a closure report has been submitted to the Administrator, no additional wastes may be placed into the landfill without filing a notification of modification as described under § 60.7(a)(4).

(e) Each owner or operator of a controlled landfill shall submit an equipment removal report to the Administrator 30 days prior to removal or cessation of operation of the control equipment.

(1) The equipment removal report shall contain all of the following items:

(i) A copy of the closure report submitted in accordance with paragraph (d) of this section;

(ii) A copy of the initial performance test report demonstrating that the 15 year minimum control period has expired; and

(iii) Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 50 megagrams or greater of NMOC per year.

(2) The Administrator may request such additional information as may be necessary to verify that all of the conditions for removal in § 60.752(b)(2)(v) have been met.

(f) Each owner or operator of a landfill seeking to comply with § 60.752(b)(2) using an active collection system designed in accordance with § 60.752(b)(2)(ii) shall submit to the Administrator annual reports of the recorded information in (f)(1) through (f)(6) of this paragraph. The initial annual report shall be submitted within 180 days of installation and start-up of the collection and control system, and shall include the initial performance test report required under § 60.8. For enclosed combustion devices and flares, reportable exceedances are defined under § 60.758(c).

(1) Value and length of time for exceedance of applicable parameters monitored under § 60.756(a), (b), (c), and (d).

(2) Description and duration of all periods when the gas stream is diverted from the control device through a bypass line or the indication of bypass flow as specified under § 60.756.

(3) Description and duration of all periods when the control device was not operating for a period exceeding 1 hour and length of time the control device was not operating.

(4) All periods when the collection system was not operating in excess of 5 days.

(5) The location of each exceedance of the 500 parts per million methane concentration as provided in § 60.753(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month.

(6) The date of installation and the location of each well or collection system expansion added pursuant to paragraphs (a)(3), (b), and (c)(4) of § 60.755.

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

(1) A diagram of the collection system showing collection system positioning including all wells, horizontal

collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

(2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

(3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

(4) The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area; and

(5) The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

(6) The provisions for the control of off-site migration.

§ 60.758 Recordkeeping requirements.

Except as provided in § 60.752(b)(2)(i)(B),

(a) Each owner or operator of an MSW landfill subject to the provisions of § 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(b) Each owner or operator of a controlled landfill shall keep up-to-date, readily accessible records for the life of the control equipment of the data listed in paragraphs (b)(1) through (b)(4) of this section as measured during the initial performance test or compliance determination. Records of subsequent tests or monitoring shall be maintained for a minimum of 5 years. Records of the control device vendor specifications shall be maintained until removal.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(ii):

(i) The maximum expected gas generation flow rate as calculated in § 60.755(a)(1). The owner or operator may use another method to determine the maximum gas generation flow rate.

if the method has been approved by the Administrator.

(ii) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in § 60.759(a)(1).

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity greater than 44 megawatts:

(i) The average combustion temperature measured at least every 15 minutes and averaged over the same time period of the performance test.

(ii) The percent reduction of NMOC determined as specified in § 60.752(b)(2)(iii)(B) achieved by the control device.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii)(B)(1) through use of a boiler or process heater of any size: a description of the location at which the collected gas vent stream is introduced into the boiler or process heater over the same time period of the performance testing.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii)(A) through use of an open flare, the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in § 60.18; continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame of the flare flame is absent.

(c) Each owner or operator of a controlled landfill subject to the provisions of this subpart shall keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in § 60.756 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

(1) The following constitute exceedances that shall be recorded and reported under § 60.757(f):

(i) For enclosed combustors except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million British thermal unit per hour) or greater, all 3-hour periods of

operation during which the average combustion temperature was more than 28 °C below the average combustion temperature during the most recent performance test at which compliance with § 60.752(b)(2)(iii) was determined.

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3)(i) of this section.

(2) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the indication of flow to the control device or the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified under § 60.756.

(3) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with § 60.752(b)(2)(iii) shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State, local, Tribal, or Federal regulatory requirements.)

(4) Each owner or operator seeking to comply with the provisions of this subpart by use of an open flare shall keep up-to-date, readily accessible continuous records of the flame or flare pilot flame monitoring specified under § 60.756(c), and up-to-date, readily accessible records of all periods of operation in which the flame or flare pilot flame is absent.

(d) Each owner or operator subject to the provisions of this subpart shall keep for the life of the collection system an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label for each collector.

(1) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of the installation date and location of all newly installed collectors as specified under § 60.755(b).

(2) Each owner or operator subject to the provisions of this subpart shall keep readily accessible documentation of the nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection as provided in § 60.759(a)(3)(i) as well as any nonproductive areas excluded from collection as provided in § 60.759(a)(3)(ii).

(e) Each owner or operator subject to the provisions of this subpart shall keep for at least 5 years up-to-date, readily accessible records of all collection and control system exceedances of the operational standards in § 60.753, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

§ 60.759 Specifications for active collection systems.

(a) Each owner or operator seeking to comply with § 60.752(b)(2)(i) shall site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the Administrator as provided in § 60.752(b)(2)(i)(C) and (D):

(1) The collection devices within the interior and along the perimeter areas shall be certified to achieve comprehensive control of surface gas emissions by a professional engineer. The following issues shall be addressed in the design: depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandability, leachate and condensate management, accessibility, compatibility with filling operations, integration with closure end use, air intrusion control, corrosion resistance, fill settlement, and resistance to the refuse decomposition heat.

(2) The sufficient density of gas collection devices determined in paragraph (a)(1) of this section shall address landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

(3) The placement of gas collection devices determined in paragraph (a)(1) of this section shall control all gas producing areas, except as provided by paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

(i) Any segregated area of asbestos or nondegradable material may be excluded from collection if documented as provided under § 60.758(d). The documentation shall provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area, and shall be provided to the Administrator upon request.

(ii) Any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The

amount, location, and age of the material shall be documented and provided to the Administrator upon request. A separate NMOC emissions estimate shall be made for each section proposed for exclusion, and the sum of all such sections shall be compared to the NMOC emissions estimate for the entire landfill. Emissions from each section shall be computed using the following equation:

$$Q_i = 2 k L_o M_i (e^{-kt_i}) (C_{NMOC}) (3.6 \times 10^{-9})$$

where,

Q_i = NMOC emission rate from the i^{th} section, megagrams per year

k = methane generation rate constant, year⁻¹

L_o = methane generation potential, cubic meters per megagram solid waste

M_i = mass of the degradable solid waste in the i^{th} section, megagram

t_i = age of the solid waste in the i^{th} section, years

C_{NMOC} = concentration of nonmethane organic compounds, parts per million by volume

3.6×10^{-9} = conversion factor

(iii) The values for k , L_o , 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. If field testing has not been performed, the default values for k , L_o , and C_{NMOC} provided in § 60.754(a)(1) shall be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions provided the nature, location, age, and amount of the nondegradable material is documented as provided in paragraph (a)(3)(i) of this section.

(b) Each owner or operator seeking to comply with § 60.752(b)(2)(i)(A) shall construct the gas collection devices using the following equipment or procedures:

(1) The landfill gas extraction components shall be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other nonporous corrosion resistant material of suitable dimensions to: convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system shall extend as

necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors shall be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations shall be situated with regard to the need to prevent excessive air infiltration.

(2) Vertical wells shall be placed so as not to endanger underlying liners and shall address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors shall be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices shall be designed so as not to allow indirect short circuiting of air into the cover or refuse into the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

(3) Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly shall include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices shall be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

(c) Each owner or operator seeking to comply with § 60.752(b)(2)(i)(A) shall convey the landfill gas to a control system in compliance with § 60.752(b)(2)(iii) through the collection header pipe(s). The gas mover equipment shall be sized to handle the maximum gas generation flow rate expected over the intended use period of the gas moving equipment using the following procedures:

(1) For existing collection systems, the flow data shall be used to project the maximum flow rate. If no flow data exists, the procedures in paragraph (c)(2) of this section shall be used.

(2) For new collection systems, the maximum flow rate shall be in accordance with § 60.755(a)(1).

10. Part 60 is further amended by adding Methods 2E, 3C and 25C to appendix A as follows:

Appendix A—Reference Methods

Method 2E—Determination of Landfill Gas: Gas Production Flow Rate

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of landfill gas (LFG) production flow rate from municipal solid waste (MSW) landfills and is used to calculate the flow rate of nonmethane organic compounds (NMOC) from landfills. This method also applies to calculating a site-specific k value as provided in § 60.754(a)(4). It is unlikely that a site-specific k value obtained through Method 2E testing will lower the annual emission estimate below 50 Mg/yr NMOC unless the Tier 2 emission estimate is only slightly higher than 50 Mg/yr NMOC. Dry, arid regions may show a more significant difference between the default and calculated k values than wet regions.

