

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§113.2400, 113.2402, 113.2404, 113.2406, 113.2408, 113.2410, and 113.2412; and amended §113.2069.

The proposed new and amended sections are included in the accompanying proposed revisions to the Federal Clean Air Act (FCAA), §111(d) Texas State Plan for Existing Municipal Solid Waste (MSW) Landfills. If adopted by the commission, the revisions to Chapter 113 and the associated revisions to the state plan will be submitted to the U.S. Environmental Protection Agency (EPA) for review and approval.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed amendments to Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, are necessary to implement emission guidelines in 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. These emission guidelines (2016 emission guidelines) were promulgated by the EPA on August 29, 2016 (81 FR 59276), and amended on August 26, 2019 (84 FR 44547), and March 26, 2020 (85 FR 17244). The August 26, 2019, amendments to Subpart Cf were vacated on April 5, 2021, by the D.C. Circuit Court of Appeals, and are not included in this proposal. On May 21, 2021, the EPA also published a federal plan (86 FR 27756) to implement the 2016 emission guidelines for MSW landfills located in states where an approved FCAA, §111(d), state plan is not in effect. The federal plan for MSW landfills

was adopted under 40 CFR Part 62, Subpart OOO.

The FCAA, §111, requires the EPA to develop performance standards and other requirements for categories of sources which the EPA finds “...causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” Under FCAA, §111, the EPA promulgates New Source Performance Standards (NSPS) and Emission Guidelines. NSPS regulations promulgated by the EPA apply to new stationary sources for which construction begins after the NSPS is proposed, or that are reconstructed or modified on or after a specified date. Emission Guidelines promulgated by the EPA are similar to NSPS, except that they apply to existing sources which were constructed on or before the date the NSPS is proposed, or that are reconstructed or modified before a specified date. Unlike the NSPS, emission guidelines are not enforceable until the EPA approves a state plan or adopts a federal plan for implementing and enforcing them.

States are required under the FCAA, §111(d), and 40 CFR Part 60, Subpart B, to adopt and submit to the EPA for approval a state plan to implement and enforce emission guidelines promulgated by the EPA. A state plan is required to be at least as protective as the corresponding emission guidelines. The FCAA also requires the EPA to develop, implement, and enforce a federal plan to implement the emission guidelines. The federal plan applies to affected units in states without an approved state plan.

In 1996, the EPA promulgated the original NSPS for MSW landfills under 40 CFR Part 60 Subpart WWW, and corresponding emission guidelines (the 1996 emission guidelines) under 40 CFR Part 60 Subpart Cc. TCEQ adopted rules under Chapter 113, Subchapter D, Division 1, and a corresponding §111(d) state plan, to implement the 1996 emission guidelines on October 7, 1998 (23 TexReg 10874). The EPA approved TCEQ's rules and state plan for existing MSW landfills on June 17, 1999 (64 FR 32427).

On August 29, 2016, the EPA adopted a new NSPS (40 CFR Part 60 Subpart XXX) and new emission guidelines (40 CFR Part 60 Subpart Cf) for MSW landfills, which essentially replaced the 1996 NSPS and emission guidelines. The 2016 emission guidelines lowered the emission threshold at which a landfill gas collection system is required from 50 megagrams (Mg) of non-methane organic compounds (NMOC) to 34 Mg of NMOC. The EPA's 2016 adoption of NSPS Subpart XXX and the 2016 emission guidelines under Subpart Cf also included changes to monitoring, recordkeeping, and reporting requirements, relative to the original 1996 requirements of Subparts WWW and Cc.

The original deadline for states to submit a state plan to implement the EPA's 2016 emission guidelines for MSW landfills was May 30, 2017. The TCEQ submitted a request for an extension to this deadline as provided under 40 CFR §60.27(a). In June 2017, TCEQ received a response from EPA Region 6 which stated that, as a result of the stay in effect at that time, "...a state plan submittal is not required at this time." The

stay expired August 29, 2017. On October 17, 2017, the EPA released a “Desk Statement” concerning the emission guidelines, which stated that “...we do not plan to prioritize the review of these state plans nor are we working to issue a Federal Plan for states that failed to submit a state plan. A number of states have expressed concern that their failure to submit a state plan could subject them to sanctions under the Clean Air Act. As the Agency has previously explained, states that fail to submit state plans are not subject to sanctions (e.g., loss of federal highway funds).” Given that the EPA’s Desk Statement indicated that submittal of state plans was not a priority, and considering that the EPA had stated that a reconsideration rulemaking of the NSPS and emission guidelines was impending, TCEQ put state plan development on hiatus to monitor developments in the federal rules. On August 26, 2019, the EPA promulgated rules which established a new deadline of August 29, 2019, for states to submit a §111(d) state plan for the 2016 emission guidelines. However, the August 26, 2019, rules were vacated and remanded on April 5, 2021, effectively restoring the original Subpart B deadline of May 30, 2017. (*Environmental Defense Fund v. EPA*, No. 19-1222 (D.C. Circuit, 2021)).

On March 12, 2020, the EPA published a finding of failure to submit (85 FR 14474) that determined that 42 states and territories, including the State of Texas, had failed to submit the required §111(d) state plans to implement the 2016 emission guidelines for MSW landfills. On May 21, 2021, the EPA published a federal plan under 40 CFR Part 62, Subpart OOO, to implement the 2016 emission guidelines for MSW landfills in

states where an approved §111(d) state plan for the 2016 emission guidelines was not in effect. This federal plan became effective on June 21, 2021, and currently applies to MSW landfills in Texas and numerous other states without an approved state plan implementing the 2016 emission guidelines. The overall requirements of the federal plan are similar to the emission guidelines in Subpart Cf, but EPA included certain changes and features in the federal plan to simplify compliance obligations for landfills that are already controlling emissions under prior landfill regulations such as 40 CFR Part 60, Subpart WWW, or state rules adopted as part of a previously approved state plan for the 1996 emission guidelines. Once a state has obtained approval for a §111(d) state plan implementing the 2016 emission guidelines, most requirements of the federal plan no longer apply, as affected sources would instead comply with the requirements of the approved state plan. (Some of the compliance deadlines and increments of progress specified in the federal plan may still apply.)

