

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 9, 2010.  
**Lois Rossi,**  
*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In §180.960, the table is amended by adding alphabetically the following polymers to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

\* \* \* \* \*

Polymer	CAS No.
* * * * *	
[2-propenoic acid, 2-methyl-, C12-16-alkyl esters, telomers with 1-dodecanethiol, poly ethylene-polypropylene glycol ether with propylene glycol monomethacrylate (1:1), and styrene 2,2'-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated, minimum number average molecular weight (in amu), 4,000	950207–35–9
* * * * *	

[FR Doc. 2010–20297 Filed 8–17–10; 8:45 am]  
**BILLING CODE 6560–50–S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 258**

[EPA–R08–RCRA–2009–0621; FRL–9149–7]

**Final Determination To Approve Alternative Final Cover Request for the Lake County, Montana Landfill**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency Region VIII is making a final determination to approve an alternative final cover for the Lake County landfill, a municipal solid waste landfill (MSWLF) owned and operated by Lake County, Montana on the Confederated Salish and Kootenai Tribes’ Flathead Reservation in Montana. EPA is promulgating a site-specific rule proposed on February 10, 2010, that approves an alternative final cover for the Lake County, Montana landfill.

**DATES:** This final rule is effective on August 18, 2010. The incorporation by reference of certain publications listed in this rule has been approved by the Director of the Federal Register on August 18, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R08–RCRA–2009–0621. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency Region VIII, Montana Office, 10 West 15th Street, Suite 3200, Helena, Montana. The Environmental Protection Agency Region VIII Montana Office is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays, and is located in a secure building. To review docket materials at this location, it is recommended that the public make an appointment by calling (406) 457–5000 during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Susanna Trujillo, Solid and Hazardous Waste Program, 8P–HW, Environmental Protection Agency, 1595 Wynkoop St., Denver, CO 80202; telephone number: (303) 312–7008; fax number: (303) 312–6341; e-mail address: [trujillo.susanna@epa.gov](mailto:trujillo.susanna@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. What did EPA propose?*

After completing a review of Lake County’s final site-specific flexibility application request, dated July 11, 2007, and March 17, 2008, and the amendments to that application, dated January 22, 2009, EPA proposed to approve in the **Federal Register** on February 10, 2010, (75 FR 6597) Lake County’s site-specific flexibility request to install an alternative final cover that varies from the final closure requirements of 40 Code of Federal Regulations (CFR) 258.60(a), but meets the criteria at 40 CFR 258.60(b). This approval would apply to the 15.4 acres of the landfill that have not been previously closed.

*B. What is a site-specific flexibility request?*

Under Sections 1008, 2002, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), EPA established revised minimum Federal criteria for MSWLFs, including landfill location restrictions, operating standards, design standards and requirements for ground water monitoring, corrective action, closure and post-closure care, and financial assurance. Under RCRA Section 4005(c), States are required to develop permit programs for facilities that may receive household hazardous waste or waste from conditionally exempt small quantity generators, and EPA determines whether the program is adequate to ensure that facilities will comply with the revised criteria.

The MSWLF criteria are at 40 CFR part 258. These regulations are self-implementing and apply directly to owners and operators of MSWLFs. For many of these criteria, 40 CFR part 258 includes a flexible performance standard as an alternative to the self-implementing regulation. The flexible standard is not self-implementing, and use of the alternative standard requires approval by the Director of a State with an EPA-approved program.

Because EPA’s approval of a State program does not extend to Indian country, owners and operators of MSWLF units located in Indian country cannot take advantage of the flexibilities available to those facilities subject to an approved State program. However, the EPA has the authority under Sections 2002, 4004, and 4010 of RCRA to promulgate site-specific rules that may provide for use of alternative standards in Indian country. See *Yankton Sioux*

*Tribe v. EPA*, 950 F. Supp. 1471 (D.S.D. 1996); *Backcountry Against Dumps v. EPA*, 100 F.3d. 147 (DC Cir. 1996). EPA has developed draft guidance on preparing a site-specific request to provide flexibility to owners or operators of MSWLFs in Indian country (Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country Draft Guidance, EPA530-R-97-016, August 1997).