1.2 Principle. Extraction wells are installed either in a cluster of three or at five locations dispersed throughout the landfill. A blower is used to extract LFG from the landfill. LFG composition, landfill pressures near the extraction well, and volumetric flow rate of LFG extracted from the wells are measured and the landfill gas production flow rate is calculated.

2. Apparatus

2.1 Well Drilling Rig. Capable of boring a 0.6 meters diameter hole into the landfill to a minimum of 75 percent of the landfill depth. The depth of the well shall not exceed the bottom of the landfill or the liquid level.

2.2 Gravel. No fines. Gravel diameter should be appreciably larger than perforations stated in sections 2.10 and 3.2 of this method.

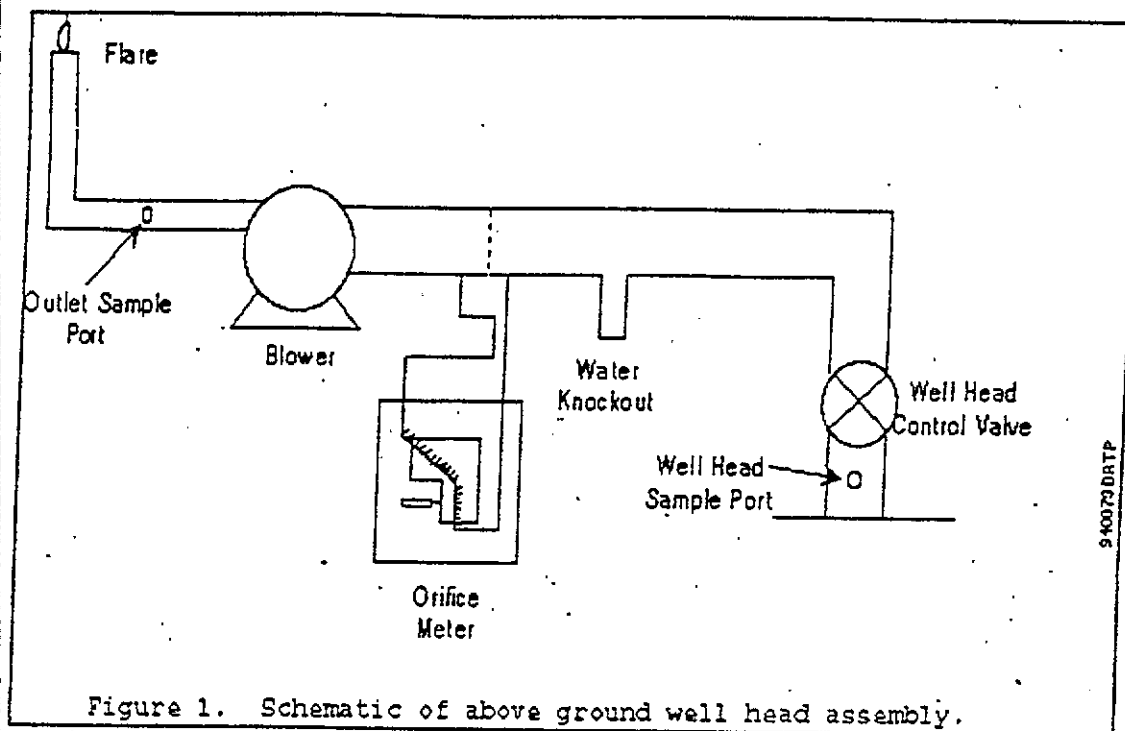
2.3 Bentonite.

2.4 Backfill Material. Clay, silt, and sandy loam have been found to be acceptable.

2.5 Extraction Well Pipe. Polyvinyl chloride (PVC), high density polyethylene (HDPE), fiberglass, stainless steel, or other suitable nonporous material capable of transporting landfill gas with a minimum diameter of 0.075 meters and suitable wall thickness.

2.6 Wellhead Assembly. Valve capable of adjusting gas flow at the wellhead and outlet, and a flow measuring device, such as an in-line orifice meter or pitot tube. A schematic of the wellhead assembly is shown in figure 1.

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BILLING CODE 5560-50-C

2.7 Cap. PVC, HDPE, fiberglass, stainless steel, or other suitable nonporous material capable of transporting landfill gas with a suitable wall-thickness.

2.8 Header Piping. PVC, HDPE, fiberglass, stainless steel, or other suitable nonporous material capable of transporting landfill gas with a suitable wall-thickness.

2.9 Auger. Capable of boring a 0.15 to 0.23 meters diameter hole to a depth equal to the top of the perforated section of the extraction well, for pressure probe installation.

2.10 Pressure Probe. PVC or stainless steel (316), 0.025 meters. Schedule 40 pipe. Perforate the bottom two thirds. A minimum requirement for perforations is slots or holes with an open area equivalent to four 6.0 millimeter diameter holes spaced 90° apart every 0.15 meters.

2.11 Blower and Flare Assembly. A water knockout, flare or incinerator, and an explosion-proof blower, capable of extracting LFG at a flow rate of at least 8.5 cubic meters per minute.

2.12 Standard Pitot Tube and Differential Pressure Gauge for Flow Rate Calibration with Standard Pitot. Same as Method 2, sections 2.1 and 2.8.

2.13 Gas flow measuring device. Permanently mounted Type S pitot tube or an orifice meter.

2.14 Barometer. Same as Method 4, section 2.1.5.

2.15 Differential Pressure Gauge. Water-filled U-tube manometer or equivalent, capable of measuring within 0.02 mm Hg, for measuring the pressure of the pressure probes.

3. Procedure

3.1 Placement of Extraction Wells. The landfill owner or operator shall either install a single cluster of three extraction wells in a test area or space five wells over the landfill. The cluster wells are recommended but may be used only if the composition, age of the solid waste, and the landfill depth of the test area can be determined. CAUTION: Since this method is complex, only experienced personnel should conduct the test. Landfill gas contains methane, therefore explosive mixtures may exist at or near the landfill. It is advisable to take appropriate safety precautions when testing landfills, such as installing explosion-proof equipment and refraining from smoking.

3.1.1 Cluster Wells. Consult landfill site records for the age of the solid waste, depth, and composition of various sections of the landfill. Select an area near the perimeter of the landfill with a depth equal to or greater than the average depth of the landfill and with the average age of the solid waste between 2 and 10 years old. Avoid areas known to contain nondecomposable materials, such as concrete and asbestos. Locate wells as shown in figure 2.

Because the age of the solid waste in a test area will not be uniform, calculate a weighted average to determine the average age of the solid waste as follows.

$$A_{avg} = \sum_{i=1}^n f_i A_i$$

where,

A_{avg} = average age of the solid waste tested, year

f_i = fraction of the solid waste in the i^{th} section

A_i = age of the i^{th} fraction, year

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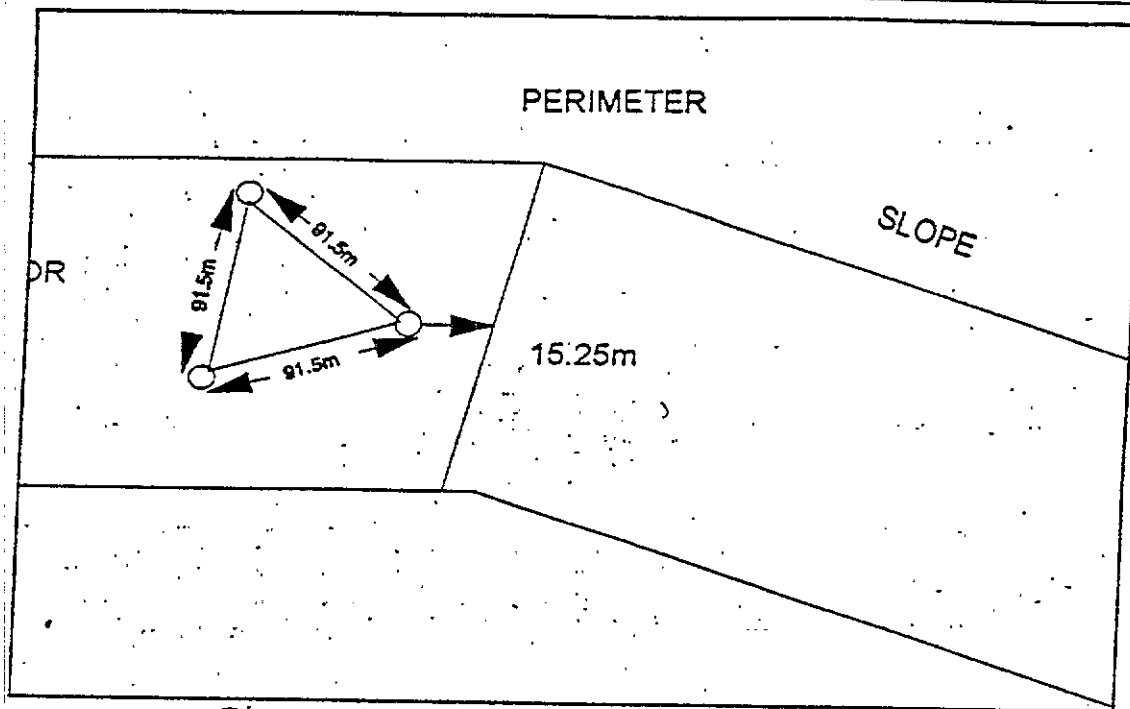