In order to implement the EPA's 2016 emission guidelines, TCEQ must revise the corresponding Chapter 113 rules and state plan for existing MSW landfills. The proposed changes to Chapter 113 include amendments to §113.2069 in Subchapter D, Division 1, and several new sections under a proposed Division 6. The proposed rules would phase out the requirement to comply with the commission's existing Division 1 rules and phase in new rules corresponding to the EPA's 2016 emission guidelines. The proposed Division 6 rules also incorporate certain elements from the 40 CFR Part 62 Subpart OOO federal plan to facilitate ongoing compliance for MSW landfills in Texas

which have been required to comply with the federal plan since it became effective on June 21, 2021. The transition date for the applicability of the proposed Division 6 rules, and non-applicability of the existing Division 1 rules, would be the effective date of the EPA's approval of Texas' revisions to the §111(d) state plan. This is discussed in more detail in the section-by-section discussion for the proposed changes to §113.2069 and proposed new §113.2412.

Interested persons are encouraged to consult the EPA's 2016 emission guidelines under 40 CFR Part 60 Subpart Cf, and the federal plan under 40 CFR Part 62 Subpart OOO, for further information concerning the specific requirements that are the subject of this proposed rulemaking. In a concurrent action, the commission is proposing a state plan revision to implement and enforce the 2016 emission guidelines that are the subject of this proposed rulemaking.

Section by Section Discussion

§113.2069, Compliance Schedule and Transition to 2016 Landfill Emission Guidelines

The commission proposes an amendment to §113.2069. Proposed subsection (c) serves as a transition mechanism for owners or operators of existing MSW landfills to end compliance with the requirements of Chapter 113, Subchapter D, Division 1, and begin compliance with the requirements of Subchapter D, Division 6, based on the implementation date specified in §113.2412. The implementation date is a future date established when the EPA's approval of the revised Texas §111(d) state plan for the

2016 emission guidelines for landfills becomes effective. On and after this date, owners or operators of MSW landfills will no longer be required to comply with the Division 1 rules, but must instead comply with the applicable requirements of Division 6.

The Division 1 rule requirements were created to implement the 1996 emission guidelines contained in 40 CFR Part 60 Subpart Cc, which have been supplanted by the more stringent 2016 emission guidelines contained in 40 CFR Part 60 Subpart Cf. These Division 1 rules will no longer be needed once the EPA approves TCEQ's new Division 6 rules and the corresponding §111(d) state plan to implement the 2016 emission guidelines.

The commission also proposes to revise the title of §113.2069 to reflect that the section now contains provisions for the transition from the Chapter 113, Division 1, requirements to the new Division 6 rules implementing the 2016 emission guidelines.

Division 6: 2016 Emission Guidelines for Existing Municipal Solid Waste Landfills

§113.2400, Applicability

The commission proposes new §113.2400, which contains requirements establishing the applicability of the new Subchapter D, Division 6, rules which implement the 2016 emission guidelines. Proposed subsection (a) specifies that the Division 6 rules apply

to existing MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014, except for certain landfills exempted under the provisions of proposed §113.2406. The applicability of the proposed Division 6 requirements includes MSW landfills which were previously subject to the requirements of Chapter 113, Subchapter D, Division 1; the requirements of 40 CFR Part 60 Subpart WWW; or the requirements of the federal plan adopted by the EPA to implement the 2016 emission guidelines (40 CFR Part 62 Subpart OOO).

Proposed subsection (b) is intended to clarify that physical or operational changes made to an existing landfill solely for purposes of achieving compliance with the Division 6 rules will not cause the landfill to become subject to NSPS under 40 CFR Part 60, Subpart XXX. This proposed subsection corresponds to 40 CFR Part 60, Subpart Cf, §60.31f(b).

Proposed subsection (c) is intended to clarify that MSW landfills which are subject to 40 CFR Part 60 Subpart XXX are not subject to the requirements of proposed Division 6. 40 CFR Part 60 Subpart XXX applies to landfills which have been modified, constructed, or reconstructed after July 17, 2014, whereas the proposed Division 6 requirements apply to MSW landfills which have not been modified, constructed, or reconstructed after July 17, 2014.

Proposed subsection (d) establishes that the requirements of Division 6 do not apply

until the implementation date specified in proposed §113.2412(a). This implementation date corresponds to the future date when the EPA's approval of Texas' revised §111(d) state plan for existing MSW landfills becomes effective. Until that date, owners or operators of existing MSW landfills must continue complying with the Chapter 113, Division 1, requirements for existing MSW landfills. The EPA will publish a notice in the *Federal Register* once their review of the revised Texas §111(d) state plan has been completed.

§113.2402, Definitions

The commission proposes new §113.2402, which identifies the definitions that apply for the purposes of Subchapter D, Division 6. Proposed subsection (a) incorporates the definitions in 40 CFR §§60.2 and 60.41f by reference, as amended through May 16, 2007, and March 26, 2020, respectively. Proposed subsections (b) and (c) address certain exceptions or additional definitions relevant to the proposed Division 6 rules.

Proposed subsection (b) establishes that the term "Administrator" as used in 40 CFR Part 60, §§60.30f – 60.41f shall refer to the commission, except for the specific purpose of 40 CFR §60.35f(a)(5), in which case the term "Administrator" shall refer to the Administrator of the EPA. Under 40 CFR §60.30f(c)(1), approval of alternative methods to determine NMOC concentration or a site-specific methane generation rate constant cannot be delegated to States. The federal rule associated with approval of these alternative methods is 40 CFR §60.35f(a)(5), so for purposes of this specific rule

the EPA must remain "the Administrator."

Proposed subsection (c) establishes a definition of a "legacy controlled landfill" for use with the proposed Division 6 rules. The proposed definition parallels the definition of "legacy controlled landfill" used by the EPA in the 40 CFR Part 62, Subpart OOO federal plan, with minor changes to align this definition with the Chapter 113 landfill rules. In plain language, a legacy controlled landfill is a landfill which submitted a collection and control system design plan before May 21, 2021, to comply with previous standards for MSW landfills (either 40 CFR Part 60, Subpart WWW, or 30 TAC Chapter 113, Division 1). This includes not only landfills which have already completed construction and installation of the GCCS, but also those that have submitted design plans and are within the 30-month timeline to install and start-up a GCCS according to 40 CFR §60.752(b)(2)(ii) (if subject to NSPS Subpart WWW), or the corresponding requirements of Chapter 113, Division 1.

