



September 11, 2019

VIA REGULATIONS.GOV

Andrew Wheeler, Administrator
United States Environmental Protection Agency
EPA Docket Center (EPA/DC)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Comments on EPA’s proposed rule “National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review” (Docket No. EPA-HQ-OAR-2002-0047)

Dear Administrator Wheeler:

The U.S. Small Business Administration’s Office of Advocacy (Advocacy) submits the following comments in response to the Environmental Protection Agency’s proposed rule, “National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review.”¹ Advocacy believes that EPA’s proposal makes some very important progress in providing small entities flexibilities that should have been part of previous rulemakings affecting this industry but that more should be done. Advocacy recommends EPA further raise the temperature operating standard, reduce the testing burden by adopting more timely, flexible and effective requirements, and provide greater flexibility in the definition of closed areas of a landfill.

The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as

¹ 84 Fed. Reg. 36670 (July 29, 2019), Docket No. EPA-HQ-OAR-2002-0047.

² 5 U.S.C. §601 et seq.



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amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

Background

Municipal Solid Waste (MSW) Landfills are subject to New Source Performance Standards (NSPS) and Emission Guidelines under section 111 of the Clean Air Act and National Emission Standards for Hazardous Air Pollutants (NESHAP) under section 112 of the Clean Air Act. Although the specific pollutants regulated under each section differ, the nature of landfills is such that both sets of regulations require the same technological solution to minimize the release of air pollution, namely a properly operated Gas Collection and Control System (GCCS).

Between 2013 and 2016, EPA engaged in rulemaking to revise the NSPS and Emission Guidelines, including a SBREFA panel under section 609(b) of the RFA. During the rulemaking Advocacy filed two public comments, expressing concerns about EPA's certification under section 605 of the RFA and recommending EPA adopt the flexibilities suggested by the consulted small entities.⁶

EPA issued a final NSPS rule in August 2016. Although more stringent in some aspects, it adopted some Panel-recommended flexibilities. However, the outcome of the rulemaking was muddled because the landfills that were covered by the previous NSPS were also subject to the NESHAP, which hadn't changed, and the smaller landfills that were newly included in the NSPS were not. EPA has now published a proposed rule to revise the NESHAP, as part of its statutory obligation to conduct a risk and technology review (RTR).

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

⁴ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁵ *Id.*

⁶ For a discussion of the rulemaking process prior to final rulemaking, *see* Comment submitted by Claudia R. Rodgers, Acting Chief Counsel for Advocacy and David Rostker, Assistant Chief Counsel, Office of Advocacy, regulations.gov Document ID EPA-HQ-OAR-2003-0215-0187. *See also* Comment submitted by Winslow Sargeant, Chief Counsel for Advocacy and David Rostker, Assistant Chief Counsel, SBA Office of Advocacy, regulations.gov Document ID EPA-HQ-OAR-2003-0215-0080 *and* Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rules Standards of Performance for Municipal Solid Waste Landfills and Review of Emissions Guidelines for Municipal Solid Waste Landfills, regulations.gov Document ID EPA-HQ-OAR-2003-0215-0140.

Advocacy's Comments on the MSW Landfills Risk and Technology Review

Advocacy supports EPA's proposal to allow owners or operators of MSW Landfills subject to the NSPS and/or the NESHAP to select the regulatory provisions under which they will operate. This will hopefully provide clarity for both small entities and the regulatory authorities. EPA should however review the proposed § 60.34f to ensure that approved State plans under the Emissions Guidelines cannot limit this choice.

Advocacy also supports the proposal to adopt many of the flexibilities finalized under the NSPS. The small entities strongly believe that these flexibilities can improve their ability to operate the GCCS, minimizing the release of air pollutants and the risk of fires. However, they also believe that some of the more stringent requirements force corrective actions that can have negative environmental consequences and make future management of the landfill more difficult. Adoption of these flexibilities are consistent with the purposes of the NESHAP technology review.

Temperature Operating Standard

EPA has maintained the temperature operating standard in the NSPS and proposes to maintain it, albeit at a higher temperature, in the NESHAP. Advocacy believes this provision is not supported by the record and imposes unnecessary costs on small entities.

EPA says in the preamble and its analysis that "The purpose of the wellhead monitoring is to prevent fires and avoid conditions that inhibit anaerobic decomposition of the waste."^{7,8} The support for the temperature operating standard of 145°F and the significantly enhanced testing and reporting is based on reviews of three consent decrees, an undated guidance from the Ohio Environmental Protection Agency (Ohio EPA), a review of Region 5 allowances for higher operating values, and Solid Waste Association of North America (SWANA) manual of practice for Landfill Gas GCCS systems.

However, while these documents may suggest that EPA should maintain some temperature operating standard, they are all grounded in the current regulatory regime, under which MSW Landfills are required to monitor temperature and take corrective action at 131°F.

- The consent decrees were the result of enforcement actions, so could not have been approved without a temperature operating standard. Notably, two of the consent decrees included temperature operating standards higher than 145°F, but none of the consent decrees relate the agreed temperature limits to the purposes of the wellhead monitoring.⁹
- The guidance from the Ohio EPA implements its obligation under current Federal regulations to review requests for higher operating temperatures. Given that such

⁷ 84 Fed. Reg. at 36691

⁸ Memo from Andrew Sheppard, U.S. EPA, "Analysis of HOV Requests for Wellhead Temperature" (June 18, 2019), regulations.gov Document ID EPA-HQ-OAR-2002-0047-0098.