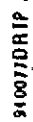
Figure 2. Location of Cluster Wells

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3.1.2 Equal Volume Wells. This procedure is used when the composition, age of solid waste, and landfill depth are not well known. Divide the portion of the landfill that has had waste for at least 2 years into five areas representing equal volumes. Locate an extraction well near the center of each area. Avoid areas known to contain nondecomposable materials, such as concrete and asbestos.

3.2 Installation of Extraction Wells. Use a well drilling rig to dig a 0.6 meters diameter hole in the landfill to a minimum of 75 percent of the landfill depth, not to exceed the bottom of the landfill or the water table. Perforate the bottom two thirds of the extraction well pipe. Perforations shall not be closer than 6 meters from the cover. Perforations shall be holes or slots with an open area equivalent to 1.0 centimeter diameter holes spaced 90 degrees apart every 0.1 to 0.2 meters. Place the extraction well in the center of the hole and backfill with 2.0 to 7.5 centimeters gravel to a level 0.3 meters above the perforated section. Add a layer of backfill material 1.2 meters thick. Add a layer of bentonite 1.0 meter thick, and backfill the remainder of the hole with cover material or material equal in permeability to the existing cover material. The specifications for extraction well installation are shown in figure 3.

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3.3 Pressure Probes. Shallow pressure probes are used in the check for infiltration of air into the landfill, and deep pressure probes are used to determine the radius of influence. Locate the deep pressure probes along three radial arms approximately 120 degrees apart at distances of 3, 15, 30, and 45 meters from the extraction well. The tester has the option of locating additional pressure probes at distances every 15 meters beyond 45 meters. Example placements of probes are shown in figure 4.

The probes located 15, 30, and 45 meters from each well, and any additional probes located along the three radial arms (deep probes), shall extend to a depth equal to the top of the perforated section of the extraction wells. Locate three shallow probes at a distance of 3 m from the extraction well. Shallow probes shall extend to a depth equal to half the depth of the deep probes.

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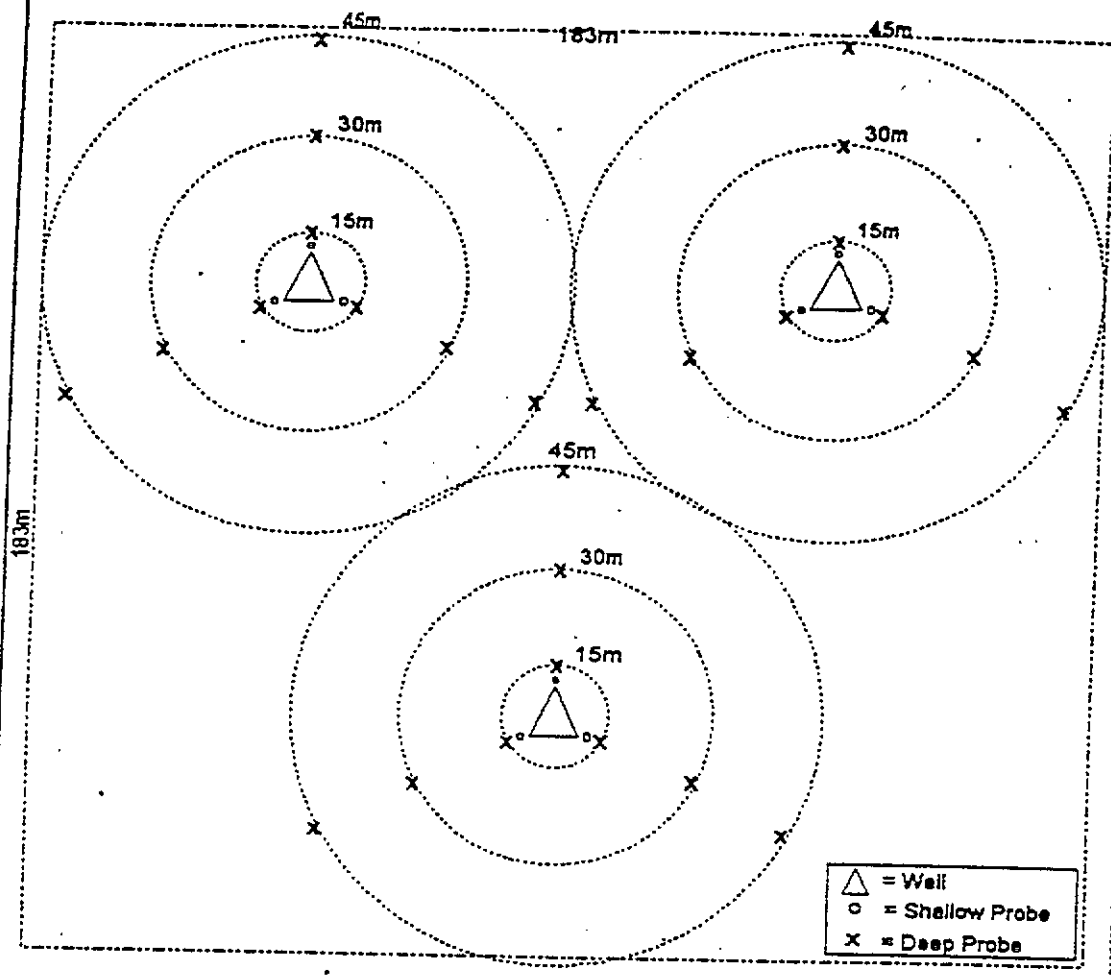


Figure 4. Cluster well configuration.

Use an auger to dig a hole, approximately 0.15 to 0.23 meters in diameter, for each pressure probe. Perforate the bottom two thirds of the pressure probe. Perforations shall be holes or slots with an open area equivalent to four 6.0 millimeter diameter holes spaced 90 degrees apart every 0.15 meters. Place the pressure probe in the center of the hole and backfill with gravel to a level 0.30 meters above the perforated section. Add a layer of backfill material at least 1.2 meters thick. Add a layer of bentonite at least 0.3 meters thick, and backfill the remainder of the hole with cover material or material equal in permeability to the existing cover material. The specifications for pressure probe installation are shown in figure 5.