§113.2404, Standards for existing municipal solid waste landfills

The commission proposes new §113.2404, which contains the technical and administrative requirements for affected MSW landfills under Subchapter D, Division 6.

Proposed subsection (a) specifies the following requirements for MSW landfills subject to Division 6: default emission standards; operational standards; compliance, testing, and monitoring provisions; recordkeeping and reporting provisions; and other

technical and administrative requirements. Proposed subsection (a) refers directly to the provisions of 40 CFR Part 60, Subpart Cf, as amended, for the relevant requirement. The various sections of Subpart Cf have been amended at different times, so the most recent amendment date of each rule section is noted in the proposed rule text. Owners or operators of existing MSW landfills subject to Division 6 would be required to comply with the referenced requirements of Subpart Cf, as applicable, unless otherwise specified within the Division 6 rules. Certain landfills, such as legacy controlled landfills, are subject to different (non-Subpart Cf) requirements as addressed in proposed §113.2404(b), (c), and (d), and in §113.2410.

Proposed subsection (b) establishes that landfill gas collection and control systems that are approved by the commission and installed in compliance with 30 TAC §115.152 are deemed to satisfy certain technical requirements of these emission guidelines. Proposed subsection (b) is intended to reduce potentially duplicative requirements relating to the landfill gas collection and control system. The gas collection and control system requirements in 30 TAC §115.152 are based on the requirements in the proposed version of the original landfill NSPS under 40 CFR Part 60, Subpart WWW (56 FR 24468, May 30, 1991). Proposed subsection (b) is essentially carried over from existing 30 TAC §113.2061(b), but the text of the proposed rule has been rephrased to more clearly state which specific design requirements of 40 CFR Part 60, Subpart Cf are satisfied. A detailed explanation of the 30 TAC §115.152 requirements and how they compare to the corresponding requirements of 40 CFR Part

60, Subpart Cf is provided in Appendix C.5 of the proposed state plan document. The technical requirements of 30 TAC §115.152 are still substantially equivalent to the corresponding Subparts Cc and Cf requirements for landfill gas collection and control systems, so preserving this previously approved aspect of the Texas state plan is still appropriate and would not result in any backsliding of emission standards or control system requirements. Owners or operators of landfills meeting the Chapter 115 requirements must still comply with all other applicable requirements of Division 6 and the associated requirements of 40 CFR Part 60, Subpart Cf, except for 40 CFR §60.33f(b) and (c).

Proposed subsection (c) allows legacy controlled landfills or landfills in the closed landfill subcategory that have already completed initial or subsequent performance tests to comply with prior landfill regulations (such as 40 CFR Part 60 Subpart WWW, or the Chapter 113, Subchapter D, Division 1, rules) to use those performance test results to comply with the proposed Division 6 rules. This proposed subsection parallels similar language in Subpart Cf at 40 CFR §60.33f(c)(2)(iii), but adds legacy controlled landfills as eligible to use this provision. This is consistent with the approach EPA used for the federal plan at 40 CFR §62.16714(c)(2)(iii). The commission believes that expanding the provision to include legacy controlled landfills, as the EPA did with the federal plan, is reasonable and will not reduce the effectiveness of the emission guidelines as implemented by the proposed revisions to the Texas §111(d) state plan for landfills. This provision will minimize the need for costly re-testing when

appropriately recent test results are already available as a result of testing for compliance with prior landfill emission standards. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with the federal plan for purposes of this requirement should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (d) specifies that legacy controlled landfills shall comply with the requirements of 40 CFR §62.16714(b)(1), as amended through May 21, 2021, in lieu of the requirements of 40 CFR §60.33f(b)(1). This change in requirements (relative to the Subpart Cf requirements) is necessary and reasonable because in the 40 CFR Part 62, Subpart OOO federal plan, 40 CFR §62.16714(b)(1)(ii) addresses the 30-month control deadlines for both legacy controlled landfills and landfills in the closed landfill subcategory, where the corresponding Subpart Cf requirement of 40 CFR §60.33f(b)(1)(ii) only addresses landfills in the closed landfill subcategory. The approach the EPA used in the federal plan to address legacy controlled landfills is an improvement relative to the corresponding provisions of Subpart Cf. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with the federal plan for purposes of this requirement should reduce the potential for confusion or noncompliance while having no adverse effect on

emissions or the environment.

§113.2406, Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules

The commission proposes new §113.2406, which contains exemptions from the proposed Subchapter D, Division 6, requirements.

Proposed subsection (a) would exempt certain MSW landfills from the requirements of Division 6. This proposed exemption is carried over from the Division 1 landfill rules (30 TAC §113.2060(2)(A)) and the previously approved state plan, but has been rephrased as an explicit exemption rather than as a part of the definition of existing MSW landfill. The proposed rule exempts MSW landfills which have not accepted waste since October 9, 1993, and have no remaining waste disposal capacity. This proposed exemption modifies the applicability of the rules relative to the default federal requirements of 40 CFR Part 60, Subparts Cc and Cf, because it excludes MSW landfills which stopped accepting waste between November 8, 1987 (the date specified in the federal guidelines) and October 9, 1993. This proposed exemption is in accordance with 40 CFR §60.24(f) criteria, which allow a state rule to be less stringent for a particular designated class of facilities provided the state can show that factors exist which make application of a less stringent standard significantly more reasonable. When TCEQ adopted the Chapter 113, Division 1, rules for existing MSW landfills in 1998, the commission's analysis found that only one landfill (City of Killeen) which

closed within the relevant time period had an estimated emission rate above the control threshold of 50 Mg/yr, and that the Killeen landfill's emissions were projected to fall below the 50 Mg/yr control threshold by 2004. The commission also estimated that, using an alternate calculation method, the emissions from the landfill would be even lower, and would be "borderline" relative to the 50 Mg/yr threshold. The commission further determined that the cost of installing and operating a gas collection and control system for the landfill would be unreasonable based on the short period of time the facility was projected to be above the 50 Mg/yr threshold. (*See* 23 TexReg 10876, October 23, 1999.) In EPA's approval of the TCEQ's original state plan submittal, the EPA acknowledged that no designated landfills which closed between November 8, 1987, and October 9, 1993, would have estimated non-methane organic compounds (NMOC) emissions above the 50 megagram (Mg) control threshold, and that controlling these closed landfills would not result in a significant reduction in NMOC emissions compared to the cost to install gas collection systems. (*See* 64 FR 32428.) As many years have passed since the original Texas state plan was approved in 1999, none of the landfills which stopped accepting waste during the relevant 1987-1993 time period would have current NMOC emissions above the 50 Mg/year threshold. The previous state plan analysis and other supporting material relating to this proposed exemption is included in Appendix C.5 of the proposed state plan document.

