

July 21, 2015

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator McCarthy:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for EPA's planned proposed rulemakings entitled "Standards of Performance for Municipal Solid Waste Landfills" (supplemental notice) and the "Emissions Guidelines and Compliance Times for Municipal Solid Waste Landfills." These notices of proposed rulemaking are being developed by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act (CAA).

Section 111 of the Clean Air Act (CAA) requires the EPA Administrator to list categories of stationary sources, if such sources cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The EPA must then issue performance standards for such source categories. These standards are referred to as new source performance standards or NSPS. The EPA has the authority to define the source categories, determine the pollutants for which standards should be developed, identify the facilities within each source category to be covered, and set the emission level of the standards. Emission Guidelines are established for existing sources under CAA section 111(d) for source categories that emit pollutants not regulated under other parts of the CAA and to which an NSPS would apply if such existing source were a new source. The emission guidelines are implemented through individual state plans. If a state does not have an approved state plan, section 111 of the CAA and the general provisions (40 CFR 60.27(c) and (d)) require EPA to develop, implement, and enforce a federal plan for existing municipal solid waste (MSW) landfills in that state.

On December 5, 2013, EPA's Small Business Advocacy Chairperson convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consists of the Director of the Sector Policies and Program Division within EPA's Office of Air and Radiation, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of the Small Business Administration (SBA). It is important to note that the Panel's findings and discussion are based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during this process as well as from public comment on the proposed rule. The options the Panel identified for reducing the rule's economic impact on small entities will require further analysis and/or data collection to ensure that the options are practicable, enforceable, protective of public health, environmentally sound and consistent with the CAA.

## **SUMMARY OF SMALL ENTITY OUTREACH**

Prior to convening the Panel, EPA conducted outreach with small entities that will potentially be affected by these regulations. In October 2013, EPA invited SBA, OMB, and potentially affected small entity representatives to a conference call and solicited comments from them on preliminary information sent to them. EPA shared the small entities' written comments with the Panel as part of the Panel convening document.

After the SBAR Panel was convened, the Panel distributed additional information to the small entity representatives (SERs) on December 5, 2013, for their review and comment and in preparation for another outreach meeting. On December 19, 2013, the Panel met with the SERs to hear their comments on the information distributed in these mailings. The SERs were asked to provide written feedback on

ideas under consideration for the proposed rulemakings. Following the December 2013 outreach meeting, the EPA published on July 14, 2014 a notice of proposed rulemaking on the new source performance standards for municipal solid waste landfills and an advanced notice of proposed rulemaking on the amendments to the emissions guidelines for municipal solid waste landfills. Subsequent to these published actions, the Panel again met with SERs for further outreach and engagement on April 14, 2015. Following each of these outreach meetings, the Panel received written comments from the SERs in response to the discussions at this meetings and the relevant outreach materials. See Section 7 of the Panel Report for a complete discussion of SER comments. Their full written comments are also attached. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFEA and developed the findings and discussion summarized below.

## **PANEL FINDINGS AND DISCUSSION**

Under section 609(b) of the RFA, the Panel is to report its findings related to these four items:

- 1) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.
- 2) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.
- 3) Identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule.
- 4) A description of any significant alternatives to the planned proposed rule which would minimize any significant economic impact of the proposed rule on small entities consistent with the stated objectives of the authorizing statute.

The Panel's most significant findings and discussion with respect to each of these items are summarized below. To read the full discussion of the Panel findings and recommendations, see Section 8 of the Panel Report.

### **A. Number and Types of Entities Affected**

For a complete description of the small entities to which the proposed rules may apply, see Section 4 of the Panel Report.

### **B. Recordkeeping, Reporting, and Other Compliance Requirements**

The potential reporting, recordkeeping, and compliance requirements are still under development. However, the Panel anticipates that the requirements will be the minimum required by the statute to ensure compliance with the emission limits. Compliance testing should be in accordance with EPA or other approved methods. Reporting and recordkeeping requirements should be streamlined if practicable.