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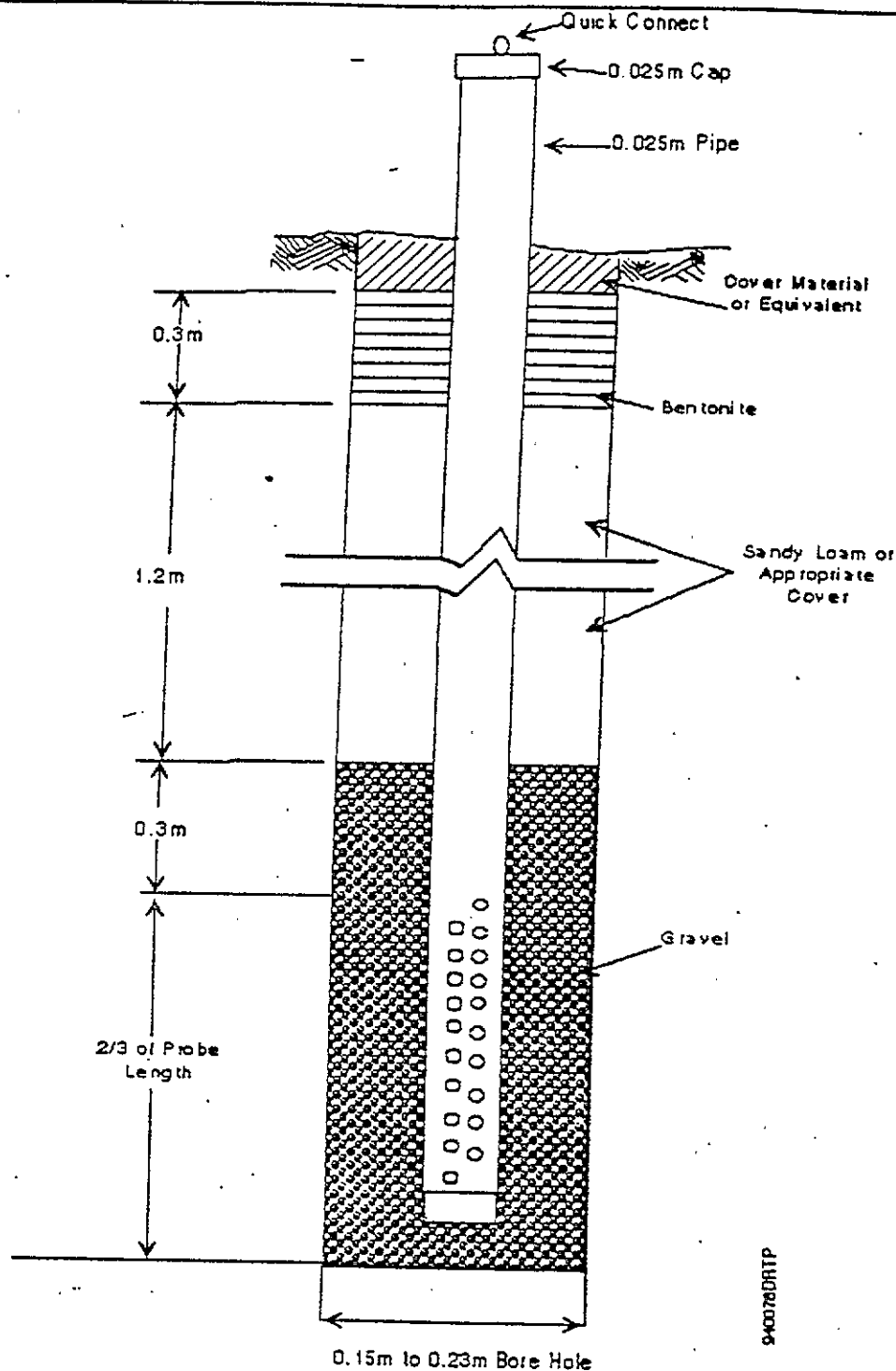


Figure 5. Pressure probe.

3.4 LFG Flow Rate Measurement.

Determine the flow rate of LFG from the test wells continuously during testing with an orifice meter. Alternative methods to measure the LFG flow rate may be used with approval of the Administrator. Locate the orifice meter as shown in figure 1. Attach the wells to the blower and flare assembly. The individual wells may be ducted to a common header so that a single blower and flare assembly and flow meter may be used. Use the procedures in section 4.1 to calibrate the flow meter.

3.5 Leak Check. A leak check of the above ground system is required for accurate flow rate measurements and for safety. Sample LFG at the wellhead sample port and at a point downstream of the flow measuring device. Use Method 3C to determine nitrogen (N_2) concentrations. Determine the difference by using the formula below.

$$\text{Difference} = C_o - C_w$$

where,

C_o = concentration of N_2 at the outlet, ppmv
 C_w = concentration of N_2 at the wellhead, ppmv

The system passes the leak check if the difference is less than 10,000 ppmv. If the system fails the leak check, make the appropriate adjustments to the above ground system and repeat the leak check.

3.6 Static Testing. The purpose of the static testing is to determine the initial conditions of the landfill. Close the control valves on the wells so that there is no flow of landfill gas from the well. Measure the gauge pressure (P_g) at each deep pressure probe and the barometric pressure (P_{bar}) every 8 hours for 3 days. Convert the gauge pressure of each deep pressure probe to absolute pressure by using the following equation. Record as P_i .

$$P_i = P_{bar} + P_g$$

where,

P_{bar} = Atmospheric pressure, mm Hg
 P_g = Gauge pressure of the deep probes, mm Hg
 P_i = Initial absolute pressure of the deep probes during static testing, mm Hg

3.6.1 For each probe, average all of the 8 hr deep pressure probe readings and record as P_{ia} . The P_{ia} is used in section 3.7.6 to determine the maximum radius of influence.

3.6.2 Measure the LFG temperature and the static flow rate of each well once during static testing using a flow measurement device, such as a Type S pitot tube and measure the temperature of the landfill gas. The flow measurements should be made either just before or just after the measurements of the probe pressures and are used in determining the initial flow from the extraction well during the short term testing. The temperature measurement is used in the check for infiltration.

3.7 Short Term Testing. The purpose of short term testing is to determine the maximum vacuum that can be applied to the wells without infiltration of air into the landfill. The short term testing is done on one well at a time. During the short term testing, burn LFG with a flare or incinerator.

3.7.1 Use the blower to extract LFG from a single well at a rate at least twice the static

flow rate of the respective well measured in section 3.6.2. If using a single blower and flare assembly and a common header system, close the control valve on the wells not being measured. Allow 24 hours for the system to stabilize at this flow rate.

3.7.2 Check for infiltration of air into the landfill by measuring the temperature of the LFG at the wellhead, the gauge pressures of the shallow pressure probes, and the LFG N_2 concentration by using Method 3C.

CAUTION: Increased vacuum at the wellhead may cause infiltration of air into the landfill, which increases the possibility of a landfill fire. Infiltration of air into the landfill may occur if any of the following conditions are met: the LFG N_2 concentration is more than 20 percent, any of the shallow probes have a negative gauge pressure, or the temperature has increased above 55°C or the maximum established temperature during static testing. If infiltration has not occurred, increase the blower vacuum by 4 mm Hg, wait 24 hours, and repeat the infiltration check. If at any time, the temperature change exceeds the limit, stop the test until it is safe to proceed. Continue the above steps of increasing blower vacuum by 4 mm Hg, waiting 24 hours, and checking for infiltration until the concentration of N_2 exceeds 20 percent or any of the shallow probes have a negative gauge pressure, at which time reduce the vacuum at the wellhead so that the N_2 concentration is less than 20 percent and the gauge pressures of the shallow probes are positive. This is the maximum vacuum at which infiltration does not occur.

3.7.3 At this maximum vacuum, measure P_{bar} every 8 hours for 24 hours and record the LFG flow rate as Q_i and the probe gauge pressures for all of the probes as P_i . Convert the gauge pressures of the deep probes to absolute pressures for each 8-hour reading at Q_i as follows:

$$P = P_{bar} + P_i$$

where,

P_{bar} = Atmospheric pressure, mm Hg
 P_i = Final absolute pressure of the deep probes during short term testing, mm Hg
 P = Pressure of the deep probes, mm Hg

3.7.4 For each probe, average the 8-hr deep pressure probe readings and record as P_{ia} .

3.7.5 For each probe, compare the initial average pressure (P_{ia}) from section 3.6.1 to the final average pressure (P_{ia}). Determine the furthestmost point from the wellhead along each radial arm where $P_{ia} \leq P_{ia}$. This distance is the maximum radius of influence (ROI), which is the distance from the well affected by the vacuum. Average these values to determine the average maximum radius of influence (R_{ma}).

The average R_{ma} may also be determined by plotting on semi-log paper the pressure differentials ($P_{ia} - P_{ia}$) on the y-axis (abscissa) versus the distances (3, 15, 30 and 45 meters) from the wellhead on the x-axis (ordinate). Use a linear regression analysis to determine the distance when the pressure differential is zero. Additional pressure probes may be used to obtain more points on the semi-log plot of pressure differentials versus distances.