Proposed subsection (b) allows an owner or operator of an MSW landfill to apply for

less stringent emission standards or longer compliance schedules, provided that the owner or operator demonstrates to the executive director and to the EPA that certain criteria are met. An exemption under subsection (b) may be requested based on unreasonable cost of control, the physical impossibility of installing control equipment, or other factors specific to the MSW landfill that make application of a less stringent standard or compliance deadline more reasonable. The proposed provisions of subsection (b) are carried over from functionally identical provisions in the EPA-approved Division 1 landfill rules at 30 TAC §113.2067. The proposed exemption is consistent with the federal requirements in 40 CFR §60.24(f) for obtaining a less stringent emission standard or compliance schedule.

Proposed subsection (c) contains language to clarify how an owner or operator of an affected MSW landfill would request an alternate emission standard or alternate compliance schedule. Requests should be submitted to the TCEQ Office of Air, Air Permits Division, and a copy should be provided to the EPA Region 6 office.

§113.2408, Federal Operating Permit requirements

The commission proposes new §113.2408 to address federal operating permit requirements for MSW landfills subject to the proposed Chapter 113, Subchapter D, Division 6, rules. Proposed §113.2408 requires that owners or operators of MSW landfills subject to Division 6 obtain a federal operating permit as required under 40 CFR §60.31f(c) and (d) and applicable requirements of 30 TAC Chapter 122, Federal

Operating Permits Program. Under 40 CFR §60.31f(c), a federal operating permit is not required for MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters, unless the landfill is otherwise subject to the requirement to obtain an operating permit under 40 CFR Part 70 or 71. For purposes of submitting a timely application for an operating permit, the owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of EPA approval of the Texas landfill state plan under §111(d) of the CAA, and not otherwise subject to either Part 70 or 71, becomes subject to the requirements of 40 CFR §70.5(a)(1)(i) or §71.5(a)(1)(i), 90 days after the effective date of the §111(d) state plan approval, even if the design capacity report is submitted earlier.

As stated in 40 CFR §60.31f(d), when an MSW landfill subject to the proposed Division 6 rules is closed (as defined in Subpart Cf) the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not otherwise subject to the requirements of either Part 70 or 71 and either of the following conditions are met: (1) The landfill was never subject to the requirement to install and operate a gas collection and control system under 40 CFR §60.33f; or (2) the landfill meets the conditions for control system removal specified in 40 CFR §60.33f(f).

§113.2410, Initial and Annual Reporting, and Modified Reporting Requirements for Legacy Controlled Landfills

The commission proposes new §113.2410 to address certain initial reports and design plans which must be submitted to the executive director and to establish modified reporting requirements for legacy controlled landfills.

Proposed subsection (a) identifies the requirements for initial reports of design capacity, non-methane organic compound (NMOC) emissions, and initial gas collection and control system design plans. These proposed reporting requirements correspond to certain reports required by 40 CFR §60.38f and by the 40 CFR Part 62, Subpart OOO federal plan. The proposed subsection (a) rules do not require an owner or operator that has already submitted the specified reports to comply with the Subpart OOO federal plan to re-submit the reports to TCEQ unless specifically requested.

The commission is proposing an additional reporting requirement in 30 TAC §113.2410(a)(4) that would require owners or operators of existing MSW landfills to provide annual calculations of NMOC emissions. This proposed requirement is necessary to enable TCEQ to maintain current information on NMOC emissions from designated facilities covered by the proposed state plan and provide updated emissions inventory information to the EPA in compliance with federal annual progress report requirements of 40 CFR §60.25(e) and (f). The commission is proposing to exclude landfills with a capacity less than 2.5 million Mg by mass or 2.5 million cubic meters by volume from this annual NMOC inventory reporting requirement, as these small landfills are exempt from most substantive requirements

of 40 CFR Part 60, Subpart Cf and 40 CFR Part 62, Subpart OOO, and the NMOC calculation's results would not affect the applicable emission control requirements or monitoring requirements for these small sites. If a small site were to increase capacity above the 2.5 Mg or 2.5 million cubic meter threshold, the applicable control requirements and monitoring requirements for the site would be determined by the NMOC calculation methodology specified in 40 CFR Part 60, Subpart Cf.

For the annual NMOC emission inventory reports required by proposed §113.2410(a)(4), TCEQ is proposing that designated facilities use calculation methods specified in the EPA's *Compilation of Air Pollutant Emissions Factors* (AP-42), as opposed to the calculation methods specified in 40 CFR Part 60, Subpart Cf. The proposed use of AP-42 calculation methods for purposes of the emissions inventory, rather than the methods in 40 CFR Part 60, Subpart Cf, is in accordance with federal guidance for the implementation of §111(d) state plans for MSW landfills (EPA-456R/98-009, *Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfills Emission Guidelines*). In this guidance, the EPA explains that the calculation methods (AP-42 vs. the emission guideline rule itself) are intentionally different, as the AP-42 methodology for emission inventories is designed to reflect typical or average landfill emissions, while the emission guideline rule methodology is purposefully conservative to protect human health, encompass a wide range of MSW landfills, and encourage the use of site-specific data.