The regulation at 40 CFR 258.60(a) establishes closure criteria for MSWLF units that are designed to minimize infiltration and erosion. The regulation requires final cover systems to be designed and constructed to:

(1) Have a permeability of less than or equal to the permeability of any bottom liner system or natural sub-soils present, or a permeability no greater than  $1 \times 10^5$  cm/sec, whichever is less, and

(2) Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum of 18 inches of earthen material, and

(3) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of 6 inches of earthen material that is capable of sustaining native plant growth.

The regulation at 40 CFR 258.60(b) allows for variances from these specified MSWLF closure criteria. Specifically, the rule allows for the Director of an approved state to approve an alternative final cover design that includes:

(1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (a)(1) and (a)(2) of 40 CFR 258.60, and

(2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of 40 CFR 258.60.

### C. Overview of Lake County's Site-Specific Flexibility Request and EPA's Action

Today, EPA is making a final determination to approve Lake County's site-specific flexibility request to install an alternative final landfill cover that meets the requirements of 40 CFR 258.60(b). The County's request is discussed in further detail in the February 10, 2010 proposal.

EPA is basing its final determination on a number of factors, including unsaturated soil modeling, site-specific climatic and soils data, and the results of a pilot test of the viability of an evapotranspiration cover conducted at the site by the County's consultants, the Desert Research Institute, and EPA. The

results of the pilot test indicated that the evapotranspiration cover will perform better than the standard prescriptive cover in 40 CFR 258.60(a) in preventing movement of leachate through the system.

EPA has determined that Lake County has demonstrated that the proposed infiltration layer for the landfill cover achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (a)(1) and (a)(2) of 40 CFR 258.60, and the erosion layer provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of 40 CFR 258.60. On January 22, 2009, Lake County submitted a "Construction Quality Assurance & Control Plan" for the closure project that specifies that testing will be performed on each component as it is installed. Testing frequencies and standards during construction are described in detail in the "Construction Quality Assurance and Control Plan."

As part of this final determination, EPA is requiring that Lake County submit to EPA for approval at 50% final design, an Operations and Maintenance Plan that includes an inspection schedule (at least quarterly) and remediation plan to address any potential rodent damage to the final cover. Lake County must achieve re-vegetation rates of greater than 50% on the closed landfill by the end of the first season and a complete stand of native grasses by the end of the third season. EPA is also requiring the landfill owner and operator to place documentation demonstrating compliance with the provisions of the site-specific rule in the operating record.

### D. Summary of Public Comments Received and Response to Comments

EPA received no comments during the public comment period regarding approval of an alternative final cover for the Lake County, Montana landfill, as proposed in the **Federal Register** on February 10, 2010.

## II. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and, therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB).

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA.

Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is EPA's analysis of the potential risks posed by Lake County's proposal and the controls and standards set forth in the application.

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

As required by section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments," (65 FR 67249, November 9, 2000), calls for EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have tribal implications." EPA has concluded that this action may have Tribal implications because it is directly applicable to a facility operating on the Confederated Salish and Kootenai Tribes' Flathead Reservation. However, this

determination will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. This determination to approve the Lake County's application will affect only the Lake County's operation of the County's landfill.