3.7.6 Calculate the depth (D_w) affected by the extraction well during the short term test

as follows. If the computed value of D_w exceeds the depth of the landfill, set D_w equal to the landfill depth.

$$D_w = WD + R_{ma}^2$$

where,

D_w = depth, m
 WD = well depth, m
 R_{ma} = maximum radius of influence, m

3.7.7 Calculate the void volume for the extraction well (V) as follows.

$$V = 0.40 \pi R_{ma}^2 D_w$$

where,

V = void volume of test well, m³
 R_{ma} = maximum radius of influence, m
 D_w = depth, m

3.7.8 Repeat the procedures in section 3.7 for each well.

3.8 Calculate the total void volume of the test wells (V_t) by summing the void volumes (V) of each well.

3.9 Long Term Testing. The purpose of long term testing is to determine the methane generation rate constant, k . Use the blower to extract LFG from the wells. If a single blower and flare assembly and common header system are used, open all control valves and set the blower vacuum equal to the highest stabilized blower vacuum demonstrated by any individual well in section 3.7. Every 8 hours, sample the LFG from the wellhead sample port, measure the gauge pressures of the shallow pressure probes, the blower vacuum, the LFG flow rate, and use the criteria for infiltration in section 3.7.2 and Method 3C to check for infiltration. If infiltration is detected, do not reduce the blower vacuum, but reduce the LFG flow rate from the well by adjusting the control valve on the wellhead. Adjust each affected well individually. Continue until the equivalent of two total void volumes (V_t) have been extracted, or until $V_t = 2 V_t$.

3.9.1 Calculate V_t , the total volume of LFG extracted from the wells, as follows.

$$V_t = \sum_{i=1}^n 60 Q_i t_{vi}$$

where,

V_t = total volume of LFG extracted from wells, m³

Q_i = LFG flow rate measured at orifice meter at the i^{th} interval, cubic meters per minute

t_{vi} = time of the i^{th} interval, hour (usually 8)

3.9.2 Record the final stabilized flow rate as Q_f . If, during the long term testing, the flow rate does not stabilize, calculate Q_f by averaging the last 10 recorded flow rates.

3.9.3 For each deep probe, convert each gauge pressure to absolute pressure as in section 3.7.4. Average these values and record as P_{ia} . For each probe, compare P_{ia} to P_{ia} . Determine the furthestmost point from the wellhead along each radial arm where $P_{ia} \leq P_{ia}$. This distance is the stabilized radius of influence. Average these values to determine the average stabilized radius of influence (R_{sa}).

3.10 Determine the NMOC mass emission rate using the procedures in section 5.

3.11 Deactivation of pressure probe holes. Upon completion of measurements, if pressure probes are removed, restore the

integrity of the landfill cover by backfilling and sealing to prevent venting of LFG to the atmosphere or air infiltration.

4. Calibrations

Gas Flow Measuring Device Calibration Procedure. Locate a standard pitot tube in line with a gas flow measuring device. Use the procedures in Method 2D, section 4, to calibrate the orifice meter. Method 3C may be used to determine the dry molecular weight. It may be necessary to calibrate more than one gas flow measuring device to bracket the landfill gas flow rates. Construct a calibration curve by plotting the pressure drops across the gas flow measuring device for each flow rate versus the average dry gas volumetric flow rate in cubic meters per minute of the gas. Use this calibration curve to determine the volumetric flow from the wells during testing.

5. Calculations

5.1 Nomenclature.

A_{avg} =average age of the solid waste tested, year
 A_i =age of solid waste in the i th fraction, year
 A =age of landfill, year
 A_r =acceptance rate, megagrams per year
 C_{NMOC} =NMOC concentration, ppmv as hexane ($C_{NMOC}=C_i/6$)
 C_i =NMOC concentration, ppmv (carbon equivalent) from Method 25C
 D =depth affected by the test wells, m
 D_i =depth affected by the test wells in the short term test, m
 D_{LF} =landfill depth, m
 f =fraction of decomposable solid waste in the landfill
 f_i =fraction of the solid waste in the i th section
 k =methane generation rate constant, year⁻¹
 L_0 =methane generation potential, cubic meters per megagram
 L_0' =revised methane generation potential to account for the amount of nondecomposable material in the landfill, cubic meters per megagram
 M_i =mass of solid waste of the i th section, megagrams
 M =mass of decomposable solid waste affected by the test well, megagrams
 M_w =number of wells
 P_{atm} =atmospheric pressure, mm Hg
 P_d =gauge pressure of the deep pressure probes, mm Hg
 P_i =initial absolute pressure of the deep pressure probes during static testing, mm Hg
 P_{i0} =average initial absolute pressure of the deep pressure probes during static testing, mm Hg
 P_f =final absolute pressure of the deep pressure probes during short term testing, mm Hg
 P_{fi} =average final absolute pressure of the deep pressure probes during short term testing, mm Hg
 P_{fl} =final absolute pressure of the deep pressure probes during long term testing, mm Hg
 P_{fli} =average final absolute pressure of the deep pressure probes during long term testing, mm Hg
 Q_f =required blow flow rate, cubic meters per minute

Q_f =final stabilized flow rate, cubic meters per minute

Q_i =LFG flow rate measured at orifice meter during the i th interval, cubic meters per minute

Q_m =maximum LFG flow rate at each well determined by short term test, cubic meters per minute

Q_r =NMOC mass emission rate, cubic meters per minute

R_m =maximum radius of influence, m

R_{m0} =average maximum radius of influence, m

R_i =stabilized radius of influence for an individual well, m

R_{si} =average stabilized radius of influence, m

t_i =age of section i , year

t_L =total time of long term testing, year

V =void volume of test well, m³

V_i =volume of solid waste affected by the test well, m³

V_L =total volume of solid waste affected by the long term testing, m³

V_w =total void volume affected by test wells, m³

WD =well depth, m

ρ =solid waste density, m³ (Assume 0.64 megagrams per cubic meter if data are unavailable)

5.2 Use the following equation to calculate the depth affected by the test well. If using cluster wells, use the average depth of the wells for WD . If the value of D is greater than the depth of the landfill, set D equal to the landfill depth.

$$D=WD+R_m$$

5.3 Use the following equation to calculate the volume of solid waste affected by the test well.

$$V_i=R_{si}^2 \pi D$$

5.4 Use the following equation to calculate the mass affected by the test well.

$$M_i=V_i \rho$$

5.5 Modify L_0 to account for the nondecomposable solid waste in the landfill.

$$L_0'=f L_0$$

5.6 In the following equation, solve for k by iteration. A suggested procedure is to select a value for k , calculate the left side of the equation, and if not equal to zero, select another value for k . Continue this process until the left hand side of the equation equals zero, ± 0.001 .

$$ke^{-k} A_{avg} - (5.256 \times 10^5) \frac{Q_f}{2 L_0' M_i} = 0$$

5.7 Use the following equation to determine landfill NMOC mass emission rate if the yearly acceptance rate of solid waste has been consistent (± 10 percent) over the life of the landfill.

$$Q_i = 2 L_0' A_r (1 - e^{-k} A) C_{NMOC} / (5.256 \times 10^{11})$$

5.8 Use the following equation to determine landfill NMOC mass emission rate if the acceptance rate has not been consistent over the life of the landfill.

$$Q_i = \frac{2 k L_0' C_{NMOC}}{(5.256 \times 10^{11})} \sum_{i=1}^n M_i e^{-k t_i}$$

6. Bibliography

1. Same as Method 2, appendix A, 40 CFR part 60.
2. Emcon Associates, Methane Generation and Recovery from Landfills. Ann Arbor Science, 1982.
3. The Johns Hopkins University, Brown Station Road Testing and Gas Recovery Projections. Laurel, Maryland: October 1982.
4. Mandeville and Associates, Procedure Manual for Landfill Gases Emission Testing.
5. Letter and attachments from Briggum, S., Waste Management of North America, to Thorneloe, S., EPA. Response to July 28, 1988 request for additional information. August 18, 1988.
6. Letter and attachments from Briggum, S., Waste Management of North America, to Wyatt, S., EPA. Response to December 7, 1988 request for additional information. January 16, 1989.

Method 3C—Determination of Carbon Dioxide, Methane, Nitrogen, and Oxygen From Stationary Sources

1. Applicability and Principle

1.1 Applicability. This method applies to the analysis of carbon dioxide (CO₂), methane (CH₄), nitrogen (N₂), and oxygen (O₂) in samples from municipal solid waste landfills and other sources when specified in an applicable subpart.

1.2 Principle. A portion of the sample is injected into a gas chromatograph (GC) and the CO₂, CH₄, N₂, and O₂ concentrations are determined by using a thermal conductivity detector (TCD) and integrator.