At this time, the commission is not proposing a specific method that affected facilities would use to submit the annual NMOC emission inventory reports. The commission anticipates that an electronic method would facilitate more efficient collection and analysis of the data. The annual reporting might be implemented through modification of the commission's existing Annual Emissions Inventory Report (AEIR) system, the commission's existing e-permitting system, or through a separate portal or interface. The commission invites comment on possible methods for submittal of these annual NMOC inventory reports. Depending on the comments received and other factors, the commission may specify the method of reporting in the final rule, if adopted, or in guidance posted on the commission's website.

It should be noted that proposed 30 TAC §113.2410 does not comprehensively include all reporting requirements, and that owners or operators of MSW landfills subject to Subchapter D, Division 6, must also comply with any additional reporting requirements specified in 40 CFR §60.38f or elsewhere in 40 CFR Part 60, Subpart Cf, even if not specifically identified in §113.2410.

Proposed subsection (b) establishes certain exemptions from reporting requirements for legacy controlled landfills which have already submitted similar reports to comply with prior regulations that applied to MSW landfills. Specifically, the owner or operator of a legacy controlled landfill is not required to submit an initial design capacity report, initial or subsequent NMOC emission rate report, collection and control system

design plan, initial performance test report, or the initial annual report, if those report(s) were already provided under the requirements of 40 CFR Part 60, Subpart WWW, or the Chapter 113, Subchapter D, Division 1, rules. This proposed exemption corresponds to the approach EPA used for legacy controlled landfills in the 40 CFR Part 62, Subpart OOO, federal plan (specifically, 40 CFR §62.16711(h)). The commission has included this proposed provision because the approach the EPA used in the federal plan to address reporting for legacy controlled landfills is an improvement relative to the corresponding provisions of Subpart Cf. Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113, and maintaining consistency with this aspect of the federal plan should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (c) establishes that owners or operators of legacy controlled landfills that have already submitted an annual report under 40 CFR Part 60, Subpart WWW, or Chapter 113, Subchapter D, Division 1, are required to submit the following annual report under Division 6 no later than one year after the most recent annual report was submitted, as specified in 40 CFR §62.16724(h). This is a clarification of the timing requirements for the annual reports of legacy controlled landfills transitioning from the prior-effective landfill regulations (40 CFR Part 60 Subpart WWW, or Chapter 113, Subchapter D, Division 1) to the new Division 6 regulations. This proposed subsection corresponds to the approach EPA used for legacy controlled landfills in the

40 CFR Part 62, Subpart OOO, federal plan (specifically, 40 CFR §62.16724(h)). Existing landfills in Texas will have been operating under the requirements of the federal plan for some time prior to the EPA's approval of the proposed changes to Chapter 113 and maintaining consistency with this aspect of the federal plan should reduce the potential for confusion or noncompliance while having no adverse effect on emissions or the environment.

Proposed subsection (d) requires owners or operators of legacy controlled landfills that demonstrate compliance with the emission control requirements of Division 6 using a treatment system (as defined in 40 CFR §60.41f) to comply with 40 CFR §62.16724(d)(7). This requires the preparation of a site-specific treatment system monitoring plan no later than May 23, 2022. Legacy controlled landfills affected by this rule will have been required to prepare this plan by May 23, 2022, to comply with the federal plan, even though the proposed Subchapter D, Division 6, rules were not yet effective or approved by the EPA at that time. This proposed requirement maintains consistency with this aspect of the federal plan and ensures that TCEQ will have continuing authority to enforce this requirement for any legacy controlled landfills which fail to prepare the required treatment system monitoring plan.

§113.2412, Implementation Date and Increments of Progress

The commission proposes new §113.2412 to establish an implementation date and required increments of progress for the proposed Subchapter D, Division 6, rules.

Proposed subsection (a) contains language that requires owners or operators of existing MSWLF to comply with the Division 6 requirements beginning on the effective date of the EPA's approval of Texas' revised §111(d) state plan implementing the 2016 emission guidelines for existing MSW landfills. Prior to this implementation date, owners or operators of existing MSW landfills shall continue to comply with the Chapter 113, Subchapter D, Division 1, rules; 40 CFR Part 60, Subpart WWW; and/or 40 CFR Part 62, Subpart OOO, as applicable. On and after the implementation date specified in this subsection, owners or operators of existing MSW landfills would no longer be required to comply with the Chapter 113, Subchapter D, Division 1, requirements or the federal requirements of Subparts WWW or OOO.

Proposed subsection (b) requires owners or operators of MSW landfills subject to Subchapter D, Division 6, to comply with all applicable requirements of progress specified in 40 CFR Part 62, Subpart OOO, Table 1, as amended through May 21, 2021. These increments of progress set deadlines for certain milestones, such as the submittal of the cover page of the final control plan; the awarding of contracts; the beginning of on-site construction; the completion of on-site construction; and final compliance. The commission is proposing to require the same increments of progress as the 40 CFR Part 62 federal plan because the federal plan is already in effect, and maintaining consistency with the Subpart OOO requirements will minimize confusion and the potential for noncompliance for owners or operators who have already started

the process of designing and installing controls to comply with the federal plan. In addition, 40 CFR §62.16712(c)(1), indicates that facilities subject to the federal plan will remain subject to the schedule in Table 1, even if a subsequently approved state or tribal plan contains a less stringent schedule. As stated in footnote 2 of Subpart OOO, Table 1, increments of progress that have already been completed under previous regulations do not have to be completed again.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules. The federal plan adopted under 40 CFR Part 62, Subpart OOO, may have a fiscal impact to units of local government, but the proposed transfer of regulatory authority to the agency does not change that fiscal impact.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit of the proposed transfer anticipated would be a more accessible point of contact (TCEQ) for the public and the regulated community for the regulation of landfill emissions. Because this proposal designates the TCEQ as the implementing agency for federal emission guidelines for landfills, the public may also

utilize the Small Business and Local Government Assistance program (TexasEnviroHelp.org), which provides free technical assistance for the agency's regulatory programs.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals. The federal plan adopted under 40 CFR Part 62, Subpart OOO, may have a fiscal impact to businesses or individuals, but the proposed transfer of regulatory authority to the agency does not change that fiscal impact.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does create a new regulation in Chapter 113, Subchapter D, Division 6. The proposed rulemaking phases out the requirement to comply with Chapter 113, Subchapter D, Division 1, but does not repeal it. The proposed rulemaking increases the number of individuals subject to landfill regulations under Chapter 113; however, those