### **C. Related Federal Rules**

MSW landfills that are subject to the Emission Guidelines or NSPS are also likely to be subject to the National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (40 CFR part 63, subpart AAAA). However, the landfills NESHAP works in conjunction with the Emission Guidelines and NSPS and points to the Emission Guidelines and NSPS for control requirements. Landfills that beneficially use landfill gas may also be subject to combustion-related NSPS or NESHAP, however, those rules do not conflict with the NMOC destruction or LFG treatment requirements of proposed subparts Cf and XXX. Further, the landfills expected to become subject to subpart Cf are currently subject to 40 CFR part 60 subpart WWW, 40 CFR part 62 subpart GGG, or the state plans implementing 40 CFR part 60

subpart Cc. Once subpart Cf is fully finalized and implemented, the state and federal plans implementing this new subpart Cf will supersede the requirements of the subparts WWW and Cc. Many of the MSW landfills subject to the proposed Emission Guidelines and NSPS are subject to 40 CFR part 98, subpart HH of the GHG reporting rule. For both the landfills Emission Guidelines/NSPS and subpart HH of the GHG reporting rule, landfills must report (or use in calculations) data elements such as landfill capacity, open/closed status, and waste acceptance. Landfills subject to both the Emission Guidelines/NSPS and subpart HH of the GHGRP must calculate emissions. The Emission Guidelines/NSPS requires calculation of an annual NMOC emission rate, based on default values or site-specific measurements of methane generation rate and NMOC concentration, whereas subpart HH of the GHGRP requires calculation of quantity of methane destroyed, based on monitoring data such as flow, moisture, and methane concentration. Although landfills will record or report similar data elements (i.e., design capacity, waste acceptance, methane concentration, GCCS details, flowrate) under the two sets of landfills rules, the rules have different objectives. The Emission Guidelines/NSPS requires landfill owners and operators to control NMOC emissions using a collection and control system, whereas subpart HH of the GHGRP reporting rule requires landfill owners and operators to report specific landfill parameters and to estimate methane emissions.

The landfills Emission Guidelines and NSPS cover air emissions from MSW landfills and were not intended to be duplicative of, or overlap significantly with, RCRA requirements. Emission guideline and NSPS landfills may also receive Resource Conservation and Recovery Act (RCRA) subtitle D waste (e.g., commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial waste). Subtitle D of RCRA addresses location, liner specifications, leachate collection and removal systems, operating practices, groundwater monitoring, corrective action measures, closure and post-closure care, and financial assurance of non-hazardous solid wastes. Under subtitle D, the state and local governments are the primary planning, permitting, regulating, implementing, and enforcement agencies for management and disposal of household and industrial or commercial non-hazardous solid wastes. EPA establishes technical design and operating criteria (which, at a minimum, the states include in their own regulations) for disposal facilities.

While methane migration control measures are required under both subtitle D and the Landfill NSPS, subtitle D deals with explosive hazards in facility structures and at property boundaries. Surface monitoring requirements under the landfill NSPS were designed to ensure that the landfill cover or cap and gas collection system were properly designed and operated. Well monitoring under subtitle D is for leachate migration and not gas monitoring (which is required for the Landfills NSPS).

#### **D. Regulatory Flexibility Alternatives**

The Panel agrees that the EPA should explore regulatory alternatives and provide flexibility where appropriate. This flexibility can lessen impacts to small entities as well as entities not classified as small.

##### Federal Plan

SERs encouraged the EPA to develop a Federal plan or template for an approvable State plan. The Panel recommends that the EPA develop a Federal plan. The Panel agrees that a Federal plan is needed, and recommends that EPA set a schedule for development the Federal plan, if appropriate.

##### Direct regulation of methane

SERs expressed concerns about changes to the designated pollutant, including administrative burden and legal uncertainty. The Panel agrees that the pollutant of interest should continue to be landfill gas and that NMOC should continue to be measured as a surrogate.

##### Site-specific emission threshold determinations (Tier 4)

The current landfill regulatory requirements include use of a series of models to determine exceedance of the emission threshold. After exceedance of the threshold, landfills have 30 months to install controls. SERs expressed support for a new approach, known as Tier 4, which would allow for a site-specific measurement in addition to the current approved models.