2. Range and Sensitivity

2.1 Range. The range of this method depends upon the concentration of samples. The analytical range of TCD's is generally between approximately 10 ppmv and the upper percent range.

2.2 Sensitivity. The sensitivity limit for a compound is defined as the minimum detectable concentration of that compound, or the concentration that produces a signal-to-noise ratio of three to one. For CO₂, CH₄, N₂, and O₂, the sensitivity limit is in the low ppmv range.

3. Interferences

Since the TCD exhibits universal response and detects all gas components except the carrier, interferences may occur. Choosing the appropriate GC or shifting the retention times by changing the column flow rate may help to eliminate resolution interferences.

To assure consistent detector response, helium is used to prepare calibration gases. Frequent exposure to samples or carrier gas containing oxygen may gradually destroy filaments.

4. Apparatus

4.1 Gas Chromatograph. GC having at least the following components:

4.1.1 Separation Column. Appropriate column(s) to resolve CO₂, CH₄, N₂, O₂, and other gas components that may be present in the sample.

4.1.2 Sample Loop. Teflon or stainless steel tubing of the appropriate diameter.

Note: Mention of trade names or specific products does not constitute endorsement or recommendation by the U. S. Environmental Protection Agency.

4.1.3 Conditioning System. To maintain the column and sample loop at constant temperature.

4.1.4 Thermal Conductivity Detector.

4.2 Recorder. Recorder with linear strip chart. Electronic integrator (optional) is recommended.

4.3 Teflon Tubing. Diameter and length determined by connection requirements of cylinder regulators and the GC.

4.4 Regulators. To control gas cylinder pressures and flow rates.

4.5 Adsorption Tubes. Applicable traps to remove any O₂ from the carrier gas.

5. Reagents

5.1 Calibration and Linearity Gases. Standard cylinder gas mixtures for each compound of interest with at least three concentration levels spanning the range of suspected sample concentrations. The calibration gases shall be prepared in helium.

5.2 Carrier Gas. Helium, high-purity.

6. Analysis

6.1 Sample Collection. Use the sample collection procedures described in Methods 3 or 25C to collect a sample of landfill gas (LFG).

6.2 Preparation of GC. Before putting the GC analyzer into routine operation, optimize the operational conditions according to the manufacturer's specifications to provide good resolution and minimum analysis time. Establish the appropriate carrier gas flow and set the detector sample and reference cell flow rates at exactly the same levels. Adjust the column and detector temperatures to the recommended levels. Allow sufficient time for temperature stabilization. This may typically require 1 hour for each change in temperature.

6.3 Analyzer Linearity Check and Calibration. Perform this test before sample analysis. Using the gas mixtures in section 5.1, verify the detector linearity over the range of suspected sample concentrations with at least three points per compound of interest. This initial check may also serve as the initial instrument calibration. All subsequent calibrations may be performed using a single-point standard gas provided the calibration point is within 20 percent of the sample component concentration. For each instrument calibration, record the carrier and detector flow rates, detector filament and block temperatures, attenuation factor, injection time, chart speed, sample loop volume, and component concentrations. Plot a linear regression of the standard concentrations versus area values to obtain the response factor of each compound. Alternatively, response factors of uncorrected component concentrations (wet basis) may be generated using instrumental integration. Note: Peak height may be used instead of peak area throughout this method.

6.4 Sample Analysis. Purge the sample loop with sample, and allow to come to atmospheric pressure before each injection. Analyze each sample in duplicate, and calculate the average sample area (A). The

results are acceptable when the peak areas for two consecutive injections agree within 5 percent of their average. If they do not agree, run additional samples until consistent area data are obtained. Determine the tank sample concentrations according to section 7.2.

7. Calculations

Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off results only after the final calculation.

7.1 Nomenclature.

A = average sample area

B_w = moisture content in the sample, fraction

C = component concentration in the sample, dry basis, ppmv

C_d = calculated NMOC concentration, ppmv
C equivalent

C_m = measured NMOC concentration, ppmv
C equivalent

P_{bar} = barometric pressure, mm Hg.

P_{ii} = gas sample tank pressure after evacuation, mm Hg absolute

P_i = gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute

P_{rf} = final gas sample tank pressure after pressurizing, mm Hg absolute

P_w = vapor pressure of H₂O (from table 3C-1), mm Hg

T_{ii} = sample tank temperature before sampling, °K

T_i = sample tank temperature at completion of sampling, °K

T_{rf} = sample tank temperature after pressurizing, °K

r = total number of analyzer injections of sample tank during analysis (where j = injection number, 1 . . . r)

R = Mean calibration response factor for specific sample component, area/ppmv

TABLE 3C-1.—MOISTURE CORRECTION

Temperature °C	Vapor Pressure of H ₂ O, mm Hg
4	6.1
6	7.0
8	8.0
10	9.2
12	10.5
14	12.0
16	13.6
18	15.5
20	17.5
22	19.8
24	22.4
26	25.2
28	28.3
30	31.8

7.2 Concentration of Sample

Components. Calculate C for each compound using Equations 3C-1 and 3C-2. Use the temperature and barometric pressure at the sampling site to calculate B_w. If the sample was diluted with helium using the procedures in Method 25C, use Equation 3C-3 to calculate the concentration.

$$B_w = \frac{P_w}{P_{bar}} \quad 3C-1$$

$$C = \frac{A}{R(1-B_w)} \quad 3C-2$$

$$C = \frac{\frac{P_{rf}}{T_{rf}}}{\frac{P_i}{T_i} - \frac{P_{ii}}{T_{ii}}} \cdot \frac{A}{R(1-B_w)} \quad 3C-3$$

8. Bibliography

- McNair, H.M., and E.J. Bonnell. Basic Gas Chromatography. Consolidated Printers, Berkeley, CA, 1969.

Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in MSW Landfill Gases

1. Applicability and Principle

1.1 Applicability. This method is applicable to the sampling and measurement of nonmethane organic compounds (NMOC) as carbon in MSW landfill gases.

1.2 Principle. A sample probe that has been perforated at one end is driven or augered to a depth of 1.0 meter below the bottom of the landfill cover. A sample of the landfill gas is extracted with an evacuated cylinder. The NMOC content of the gas is determined by injecting a portion of the gas into a gas chromatographic column to separate the NMOC from carbon monoxide (CO), carbon dioxide (CO₂), and methane (CH₄); the NMOC are oxidized to CO₂, reduced to CH₄, and measured by a flame ionization detector (FID). In this manner, the variable response of the FID associated with different types of organics is eliminated.

2. Apparatus

2.1 Sample Probe. Stainless steel, with the bottom third perforated. The sample probe shall be capped at the bottom and shall have a threaded cap with a sampling attachment at the top. The sample probe shall be long enough to go through and extend no less than 1.0 meter below the landfill cover. If the sample probe is to be driven into the landfill, the bottom cap should be designed to facilitate driving the probe into the landfill.

2.2 Sampling Train.

2.2.1 Rotameter with Flow Control Valve. Capable of measuring a sample flow rate of 500 ml/min or less (30.5±3.1 m³/min). The control valve shall be made of stainless steel.

2.2.2 Sampling Valve. Stainless steel.

2.2.3 Pressure Gauge. U-tube mercury manometer, or equivalent, capable of measuring pressure to within 1 mm Hg in the range of 0 to 1,100 mm Hg.

2.2.4 Sample Tank. Stainless steel or aluminum cylinder, with a minimum volume of 4 liters and equipped with a stainless steel sample tank valve.

2.3 Vacuum Pump. Capable of evacuating to an absolute pressure of 10 mm Hg.

2.4 Purging Pump. Portable, explosion proof, and suitable for sampling NMOC.

2.5 Pilot Probe Procedure. The following are needed only if the tester chooses to use the procedure described in section 4.2.1.

2.5.1 Pilot Probe. Tubing of sufficient strength to withstand being driven into the landfill by a post driver and an outside diameter of at least 6.0 millimeters smaller than the sample probe. The pilot probe shall be capped on both ends and long enough to go through the landfill cover and extend no less than 1.0 meter into the landfill.

2.5.2 Post Driver and Compressor. Capable of driving the pilot probe and the sampling probe into the landfill.

2.6 Auger Procedure. The following are needed only if the tester chooses to use the procedure described in section 4.2.2.

2.6.1 Auger. Capable of drilling through the landfill cover and to a depth of no less than 0.9 meters into the landfill.

2.6.2 Pea Gravel.

2.6.3 Bentonite.

2.7 NMOC Analyzer, Barometer, Thermometer, and Syringes. Same as in sections 2.3, 2.4.1, 2.4.2, 2.4.4, respectively, of Method 25.