⁹ See *United States of America v. County of Maui*, Consent Decree, Case No. 1:12-cv-00571-LEK-RLP (D. Haw. Dec. 27, 2012), available at regulations.gov, Document ID EPA-HQ-OAR-2002-0047-0094 and *United States v. Waste Management of Hawaii, Inc., and City and County of Honolulu*, Consent Decree, Case No. 1:13 cv-00095 (D. Haw. Apr. 18, 2013), available at regulations.gov, Document ID EPA-HQ-OAR-2002-0047-0095

guidance cannot suggest a lack of a temperature operating standard, it suggests that it should be no lower than 150°F.¹⁰

- The review of Region 5 Higher Operating Value (HOV) requests is an analysis of *approved* requests and does not address either the rationale for approving HOVs or circumstances in which requests were not approved. Thus, while useful to show how a higher temperature operating standard might reduce burden, it does not help to determine what the most appropriate temperature operating standard might be or whether there should be one at all.
- The SWANA manual is over 20 years old; it is contradicted by the practical experience cited in the other documents in the record which show GCCS functioning effectively at temperatures above 150°F.

Ohio EPA filed comments on the proposed NSPS that provide more detail on the appropriate interpretation of temperature at the wellhead. Ohio EPA noted that below 150°F, there is very little indication of fire and that it “has observed many wells with elevated temperature (up to 169°F) without having an observed impacts on anaerobic decomposition or without other indicators of fire or significant inhibition of anaerobic decomposition by killing methanogens.”¹¹ Overall, temperature may be a potential warning sign of fire or other problem, but it should not be treated as a *de facto* problem on its own.

EPA should similarly reconsider the proposal for enhanced monitoring. EPA has proposed weekly laboratory testing for CO for as long as the temperature standard is exceeded. First, enhanced CO monitoring is appropriate for monitoring underground fires once detected, but CO itself is not dispositive of an underground fire. EPA should not require repeated CO testing in the absence of other signs of fire. Second, laboratory testing is costly and does not provide timely information that can help the operator improve compliance. EPA has, in two of the consent decrees referenced above, provided for the Defendants to “analyze CO concentrations by using Draeger tubes or similar colorimetric gas detection tubes, provided that such CO collection and analysis shall be done in accordance with manufacturer instructions, and provided, that if the CO concentrations analyzed using such tubes exceed 200 ppmv for a sample, Defendants shall re-sample and re-analyze the landfill gas well using a third-party independent laboratory. . . .”¹² Colorimetric testing provides rapid results that are sufficiently accurate for this application, where minimal levels of CO may indicate the need for further scrutiny.

Advocacy appreciates that any regulated entity can request an HOV for a wellhead in specific circumstances. However, that does not mitigate the burden of applying for the HOV, the recordkeeping, testing and reporting burden while a regulatory authority is considering the request, or the harm that may come from unnecessary corrective actions to force temperature down when all other indicators are of a properly operating GCCS.

¹⁰ See Ohio EPA, “Guidance Document for Higher Operating Value Demonstrations,” available at <http://web.epa.state.oh.us/eBusinessCenter/Agency/DAPC/HOV%20Demonstration.doc> (last visited 9/10/2019).

¹¹ Comment by Ohio EPA, Appendix, via Regulations.gov, Document ID No. EPA-HQ-OAR-2003-0215-0079.

¹² *United States v. Forward, Inc.*, Consent Decree, Case No. 2:11-cv-00590 EFB (E.D. Cal. May 2, 2012), p. 3.

Closed Areas

EPA proposes a definition that states the following: “*Closed area* means a separately lined area of an MSW landfill in which solid waste is no longer being placed. If additional solid waste is placed in that area of the landfill, that landfill area is no longer closed. The area must be separately lined to ensure that the landfill gas does not migrate between open and closed areas.”

EPA should provide more flexibility to use fully the available space in a landfill. It is not uncommon for cells of a landfill to be closed, and closed for many years, before the space between cells is filled in. If the closed cell is producing little landfill gas, new solid waste in proximity will not spur additional production. To the contrary, a well-operated GCCS in the newly used areas, operating negative pressure, will draw landfill gas rather than allow it to migrate into the closed areas. Surface monitoring should be sufficient to identify any such problems. Any concerns about landfill gas migrating should therefore be handled in the design of the GCCS for the new cell rather than automatically requiring re-installation of a GCCS in the closed cell.

Conclusions and Recommendations

Advocacy believes there are opportunities for EPA to provide greater flexibility to small entities operating MSW Landfills without compromising the air quality benefits of GCCS systems or risking landfill fires.

Advocacy recommends elimination of the temperature operating standard and replacing it with a more flexible operating standard that targets the various warning signs of landfill fires rather than a single parameter. If EPA does maintain a temperature operating standard, it should be no lower than 150°F. Enhanced CO monitoring should be limited to circumstances in which other warning signs of fire are present, and EPA should allow colorimetric gas detection tubes in lieu of laboratory testing to provide data that is more relevant, more timely, and less burdensome to collect.

Advocacy recommends flexibility in the definition of a closed area to allow for the full use of MSW Landfill area. The definition should eliminate the requirement for separate lining for each area and the reference to migration of landfill gases.

Advocacy urges EPA to consider the above issues and recommendations. We look forward to working with you to minimize the disproportionate impact of regulation on small entities while achieving the objectives of environmental protection.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel David Rostker at (202) 205-6966 or by email at david.rostker@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

David Rostker
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Paul Ray
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