EPA consulted with the Confederated Salish and Kootenai Tribes early in the process of making this determination to approve the County's alternative final cover request so that the Tribes had the opportunity to provide meaningful and timely input. Between 2007 and 2009, technical issues were raised and addressed by both the Tribes and EPA concerning Lake County's proposal. EPA's consultation with the Tribes culminated in a letter of July 15, 2009, from the Tribes, in which they stated that they have no further issues with the Lake County proposal. The Tribes did not offer any additional comments during the public comment period announced in the **Federal Register** on February 10, 2010.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide to Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The technical standards included in the application were proposed by Lake County. Given EPA's obligations under Executive Order 13175 (see above), the Agency has, to the extent appropriate, applied the standards established by the County and accepted by the Tribes. In addition, the Agency evaluated the proposal's design against the engineering design and construction criteria contained in the EPA draft guidance document, "Water Balance Covers for Waste Containment: Principles and Practice (2009)."

**Authority:** Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6907, 6912, 6944, and 6949a. Temporary Delegation of Authority to Promulgate Site-Specific Rules to Respond to Requests for Flexibility from Owners/Operators of Municipal Solid Waste Landfill Facilities in Indian Country, October 14, 2009, Incorporation by Reference.

#### List of Subjects in 40 CFR Part 258

Environmental protection, Incorporation by reference, Municipal landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: April 22, 2010.

**Carol Rushin,**

*Acting Regional Administrator, Region VIII.*

**Editorial Note:** This document was received in the Office of the Federal Register on August 11, 2010.

■ For the reasons stated in the preamble, 40 CFR part 258 is amended as follows:

#### PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

■ 1. The authority citation for part 258 continues to read as follows:

**Authority:** 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

#### Subpart F—[Amended]

■ 2. Add § 258.62 to subpart F to read as follows:

##### § 258.62 Approval of Site-Specific Flexibility Requests in Indian Country.

(a) *Lake County Municipal Landfill final cover requirements.* Paragraph (a) of this section applies to the Lake County Landfill, a municipal solid waste landfill owned and operated by Lake County on the Confederated Salish and Kootenai Tribes' Flathead Reservation in Montana. The alternative final cover request submitted by Lake County, Montana, consisting of the "Lake County Landfill Alternative Cover," dated May 2007, the "Construction Quality Assurance & Control Plan for the Lake County Class II Landfill Unit Landfill Closure Project" and the "Lake County Landfill Plans for Final Closure January 2009," dated January 2009, is hereby incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect or obtain a copy at the Environmental Protection Agency, Region VIII, Montana Office, 10 West 15th St., Suite 3200, Helena, MT or by calling 406-457-5000. You may also inspect a copy at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). The facility owner and/or operator may close the facility in accordance with this application,

including the following activities more generally described as follows:

(1) The owner and operator may install an evapotranspiration system as an alternative final cover for the 15.4 acre active area.

(2) The final cover system shall consist of a 5.5-foot-thick multi-layer cover system comprised, from bottom to top, of an 18-inch intermediate and gas vent layer, a 24-inch native sand layer, an 18-inch imported silt layer and a 6-inch topsoil layer, as well as seeding and erosion control.

(3) The final cover system shall be constructed to achieve an equivalent reduction in infiltration as the infiltration layer specified in § 258.60(a)(1) and (a)(2), and provide an equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of this section.

(4) In addition to meeting the specifications of the "Lake County Landfill Alternative Cover" dated May 2007, and the "Construction Quality Assurance & Control Plan for the Lake County Class II Landfill Unit Landfill Closure Project" dated January 2009, the owner and operator shall:

(i) At 50% final design, submit to EPA for approval an Operations and Maintenance Plan that includes an inspection schedule (at least quarterly) and remediation plan to address any potential rodent damage to the final cover; and

(ii) Achieve re-vegetation rates greater than 50% by the end of the first season and a complete stand of native grasses by the end of the third season.

(5) The owner and operator shall place documentation demonstrating compliance with the provisions of this Section in the operating record.

(6) All other applicable provisions of 40 CFR part 258 remain in effect.

[Reserved]

[FR Doc. 2010-20184 Filed 8-17-10; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R01-RCRA-2010-0468-FRL-9190-6]

#### Massachusetts: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Commonwealth of Massachusetts applied to EPA for final