3. Reagents

3.1 NMOC Analysis. Same as in Method 25, section 3.2.

3.2 Calibration. Same as in Method 25, section 3.4, except omit section 3.4.3.

4. Procedure

4.1 Sample Tank Evacuation and Leak Check. Conduct the sample tank evacuation and leak check either in the laboratory or the field. Connect the pressure gauge and sampling valve to the sample tank. Evacuate the sample tank to 10 mm Hg absolute pressure or less. Close the sampling valve, and allow the tank to sit for 60 minutes. The tank is acceptable if no change is noted. Include the results of the leak check in the test report.

4.2 Sample Probe Installation. The tester may use the procedure in sections 4.2.1 or 4.2.2. CAUTION: Since this method is complex, only experienced personnel should perform this test. LFG contains methane, therefore explosive mixtures may exist on or near the landfill. It is advisable to take appropriate safety precautions when testing landfills, such as refraining from smoking and installing explosion-proof equipment.

4.2.1 Pilot Probe Procedure. Use the post driver to drive the pilot probe at least 1.0 meter below the landfill cover. Alternative procedures to drive the probe into the landfill may be subject to the approval of the Administrator.

Remove the pilot probe and drive the sample probe into the hole left by the pilot probe. The sample probe shall extend not less than 1.0 meter below the landfill cover and shall protrude about 0.3 meters above the landfill cover. Seal around the sampling probe with bentonite and cap the sampling probe with the sampling probe cap.

4.2.2 Auger Procedure. Use an auger to drill a hole through the landfill cover and to at least 1.0 meter below the landfill cover. Place the sample probe in the hole and backfill with pea gravel to a level 0.6 meters from the surface. The sample probe shall protrude at least 0.3 meters above the landfill cover. Seal the remaining area around the probe with bentonite. Allow 24 hours for the landfill gases to equilibrate inside the augered probe before sampling.

4.3 Sample Train Assembly. Prepare the sample by evacuating and filling the sample tank with helium three times. After the third evacuation, charge the sample tank with helium to a pressure of approximately 325 mm Hg. Record the pressure, the ambient temperature, and the barometric pressure. Assemble the sampling probe purging system as shown in figure 1.

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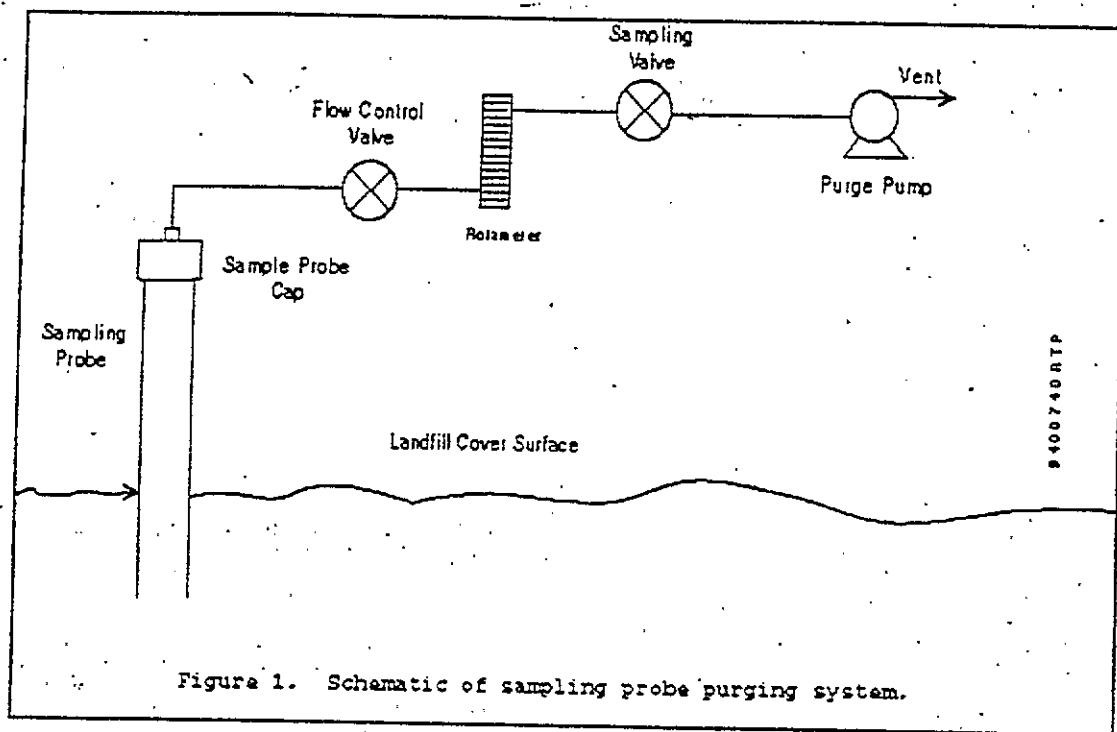


Figure 1. Schematic of sampling probe purging system.

4.4 Sampling Procedure. Open the sampling valve and use the purge pump and the flow control valve to evacuate at least two sample probe volumes from the system at a flow rate of 500 ml/min or less (30.5 ± 3.1 m³/min). Close the sampling valve and replace the purge pump with the sample tank apparatus as shown in figure 2. Open the sampling valve and the sample tank valves

and, using the flow control valve, sample at a flow rate of 500 ml/min or less (30.5 ± 3.1 m³/min) until the sample tank gauge pressure is zero. Disconnect the sampling tank apparatus and use the carrier gas bypass valve to pressurize the sample cylinder to approximately 1,060 mm Hg absolute pressure with helium and record the final pressure. Alternatively, the sample tank may

be pressurized in the lab. If not analyzing for N₂, the sample cylinder may be pressurized with zero air. Use Method 3C to determine the percent N₂ in the sample. Presence of N₂ indicates infiltration of ambient air into the gas sample. The landfill sample is acceptable if the concentration of N₂ is less than 20 percent.

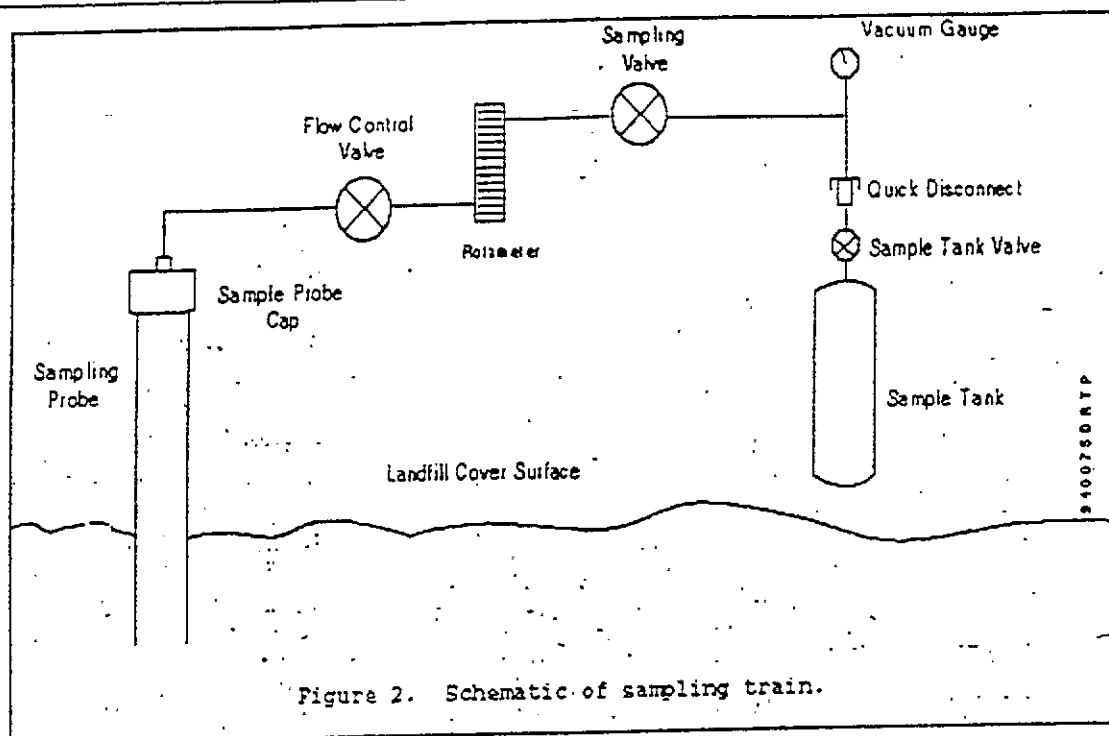


Figure 2. Schematic of sampling train.

