

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** December 21, 2022

**Thru:** Laurie Gharis, Chief Clerk  
Toby Baker, Executive Director

**From:** Samuel Short, Acting Director  
Office of Air

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

**Subject:** Commission Approval for Proposed Rulemaking  
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 The 2016 EG rule (40 Code of Federal Regulations (CFR) Part 60, Subpart Cf) effectively superseded the EPA's original emission guidelines for MSWLF which were promulgated in 1996.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 This plan is now out-of-date because it does not address the 2016 EG.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. The proposed rulemaking would also allow MSWLF which 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:**

The proposed rules would establish a new Chapter 113, Subchapter D, Division 6 containing requirements to implement the 2016 EG. The proposed 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 proposal with the rule changes to Chapter 113.

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

The proposed rules would 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 proposed Division 6 rules would also reference portions of the 40 CFR Part 62, Subpart OOO federal plan rule to facilitate the transition for MSWLF which have already begun to comply with those federal requirements. The separate §111(d)

Re: Docket No. 2017-0574-RUL

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 proposed rule changes to Chapter 113 directly parallel the requirements in the new EG and federal plan regulations for MSWLF. The §111(d) state plan meets the federal requirements for state plans.

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

Staff recommends that the proposed 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 proposed revisions carry over an existing provision which 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 proposed requirement for affected landfill sites to provide an annual report on NMOC emissions, which is not explicitly required by federal rule, but 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 are proposed 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 proposed rules and state plan are also proposed 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, the commission believes that it would be

Re: Docket No. 2017-0574-RUL

beneficial for the regulated community and the public for TCEQ to implement the new EG requirements through state rules and a state plan.

**B.) Public:**

The public would not be adversely affected by the proposed changes. The proposed rules and revisions to the state plan would 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 would 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 will be held during the comment period.

**Public Involvement Plan**

The proposed rulemaking and revision to the state plan would, 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 proposed rules closely parallel the federal guidelines and would not significantly change the emission standards and monitoring requirements already in effect. Significant public interest in this proposed rulemaking is not expected. A specific public involvement plan has not been developed. The public will have 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 will be provided in English and Spanish. A plain language summary will be provided in English and Spanish on the agency website, and newspaper notices for the public hearing will be published in English and Spanish. The public will have an opportunity to request additional communication accommodations, including live translation services, for the public hearing.

**Potential controversial concerns and legislative interest:**

The proposed rulemaking and state plan are necessary to implement revised federal requirements for existing MSWLF, as required by the FCAA. Staff does not expect the requirements proposed 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.

Re: Docket No. 2017-0574-RUL

**Would 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 proposed rules and state plan are not adopted, existing MSWLF facilities in Texas would be required to continue to comply with the EPA's federal plan for MSWLF under 40 CFR Part 62, Subpart OOO. This 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 proposal rulemaking schedule:**

**Anticipated proposal date:** January 11, 2023

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

**Anticipated public hearing date:** February 23, 2023

**Anticipated public comment period:** January 27, 2023 - February 28, 2023

**Anticipated adoption date:** June 28, 2023

**Agency contacts:**

Michael Wilhoit, Rule Project Manager, Air Permits Division, (512) 239-1222

Terry Salem, Staff Attorney, (512) 239-0469

Cecilia Mena, Texas Register Rule/Agenda Coordinator, (512) 239-6098

**Attachments:**

Proposed Revisions to §111(d) State Plan

Appendices B1-B4

Appendices C1-C6

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Krista Kyle  
Office of General Counsel  
Michael Wilhoit  
Terry Salem  
Cecilia Mena