individuals are regulated under the federal standards and other regulations by the agency. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Tex. Gov't Code Ann., §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a "Major environmental rule," which are listed in Tex. Gov't Code Ann., §2001.0225. Tex. Gov't Code Ann., §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to

implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of these proposed rules is to comply with federal emission guidelines for existing municipal solid waste landfills mandated by 42 United States Code (U.S.C.), §7411 (Federal Clean Air Act (FCAA), §111); and required to be included in operating permits by 42 U.S.C., §7661a (FCAA, §502) as specified elsewhere in this preamble. These sources are required to comply with the federal emission guidelines whether or not the commission adopts rules to implement the federal emission guidelines. The sources are required to comply with federal plans adopted by EPA if states do not adopt state plans. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards for: the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Under 42 U.S.C., §7661a (FCAA, §502), states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA; including emission guidelines, which are required under 42 U.S.C., §7411 (FCAA, §111). Similar to requirements in 42 U.S.C., §7410 (FCAA, §110) regarding the requirement to adopt

and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 U.S.C., §7661a (FCAA, §502), and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Additionally, states are required by 42 U.S.C., §7411 (FCAA, §111), to adopt and implement plans to implement and enforce emission guidelines promulgated by the EPA.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. Such rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the

commission routinely proposes and adopts rules designed to incorporate or satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission concludes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature.

While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and in fact creates no additional impacts since the proposed rules do not modify the federal emission guidelines in any substantive aspect, but merely provide for minor administrative changes as described elsewhere in this preamble. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in

effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. -- Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Mosley v. Tex. Health & Human Services Comm'n*, 593 S.W.3d 250 (Tex. 2019); *Tex. Ass'n of Appraisal Districts, Inc. v. Hart*, 382 S.W.3d 587 (Tex. App.--Austin 2012, no pet.); *Tex. Dep't of Protective & Regulatory Services v. Mega Child Care, Inc.*, 145 S.W.3d 170 (Tex. 2004).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance," Tex. Gov't Code Ann., §2001.035. The legislature specifically identified Tex. Gov't Code Ann., §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Tex. Gov't Code Ann., §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble.

The emission guidelines being proposed for incorporation are federal standards that are required by 42 U.S.C., §7411 (FCAA, §111), and are required to be included in

permits under 42 U.S.C., §7661a (FCAA, §502). They are proposed with only minor administrative changes and will not exceed any standard set by state or federal law. These proposed rules will not implement an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA will delegate implementation and enforcement of the emission guidelines to Texas if this rulemaking is adopted and EPA approves the rules as part of the State Plan required by 42 U.S.C. §7411(d) (FCAA, §111(d)). The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Tex. Gov't Code Ann., §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether the requirements of Tex. Gov't Code Ann., Chapter 2007, are applicable. Under Tex. Gov't Code Ann., §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part, or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking action as required by Tex. Gov't Code Ann., §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to propose rules to implement the federal emission guidelines for municipal solid waste landfills, mandated by 42 U.S.C., §7411 (FCAA, §111), and required to be included in operating permits by 42 U.S.C., §7661a (FCAA, §502), to facilitate implementation and

enforcement of the emission guidelines by the state. States are also required to submit state plans for the implementation and enforcement of the emission guidelines to EPA for its review and approval.

Tex. Gov't Code Ann., §2007.003(b)(4), provides that the requirements of Chapter 2007 of the Texas Government Code do not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law. In addition, the commission's assessment indicates that Texas Government Code Chapter 2007 does not apply to these proposed rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that it does not impose a greater burden than is necessary to achieve the health and safety purpose. For the reasons stated above, this action is exempt under Tex. Gov't Code Ann. §2007.003(b)(13).

Any reasonable alternative to the proposed rulemaking would be excluded from a takings analysis required under Chapter 2007 of the Texas Government Code for the same reasons as elaborated in this analysis. As discussed in this preamble, states are not free to ignore the federal requirements to implement and enforce the federal emission guidelines for municipal solid waste landfills, including the requirement to submit state plans for the implementation and enforcement of the emission guidelines to EPA for its review and approval; nor are they free to ignore the federal requirement to include the emission guideline requirements in state issued federal operating

permits. If the state does not adopt the proposed rules, the federal rules will continue to apply, and sources must comply with a federal plan that implements those rules.

The proposed rules present as narrowly tailored an approach to complying with the federal mandate as possible without unnecessary incursion into possible private real property interests. Consequently, the proposed rules will not create any additional burden on private real property. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007; nor does the Texas Government Code, Chapter 2007, apply to the proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and

policies.

The CMP goal applicable to this proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed amendments to Chapter 113 would update TCEQ rules to implement federal emission guidelines for existing landfills under 40 CFR Part 60, Subpart Cf. These guidelines require certain landfills to install and operate gas collection systems to capture and control emissions. The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking also complies with applicable requirements of 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Sites which would be required to obtain a federal operating permit under proposed §113.2408 are already required to obtain a federal operating permit under existing federal regulations. The proposed Subchapter D, Division 6, rules would be applicable

requirements under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators of affected sites subject to the federal operating permit program and these rules must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 113 requirements.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on February 23, 2023, at 10:00 a.m. in Building D, Room 191, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, February 21, 2023. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, February 22,

2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzRjOGJmNTktODOxNy00MWY2LWE1MTAtODk0ZTY4MTllyTg4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%22%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). The hearing will be conducted in English. Language interpretation services may be requested. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted through the TCEQ Public Comments system at:

<https://tceq.commentinput.com/comment/search>. File size restrictions may apply to

comments being submitted electronically. All comments should reference Rule Project Number 2017-014-113-AI. The comment period closes on February 28, 2023. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Michael Wilhoit, Air Permits Division, (512) 239-1222.

SUBCHAPTER D: DESIGNATED FACILITIES AND POLLUTANTS

DIVISION 1: MUNICIPAL SOLID WASTE LANDFILLS

§113.2069

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The amended section is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.015, concerning Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private

property to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; THSC, §382.022, concerning Investigations, which authorizes the commission to make or require the making of investigations; and THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act.