4.5 Analysis. The oxidation, reduction, and measurement of NMOC is similar to Method 25. Before putting the NMOC analyzer into routine operation, conduct an initial performance test. Start the analyzer, and perform all the necessary functions to put the analyzer into proper working order. Conduct the performance test according to the procedures established in section 5.1. Once the performance test has been successfully completed and the NMOC calibration response factor has been determined, proceed with sample analysis as follows:

4.5.1 Daily Operations and Calibration Checks. Before and immediately after the analysis of each set of samples or on a daily basis (whichever occurs first), conduct a calibration test according to the procedures established in section 5.2. If the criteria of the daily calibration test cannot be met, repeat the NMOC analyzer performance test (section 5.1) before proceeding.

4.5.2 Operating Conditions. Same as in Method 25, section 4.4.2.

4.5.3 Analysis of Sample Tank. Purge the sample loop with sample, and then inject the sample. Under the specified operating conditions, the CO₂ in the sample will elute in approximately 100 seconds. As soon as the detector response returns to baseline following the CO₂ peak, switch the carrier gas flow to backflush, and raise the column oven temperature to 195 °C as rapidly as possible. A rate of 30 °C/min has been shown to be adequate. Record the value obtained for any measured NMOC. Return the column oven temperature to 85 °C in preparation for the next analysis. Analyze each sample in triplicate, and report the average as C_{nm}.

4.6 Audit Samples. Same as in Method 25, section 4.5.

4.7 Deactivation of Sample Probe Holes. Once sampling has taken place, either plug the sampling probes with a cap or remove the probes and refill the hole with cover material.

5. Calibration and Operational Checks

Maintain a record of performance of each item.

5.1 Initial NMOC Analyzer Performance Test. Same as in Method 25, section 5.2, except omit the linearity checks for CO₂ standards.

5.2 NMOC Analyzer Daily Calibration. NMOC response factors, same as in Method 25, section 5.3.2.

6. Calculations

All equations are written using absolute pressure; absolute pressures are determined by adding the measured barometric pressure to the measured gauge of manometer pressure.

6.1 Nomenclature.

B_w=moisture content in the sample, fraction
C_{N2}=measured N₂ concentration, fraction
C_i=calculated NMOC concentration, ppmv C equivalent
C_{nm}=measured NMOC concentration, ppmv C equivalent
P_b=barometric pressure, mm Hg
P_s=gas sample tank pressure before sampling, mm Hg absolute
P_t=gas sample tank pressure at completion of sampling, but before pressurizing, mm Hg absolute
P_f=final gas sample tank pressure after pressurizing, mm Hg absolute
P_w=vapor pressure of H₂O (from table 25C-1), mm Hg
T_i=sample tank temperature before sampling, °K

T_i=sample tank temperature at completion of sampling, but before pressurizing, °K

T_f=sample tank temperature after pressurizing, °K

r=total number of analyzer injections of sample tank during analysis (where j=injection number, 1. . . r)

6.2 Water Correction. Use table 25C-1, the LFG temperature, and barometric pressure at the sampling site to calculate B_w.

$$B_w = \frac{P_w}{P_b}$$

TABLE 25C-1.—MOISTURE CORRECTION

Temperature, °C	Vapor Pressure of H ₂ O, mm Hg
4	6.1
6	7.0
8	8.0
1	9.2
12	10.5
14	12.0
16	13.6
18	15.5
20	17.5
22	19.8
24	22.4
26	25.2
28	28.3
30	31.8

6.3 NMOC Concentration. Use the following equation to calculate the concentration of NMOC for each sample tank.

$$C_i = \frac{\frac{P_{if}}{T_{if}}}{\frac{P_i}{T_i} - \frac{P_{ii}}{T_{ii}}} \frac{1}{(1 - B_w - C_{N2})} \sum_{j=1}^r C_{im}^{(j)}$$

7. Bibliography

1. Salon, Albert E., Samuel Witz, and Robert D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75-33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association, Boston, Massachusetts, June 15-20, 1975.) p. 14.

2. Salon, Albert E., William L. Oaks, and Robert D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74-190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association, Denver, Colorado, June 9-13, 1974.) p. 25.

[FR Doc. 96-5529 Filed 3-11-96; 8:45 am]

BILLING CODE 6560-60-P

FEDERAL MARITIME COMMISSION

46 CFR Part 501

The Federal Maritime Commission—General

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is revising its statement of delegations of authorities to include new authority delegated to the Director of the Bureau of Economics and Agreement Analysis to grant or deny applications for waivers of certain regulations.

EFFECTIVE DATE: March 12, 1996.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, (202) 523-5787.

SUPPLEMENTARY INFORMATION: In Docket No. 94-31, *Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984*, the Federal Maritime Commission ("Commission") has amended its regulations set forth in 46 CFR Part 572 governing the filing, processing and review of agreements among ocean common carriers subject to the Shipping Act of 1984. The amended regulations provide that, upon a showing of good cause, the Commission may waive any part of their requirements, and set forth procedures and standards governing applications for a waiver.

This rule amends the Commission's statement of delegations of authorities in 46 CFR Part 501 to include a new delegation to the Director of the Commission's Bureau of Economics and Agreement Analysis to grant or deny applications for waivers of the agreement regulations. Review of the Director's grant or denial of a waiver is available under the procedures already in effect pursuant to 46 CFR 501.21(f).

Notice and opportunity for public comment were not necessary prior to issuance of this rule and because it deals solely with matters of agency organization and procedure. 5 U.S.C. 553.

List of Subjects in 46 CFR Part 501

Administrative practice and procedure; authority delegations; organization and functions; seals and insignia.

Therefore, pursuant to 5 U.S.C. 551-557, 701-706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501-520 and 3501-3520; 46 U.S.C. app. 801-848, 876, 1111 and 1701-1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89-56, 79 Stat. 195; and 5 CFR Part 2638, Part 501 of Title 46, Code of Federal Regulations, is amended to read as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. The authority citation for Part 501 continues to read as follows:

Authority: 5 U.S.C. 551-557, 701-706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501-520 and 3501-3520; 46 U.S.C. app. 801-848, 876, 1111 and 1701-1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89-56, 79 Stat. 195; 5 CFR Part 2638.

2. In section 501.26, paragraph (f) is amended by changing the reference to "572.404" to "572.406," and by changing the references to "572.501 and 572.502" to "572.404 and 572.405;" paragraphs (g) through (m) are redesignated (i) through (o); newly redesignated (i) (6) is removed; and new paragraphs (g) and (h) are added, as follows:

§ 501.26 Delegation to the Director, Bureau of Economics and Agreement Analysis.

(g) Authority to grant or deny applications filed under § 572.505 of this chapter for waiver of the information form requirements of §§ 572.503 and 572.504 of this chapter. By the Commission.

(h) Authority to grant or deny applications filed under § 572.709 of

this chapter for waiver of the reporting and record retention requirements of §§ 572.701, 572.702, 572.703, 572.704, 572.705, 572.706, 572.707 and 572.708 of this chapter.

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96-5807 Filed 3-11-96; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 92-166; FCC 96-54]

Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission has adopted, upon reconsideration, changes to the rules and policies establishing service and licensing rules for the Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band. Specifically, we conclude that the "interim plan," designed to avoid interference between the Big LEO systems and the Russian Global Navigation Satellite System ("GLONASS"), is unnecessary at this time. We also clarify our views concerning position determination capabilities in Big LEO earth terminals, and modifications to feeder link proposals. In order to ensure that United States licensees do not engage in practices that are contrary to the goal of competitive markets world-wide, we also adopt a rule concerning exclusive arrangements for provision of Big LEO service. We also clarify our "two-tiered" processing scheme for financial qualifications. In addition, we make a number of minor editorial and clarifying changes to our technical rules.

EFFECTIVE DATE: April 11, 1996.

FOR FURTHER INFORMATION CONTACT: Karl Kensinger, International Bureau, Satellite and Radiocommunication Division, Satellite Policy Branch, (202) 418-0773.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in CC Docket No. 92-166; FCC 96-54, adopted February 12, 1996 and released February 15, 1996. The complete text of this *Memorandum Opinion and Order* is