

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** June 9, 2023

**Thru:** Laurie Gharis, Chief Clerk  
Erin E. Chancellor, Interim Executive Director

**From:** Richard C. Chism, Director *RCC*  
Office of Air

**Docket No.:** 2017-0574-RUL

**Subject:** Commission Approval for Rulemaking and State Plan Adoption  
Chapter 113, Standards of Performance for Hazardous Air Pollutants and  
for Designated Facilities and Pollutants  
Municipal Solid Waste Landfills §111(d) State Plan and Rule Updates  
Rule Project No. 2017-014-113-AI

### **Background and reason(s) for the rulemaking:**

On August 29, 2016, the United States Environmental Protection Agency (EPA) issued new emission guidelines (EG) for existing municipal solid waste landfills (MSWLF) (the 2016 EG rule) and published an updated New Source Performance Standard for new and modified MSWLF. The 2016 EG rule (40 Code of Federal Regulations (CFR) Part 60, Subpart Cf) effectively superseded the EPA's original emission guidelines for MSWLF which were promulgated in 1996. On May 21, 2021, the EPA published a federal plan rule for MSWLF under 40 CFR Part 62, Subpart OOO, which regulates existing MSWLF located in states without an approved state plan to implement the 2016 EG. Under the Federal Clean Air Act (FCAA), Texas is required to submit a revised state plan to implement the 2016 EG. The current Texas state plan for existing MSWLF is implemented through regulations in 30 Texas Administrative Code (TAC) Chapter 113, Subchapter D, Division 1, and was approved by the EPA in 1999. This plan is now out-of-date because it does not address the 2016 EG. Rulemaking is needed to revise the Texas state plan and corresponding Chapter 113 MSWLF rules to conform to the EPA's 2016 EG. If adopted, this rulemaking will also allow MSWLF that are currently subject to EPA's Subpart OOO federal plan to instead comply with substantially equivalent state rules under the authority of the Texas Commission on Environmental Quality (TCEQ or commission), rather than the federal plan being administered by the EPA, after EPA approval of the revised state plan.

### **Scope of the state plan and rulemaking:**

If adopted, the rules will establish a new Chapter 113, Subchapter D, Division 6 containing requirements to implement the 2016 EG. The rules also include transitional language in Subchapter D, Division 1, to establish when landfills would be required to begin complying with the new Division 6 rules. A separate §111(d) state plan document with supporting documentation has also been prepared for concurrent adoption with the rule changes to Chapter 113.

### **A.) Summary of what the state plan and rulemaking will do:**

If adopted, the rules will implement the 2016 EG by incorporating the relevant 40 CFR Part 60 Subpart Cf requirements by reference into Chapter 113, Subchapter D, Division 6. Certain elements of the Division 6 rules will also reference portions of the 40 CFR Part 62, Subpart OOO federal plan rule to facilitate the transition for MSWLF that have already

Re: Docket No. 2017-0574-RUL

begun to comply with those federal requirements. The separate §111(d) state plan document contains information required by 40 CFR Part 60, Subpart B and 40 CFR Part 60, Subpart Cf.

**B.) Scope required by federal regulations or state statutes:**

The changes to Chapter 113, Subchapter D are required in order to satisfy FCAA requirements relating to the implementation of a state plan for MSWLF. With the exceptions discussed below, the rule changes to Chapter 113 directly parallel the requirements in the new EG and federal plan regulations for MSWLF. The §111(d) state plan revision meets the federal requirements for revisions to a state plan.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

Staff recommends that the revisions to Chapter 113 and the state plan include an alternate applicability date which may reduce the number of MSWLF sites potentially subject to the emission guidelines, compared to the “standard” applicability dates specified in the federal rules. The TCEQ’s alternate applicability date for the EG was previously approved by the EPA in 1999, and TCEQ expects it to be approved again. In addition, the rule revisions carry over an existing provision that allows landfills to meet certain requirements of the EG by complying with certain emission control requirements for landfills in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds. Staff also recommends a requirement for affected landfill sites to provide an annual report on non-methane organic compound emissions, which is necessary for TCEQ to maintain sufficient information to satisfy federal progress report requirements under 40 CFR §60.25.

**Statutory authority:**

The rulemaking and state plan will be adopted under Texas Water Code (TWC), §5.103, Rules; TWC, §5.105, General Policy; Texas Health and Safety Code (THSC), §382.002, Policy and Purpose; THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; THSC, §382.014, Emission Inventory; THSC, §382.015 Permission to Enter Property; THSC, §382.016, Monitoring Requirements; Examination of Records; THSC, §382.017, Rules; THSC, §382.021, Sampling Methods and Procedures; THSC, §382.022, Investigations; and THSC, §382.051, Permitting Authority of Commission; Rules. The rules and state plan will also be adopted under TWC, §7.002, Enforcement Authority; TWC, §7.032, Injunctive Relief; and TWC, §7.302, Grounds for Revocation or Suspension of Permit.