The Panel recommends that the EPA adjust the current requirements for determining when landfills are required to install GCCS. In addition to the current model requirements, the Panel recommends that the EPA allow the use of site-specific Tier 4 monitoring. The Panel recommends that the site-specific requirements be based on the thresholds and procedures outlined in EPA Method 21 and that Tier 4 be allowed after a failed Tier 1, Tier 2, or Tier 3 test. The Panel also recommends that EPA allow the Tier 4 approach to be used to determine when a GCCS can be removed.

#### *Design capacity and emission threshold*

During the Pre-panel and Panel Outreach Meetings, the EPA presented various options that adjusted the design capacity and NMOC emission thresholds currently outlined in the landfill air regulations. SERs recognized that additional emission reductions could be achieved by lowering these thresholds. SERs however, encouraged the EPA to consider the impact (e.g., operations and costs) that significant lowering of these thresholds could have on small entities and landfills with low gas quality or flowrate. SERs specifically encouraged EPA to consider the remaining useful life when lowering the threshold. SERs also encouraged EPA to explore alternatives to modeled emission requirements and expressed concerns about the costs and benefits of lowering thresholds for landfills with declining gas flows.

The Panel agrees that while significant emission reductions may be achievable, lowering of the design and/or emission thresholds should not occur without a practical assessment of barriers to compliance and an assessment of the cost effectiveness of such changes on small entities. Further, changes to design capacity will make additional landfills (that are often small) subject to new requirements. The Panel recommends that EPA consider options for subcategorization to minimize the burden on small entities. For example, closed landfills could be exempted from new requirements that increase stringency of the emission threshold. This would help to ensure that a disproportionate number of closed landfills (which are often small and have declining gas flows and revenues) would not have to incur the burden of additional compliance costs. It should also be noted that the streamlined wellhead monitoring requirements (outlined in Section 8.4.9 of this document) and surface emission-based thresholds for installing and/or removing controls (outlined in sections 8.4.5 and 8.4.6 of this document) would also provide flexibility for closed areas and closed landfills.

#### *Requirements for gas collection system installation and expansion*

The EPA presented various options that reduced timelines for gas collection system installation and wellfield expansion. SERs expressed concerns about the ability to meet compliance deadlines if timelines for gas collection system installation or expansion were reduced. SERs also expressed concerns about increased burden (e.g., permitting, construction, and operational costs) associated with tighter timelines. Additionally, SERs asserted that increased stringency of these parameters was not necessary. The Panel agrees that barriers associated with adjustments to timelines for gas collection installation and wellfield expansion (e.g. monitoring and costs) should be considered. The Panel recommends that EPA avoid making substantive changes to timelines established for collection system installation and expansion unless it has significant evidence that tightening these metrics would be cost effective.

#### *Removing a GCCS*

SERs expressed concerns about the current requirements for GCCS removal, specifically the minimum 15-year time period for GCCS operation and the desire for intermittent operation of a GCCS in lieu of capping and removing the system. The Panel agrees EPA should account for declining gas flow by allowing site-specific measurements as part of the removal criteria. Those changes should allow for consideration of declining gas flow independent of the current 15 year GCCS requirement.

### Surface monitoring

The EPA outlined its current approach to surface monitoring (EPA Method 21) during the Pre-Panel and Panel Outreach Meetings. The EPA also discussed its exploration of alternatives to the requirements currently outlined in Method 21, known as enhanced surface monitoring (modeled after key aspects of the California Landfill Methane Rule). SERs asserted that the current approach to surface monitoring should continue. Additionally, SERs discussed their familiarity with the alternative approaches explored and encouraged the EPA to recognize that those alternatives were not coupled with the monthly gas well monitoring requirements outlined in the landfill air regulations. Further, SERs asserted that surface monitoring was an effective means of ensuring proper operation of gas collection and control systems and, as such, eliminated the need for monthly gas well monitoring of temperature and nitrogen/oxygen (outlined in Section 8.4.8 of this document). SERs also encouraged the EPA to solicit data before adopting new surface monitoring requirements.