The proposed amended section implements TWC, §§5.102-5.103, and 5.105; as well as THSC, §§382.002, 382.011 - 382.017, 382.021-382.022, and 382.051.

§113.2069. Compliance Schedule and Transition to 2016 Landfill Emission Guidelines.

(a) An owner or operator subject to the requirements of this division shall submit the initial design capacity report in accordance with 40 Code of Federal Regulations (CFR) Part 60, §60.757(a)(2) to the executive director within 90 days from

the date the commission publishes notification in the [Texas Register] *Texas Register* that the United States Environmental Protection Agency (EPA) has approved this rule.

(b) An owner or operator of a municipal solid waste landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound emission rate report in accordance with 40 CFR §60.757(b)(2) to the executive director within 90 days from the date the commission publishes notification in the [Texas Register] *Texas Register* that EPA has approved this rule.

(c) On and after the implementation date specified in §113.2412 of this title, owners or operators of landfills subject to the requirements of this division shall instead comply with the applicable requirements of Division 6 of this subchapter.

SUBCHAPTER D: DESIGNATED FACILITIES AND POLLUTANTS

DIVISION 6: 2016 EMISSION GUIDELINES FOR EXISTING MUNICIPAL SOLID WASTE

LANDFILLS

§§113.2400, 113.2402, 113.2404, 113.2406, 113.2408, 113.2410, 113.2412

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.015, concerning Power to Enter Property, which

authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, as well as require recordkeeping; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; THSC, §382.022, concerning Investigations, which authorizes the commission to make or require the making of investigations; and THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act. The new sections are also proposed under TWC, §7.002, Enforcement Authority, which authorizes the commission to institute legal proceedings to compel compliance; TWC, §7.032, Injunctive Relief, which provides that injunctive relief may be sought by the executive director; and TWC, §7.302, Grounds for Revocation or Suspension of Permit, which provides authority to the commission to revoke or suspend any air quality permit.

The proposed new sections implement TWC, §§5.102 - 5.103, and 5.105; as well as THSC, §§382.002, 382.011 - 382.017, 382.021 - 382.022 and 382.051.

§113.2400. Applicability.

(a) The requirements of this division apply to existing municipal solid waste landfills (MSWLFs) for which construction, reconstruction, or modification was commenced on or before July 17, 2014, except for landfills exempted under §113.2406 of this title (relating to Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules).

(b) Physical or operational changes made to an existing MSWLF solely to comply with these emission guidelines are not considered a modification or reconstruction and would not subject an existing MSWLF to the requirements of a standard of performance for new MSWLFs (such as 40 Code of Federal Regulations (CFR) Part 60, Subpart XXX).

(c) The requirements of this division do not apply to landfills which are subject to 40 CFR Part 60, Subpart XXX (Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification after July 17, 2014).

(d) The requirements of this division do not apply until the implementation date specified in §113.2412 of this title (relating to Implementation Date and Increments of Progress).

§113.2402. Definitions.

(a) Except as provided in subsections (b) and (c) of this section, the terms used in this division are defined in 40 CFR §60.2 as amended through May 16, 2007, and 40 CFR §60.41f as amended through March 26, 2020, which are incorporated by reference.

(b) The term "Administrator" wherever it appears in 40 CFR Part 60, §§60.30f - 60.41f, shall refer to the commission, except for purposes of 40 CFR §60.35f(a)(5). For purposes of 40 CFR §60.35f(a)(5), the term "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(c) Legacy controlled landfill--any municipal solid waste landfill subject to this division that submitted a gas collection and control system (GCCS) design plan prior to May 21, 2021, in compliance with 40 CFR §60.752(b)(2)(i) or 30 TAC §113.2061 of this title (relating to Standards for Air Emissions), depending on which regulation was applicable to the landfill. This definition applies to those landfills that completed construction and began operations of the GCCS and those that are within the 30-month timeline for installation and start-up of a GCCS according to 40 CFR §60.752(b)(2)(ii), or the requirements of 30 TAC Chapter 113, Subchapter D, Division 1.

§113.2404. Standards for Existing Municipal Solid Waste Landfills.

(a) Except as specifically provided otherwise in §§113.2400 - 113.2412 of this title, an owner or operator of an existing municipal solid waste landfill (MSWLF) subject to the requirements of this division shall comply with the applicable provisions specified in 40 CFR Part 60, Subpart Cf, as follows:

(1) 40 CFR §60.31f, relating to Designated Facilities, as amended through August 29, 2016;

(2) 40 CFR §60.32f, relating to Compliance Times, as amended through August 29, 2016;

(3) 40 CFR §60.33f, relating to Emission Guidelines for municipal solid waste landfill emissions, as amended through August 29, 2016;

(4) 40 CFR §60.34f, relating to Operational Standards for collection and control systems, as amended through March 26, 2020;

(5) 40 CFR §60.35f, relating to Test methods and procedures, as amended through August 29, 2016;

(6) 40 CFR §60.36f, relating to Compliance provisions, as amended through March 26, 2020;

(7) 40 CFR §60.37f, relating to Monitoring of operations, as amended through March 26, 2020;

(8) 40 CFR §60.38f, relating to Reporting guidelines, as amended through March 26, 2020;

(9) 40 CFR §60.39f, relating to Recordkeeping guidelines, as amended through March 26, 2020; and

(10) 40 CFR §60.40f, relating to Specifications for active collection systems, as amended through August 29, 2016.

(b) Gas collection and control systems approved by the commission and installed at an MSWLF in compliance with §115.152 of this title (relating to Control Requirements), satisfy the gas collection and control system design requirements of 40 CFR §60.33f(b) and (c) for purposes of this section.

(c) Legacy controlled landfills or landfills in the closed landfill subcategory that have already installed control systems and completed initial or subsequent

performance tests may comply with this division using the initial or most recent performance test conducted to comply with 40 CFR Part 60, Subpart WWW, or 30 TAC Chapter 113, Subchapter D, Division 1 of this title.

(d) Legacy controlled landfills shall comply with the requirements of 40 CFR §62.16714(b)(1), as amended through May 21, 2021, in lieu of the requirements of 40 CFR §60.33f(b)(1).