**Effect on the:**

**A.) Regulated community:**

Affected existing MSWLF facilities must comply with the new EG requirements regardless of whether TCEQ adopts a state plan and implements the requirements through revisions to the Chapter 113 rules, or whether the requirements are implemented through the federal plan administered by the EPA. However, it would be beneficial for the regulated

Re: Docket No. 2017-0574-RUL

community and the public for TCEQ to implement the new EG requirements through state rules and a state plan, since the TCEQ implements other federal requirements.

**B.) Public:**

The public will not be adversely affected by the rule changes. The rules and revisions to the state plan will allow TCEQ to implement these emission guidelines, rather than the EPA. This is expected to result in more effective administration of the guidelines, as TCEQ has more local knowledge about these facilities and closer relationships with nearby communities. TCEQ also has closer relationships with the operators of affected landfill facilities, compared to the EPA.

**C.) Agency programs:**

Agency programs will not be significantly affected by the rule changes.

**Stakeholder meetings:**

The commission has not scheduled any stakeholder meetings related to this rulemaking; however, a public hearing was offered during the comment period.

**Public Involvement Plan:**

The rulemaking and revision to the state plan will, once approved by EPA, allow TCEQ to implement the most recent federal emission guidelines for existing MSWLF. These emission guidelines are already in effect in Texas through a federal plan. The rules closely parallel the federal guidelines and do not significantly change the emission standards and monitoring requirements already in effect. Based on the limited number of commenters, the proposed rule changes did not draw significant public interest and a specific public involvement plan was not developed. The public was provided with the opportunity to submit comments and attend a public hearing.

**Alternative Language Requirements:**

The agenda item announcement for proposal and adoption at the Commissioners' Agenda Meeting and the agency webpage requesting comments on the proposed rules were provided in English and Spanish. A plain language summary was provided in English and Spanish on the agency website, and newspaper notices for the public hearing were published in English and Spanish. The public had an opportunity to request additional communication accommodations, including live translation services, for the public hearing, but no such requests were received.

**Public Comment:**

The commission offered a public hearing (virtual and in-person) on February 23, 2023. The comment period closed on February 28, 2023. Comments were received from two individuals and Harris County Pollution Control Services (HCPCS). The comments were generally supportive of the proposed rules, but suggested changes to certain aspects of the rules or agency policy. One individual suggested that TCEQ track revenues or benefits from landfill gas collection systems to ensure that the revenue or benefits help communities affected by landfills. HCPCS suggested rule changes to allow the executive director or local pollution control programs to request additional documentation. One individual expressed concern about the annual NMOC emission reporting required by the

Commissioners

Page 4

June 9, 2023

Re: Docket No. 2017-0574-RUL

rules. Please consult the response to comments in the preamble to the adopted rule for a full description of the comments and TCEQ's detailed responses.

**Significant changes from proposal:**

In response to a comment, a definition of the term "reconstruction" was added to §113.2402. Also in response to comments, language was added to §113.2406 to allow the executive director to request additional information about facilities claiming exemptions, and to §113.2410 to allow the executive director or local pollution control programs with jurisdiction to request additional information about compliance.

**Potential controversial concerns and legislative interest:**

The rulemaking and state plan revision are necessary to implement revised federal requirements for existing MSWLF, as required by the FCAA. Staff does not expect the requirements in the rulemaking or state plan to be controversial since these requirements already apply to these sources, but any regulatory actions involving MSWLF facilities can generate public and legislative interest.

**Will this rulemaking affect any current policies or require development of new policies?**

No.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

If the rules and state plan revision are not adopted, existing MSWLF facilities in Texas will be required to continue to comply with the EPA's federal plan for MSWLF under 40 CFR Part 62, Subpart OOO. The federal plan is directly administered by the EPA. For Title V sources, Texas is also required to have authority to implement all applicable requirements. The requirements of 40 CFR Part 60, Subpart Cf are applicable requirements for sources otherwise subject to the Title V Federal Operating Permit Program. It would be preferable for the public and the regulated community for the TCEQ, rather than the EPA, to be responsible for the implementation of the EG.

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: January 27, 2023

Anticipated *Texas Register* adoption publication date: July 14, 2023

Anticipated effective date: July 20, 2023

Six-month *Texas Register* filing deadline: July 27, 2023

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**Attachments:** None

Commissioners

Page 5

June 9, 2023

Re: Docket No. 2017-0574-RUL

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