The Panel believes that changes to the current surface monitoring requirements are not warranted based upon the information currently available. However, additional data should be considered. As such, the Panel recommends that EPA solicit comment on alternative approaches to surface monitoring and explore changes to current surface monitoring requirements if deemed appropriate. Additionally the Panel recommends that EPA request data on specific parameters such as wind speed, walking patterns, and integrated measurements.

### Organics diversion

SERs expressed concerns with mandating or encouraging organics diversion. The Panel agrees that there are significant barriers to mandating organics diversion and that a mandate should not be pursued at this time. The Panel, however, recognizes the benefits of voluntary organics diversion programs. The EPA asserts that encouraging these practices are beneficial in that they reduce the amount of landfill gas generated and can serve as a useful compliance tool by postponing or preventing the need to install a GCCS.

### Gas well monitoring

During its Pre-panel and Panel Outreach Meetings, the EPA encouraged SERs to discuss their practical experience with the landfill air regulations and recommend options that could potentially reduce regulatory burden while meeting or exceeding the levels of protection currently achieved by the rules. SERs, in turn, asserted that monthly gas well monitoring requirements for temperature and nitrogen/ oxygen were onerous and unnecessary. SERs asserted that it was in their best interest to ensure proper operation of gas wells. They also viewed recordkeeping and corrective action requirements associated with monthly gas well monitoring as overly burdensome.

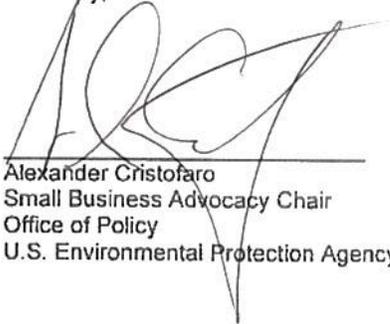
The Panel recommends that EPA remove the requirement to meet operating limits for temperature and nitrogen/oxygen as well as the associated corrective action requirements. The EPA however, asserts that monitoring of temperature and nitrogen/oxygen at wellheads, could be used to inform potential adjustments to the GCCS (while eliminating the requirement to meet a limit). The Panel recommends that EPA explore retention of the negative pressure requirement as well as its associated recordkeeping and reporting requirements.

### Landfill gas treatment

The current landfill air regulations do not define landfill gas treatment. Amendments proposed in 2002 and 2006 attempted to address landfill gas treatment by creating a definition. One approach, under the proposed amendments, sought to define treatment as filtration, dewatering, and compression of landfill gas. Another proposed approach, assigned numeric criteria to the treatment definition to address ambiguity and provide clarity for regulatory compliance. Over the course of Panel meetings, the EPA requested comments on both approaches from SERs. The EPA also presented an additional numeric approach that refined the numeric option outlined in the 2006 proposal.

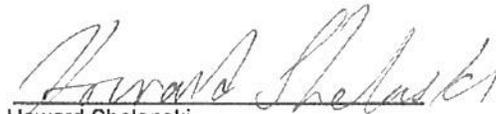
SERs generally support non-numeric treatment requirements. Many advocated for an interpretation of gas treatment consistent with EPA's 2002 proposed amendments (67 FR 36475), which classified treatment as filtration, compression, and dewatering of landfill gas. The Panel agrees that non-numeric requirements that rely on site-specific treatment monitoring plans are appropriate.

Sincerely,



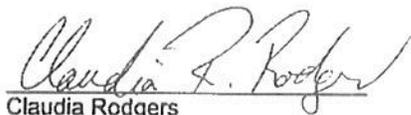
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Alexander Cristofaro  
Small Business Advocacy Chair  
Office of Policy  
U.S. Environmental Protection Agency



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Howard Shelanski  
Administrator  
Office of Information and Regulatory Affairs  
U.S. Office of Management and Budget



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Claudia Rodgers  
Acting Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration



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Peter Sirigotis  
Director, Sector Policies and Program Division  
Office of Air and Radiation  
U.S. Environmental Protection Agency

Enclosure