§113.2406. Exemptions, Alternate Emission Standards, and Alternate Compliance Schedules.

(a) A municipal solid waste landfill (MSWLF) meeting the following conditions is not subject to the requirements of this division:

(1) The MSWLF has not accepted waste at any time since October 9, 1993;

and

(2) The MSWLF does not have additional design capacity available for future waste deposition, regardless of whether the MSWLF is currently open or closed.

(b) A MSWLF may apply for less stringent emission standards or longer compliance schedules than those otherwise required by this division, provided that the owner or operator demonstrates to the executive director and EPA, the following:

(1) unreasonable cost of control resulting from MSWLF age, location, or basic MSWLF design;

(2) physical impossibility of installing necessary control equipment; or

(3) other factors specific to the MSWLF that make application of a less stringent standard or final compliance time significantly more reasonable.

(c) Owners or operators requesting alternate emission standards or compliance schedules under subsection (b) of this section shall submit requests and supporting documentation to the TCEO Office of Air, Air Permits Division and provide a copy to the United States Environmental Protection Agency, Region 6.

§113.2408. Federal Operating Permit Requirements.

The owner or operator of an existing municipal solid waste landfill subject to the requirements of this division shall comply with the applicable requirements of 40 CFR §60.31f(c) and (d), and 30 TAC Chapter 122, Federal Operating Permits Program, relating to the requirement to obtain and maintain a federal operating permit.

§113.2410. Initial and Annual Reporting, and Modified Reporting Requirements for

Legacy Controlled Landfills.

(a) An owner or operator of a municipal solid waste landfill (MSWLF) subject to the requirements of this division shall comply with the following reporting requirements, except as otherwise specified for legacy controlled landfills in subsections (b) - (d) of this section.

(1) The owner or operator shall submit the initial design capacity report in accordance with 40 CFR Part 60, §60.38f(a), to the executive director within 90 days from the implementation date specified in §113.2412 of this title (relating to Implementation Date and Increments of Progress). Owners or operators that have already submitted an initial design capacity report to EPA to satisfy 40 CFR §62.16724 are not required to submit the report again, unless specifically requested by the executive director.

(2) An owner or operator of anMSWLF with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound (NMOC) emission rate report in accordance with 40 CFR §60.38f(c) to the executive director within 90 days from the implementation date specified in §113.2412 of this title. Owners or operators that have already submitted an initial NMOC report to

EPA to satisfy 40 CFR §62.16724 are not required to submit the report again, unless specifically requested by the executive director.

(3) An owner or operator of anMSWLF subject to the requirements of this division shall comply with applicable requirements of 40 CFR §60.38f(d) and (e) concerning the submittal of a site-specific gas collection and control system design plan to the executive director. Owners or operators that have already submitted a design plan to EPA to satisfy 40 CFR §62.16724 are not required to submit the design plan again, unless specifically requested by the executive director.

(4) Owners or operators of an MSWLF subject to the requirements of this division shall provide to the executive director an annual emission inventory report of landfill-generated non-methane organic compound (NMOC) emissions. This annual NMOC emission inventory report is not required for an MSWLF with a capacity less than 2.5 million megagramsby mass or 2.5 million cubic meters by volume. This annual NMOC emission inventory report is separate and distinct from any initial or annual NMOC emission rate reports required under 40 CFR §60.38f.

(A) Annual NMOC emission inventory reports required under this paragraph shall include the landfill's uncontrolled and (if equipped with a control system) controlled NMOC emissions in megagrams per year (Mg/yr) for the preceding calendar year. For purposes of these annual emission inventory reports,

NMOC emissions will be calculated using the procedures specified in the U.S. EPA's *Compilation of Air Pollutant Emissions Factors* (AP-42). Note that the use of AP-42 calculations for these annual NMOC emission inventory reports is different from the calculation method that is required for NMOC emission rate reports prepared for purposes of 40 CFR Part 60, Subpart Cf or 40 CFR Part 62, Subpart OOO.

(B) Annual NMOC emission inventory reports required under this paragraph shall be submitted no later than March 31 of each year following the calendar reporting year. These reports shall be submitted using the method designated by the executive director.

(5) This section only addresses certain specific reports for MSWLFs which are subject to this division. Owners or operators of an MSWLF subject to this division shall also comply with any additional reporting requirements specified in 40 CFR §60.38f or elsewhere in 40 CFR Part 60, Subpart Cf, except as otherwise specified for legacy controlled landfills in subsections (b) - (d) of this section.

(b) Owners or operators of legacy controlled landfills are not required to submit the following reports, provided these reports were submitted under 40 CFR Part 60, Subpart WWW, or Chapter 113, §113.2061 (relating to Standard for Air Emissions), on or before June 21, 2021:

(1) Initial design capacity report specified in 40 CFR §60.38f(a);

(2) Initial or subsequent NMOC emission rate report specified in 40 CFR §60.38f(c);

(3) Collection and control system design plan specified in 40 CFR §60.38f(d);

(4) Initial annual report specified in 40 CFR §60.38f(h); and

(5) Initial performance test report specified in 40 CFR §60.38(f)(i).

(c) Owners or operators of legacy controlled landfills that have already submitted an annual report under 40 CFR Part 60, Subpart WWW, or Chapter 113, Division 1, of this title, are required to submit the annual report under this division no later than one year after the most recent annual report was submitted.

(d) Owners or operators of legacy controlled landfills that demonstrate compliance with the emission control requirements of this division using a treatment system as defined in 40 CFR §60.41f must comply with 40 CFR §62.16724(d)(7) as amended through May 21, 2021.

§113.2412. Implementation Date and Increments of Progress.

(a) Upon the effective date of United States Environmental Protection Agency (EPA) approval of the Texas §111(d) state plan for the implementation of 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills), owners or operators of municipal solid waste landfills (MSWLFs) covered by the applicability provisions of §113.2400(a) of this title (relating to Applicability), must comply with the requirements of this division.

(b) Owners or operators of an MSWLF subject to this division shall comply with all applicable increments of progress specified in 40 CFR Part 62, Subpart OOO, Table 1, as amended through May 21, 2021.