

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 258****[EPA-R08-RCRA-2009-0621; FRL-9110-4]****Determination to Approve Alternative Final Cover Request for the Lake County, MT Landfill; Opportunity for Public Comment****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Environmental Protection Agency, Region VIII, is making a 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 seeking public comment on EPA's determination to approve Lake County's alternative final cover proposal.

**DATES:** Comments must be received on or before March 12, 2010. If sufficient public interest is expressed, EPA will schedule and hold a public meeting. If a public meeting is scheduled, the date, time and location will be announced in the *Missoulian* and the *Char-Koosta News*. (If you are interested in attending a public meeting, contact Stephanie Wallace at (406) 457-5018).

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-RCRA-2009-0621 by one of the following methods:

- **Online:** <http://www.regulations.gov>: Follow the online instructions for submitting comments.

- **E-mail:** [wallace.stephanie@epa.gov](mailto:wallace.stephanie@epa.gov).

- **Fax:** (406) 457-5055.

- **Mail:** Stephanie Wallace, Environmental Protection Agency, Region VIII, Montana Office, 10 West 15th Street, Suite 3200, Helena, MT 59626.

- **Hand delivery:** Environmental Protection Agency, Region VIII, Montana Office, 10 West 15th Street, Suite 3200, Helena, MT 59626. Such deliveries are only accepted during normal hours of operation, which are Monday through Friday from 8 a.m. until 4:30 p.m.

**Instructions:** Direct your comments to Docket ID No. EP-R08-RCRA-2009-0621. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or by e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA rather than going through <http://www.regulations.gov>, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any detects or viruses.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., 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. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency Region VIII, Montana Office, 10 W. 15th Street, Suite 3200, Helena, Montana. A complete public portion of the administrative record for this rulemaking is also available for review at this location and at the Polson City Library. 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, it is recommended that the public make an appointment by calling the EPA Montana Office at (406) 457-5000 during normal business hours. The Polson City Library, located at 2 First Avenue, Polson, MT (telephone (406) 883-8225) is open from 11 a.m. to 6

p.m., Monday through Friday and 11 a.m. to 4 p.m. Saturday.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Wallace, EPA Region VIII Montana Office, 10 W. 15th Street, Suite 3200, Helena, MT 59626; telephone number: (406) 457-5018; fax number: (406) 457-5055; e-mail address: [wallace.stephanie@epa.gov](mailto:wallace.stephanie@epa.gov).

**SUPPLEMENTARY INFORMATION:****Submitting Comments to EPA**

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

- *Follow directions*—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

2. *Submitting Confidential Business Information (CBI).* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so-marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2.

3. *Docket Copying Costs:* Copying arrangements will be made through the EPA Montana Office and billed directly

to the recipient. Copying costs may be waived, depending on the total number of pages copied.

If sufficient public interest is expressed, EPA will hold a public meeting. The location, date and time of a meeting will be announced in the *Missoulian* and the *Char-Koosta News*.

## I. General Information

### A. Background

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 operating 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 Code of Federal Regulations (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 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.

### B. Lake County's Site-Specific Flexibility Request

The Lake County landfill is a municipal solid waste landfill owned and operated by Lake County on the Confederated Salish and Kootenai Tribes' Flathead Reservation in Montana. The landfill site is approximately 50 acres in size and serves approximately 28,000 people in Lake County. Most of the county, including the landfill, lies within the boundaries of the Flathead Reservation. The landfill itself consists of a 30-acre unlined waste footprint that was used as the county's municipal landfill beginning in the 1960s. In the early 2000s the County built a transfer station and converted the landfill to accept inert and construction and demolition waste only. Of the existing 30-acre waste footprint, 14.6 acres were previously closed and covered.

On July 11, 2007, Lake County submitted a site-specific flexibility application request to EPA and the Confederated Salish and Kootenai Tribes for the Lake County landfill. The request seeks EPA approval for the use of an alternative final cover that varies

from the final closure requirements of 40 CFR 258.60. This request would apply to the 15.4 acres of the landfill that have not been previously closed.

Between July 11, 2007, and January 22, 2009, Lake County made revisions to its application request in response to concerns raised by EPA and the Confederated Salish and Kootenai Tribes. EPA is basing its determination and this proposed rule on the application, dated July 11, 2007 and March 17, 2008, and the January 22, 2009 amendments to that application. The specific request for EPA approval of Lake County's application is discussed below. As set forth in more detail below, EPA is proposing to approve the request and allow Lake County to install an alternative final cover that meets the criteria at 40 CFR 258.60(b).

Lake County is seeking EPA approval to use an alternative final cover system for 15.4 acres of its existing waste footprint. Lake County proposes to install a 5.5-foot-thick multi-layer cover system comprised of the following from bottom to top: An 18-inch intermediate and gas vent layer, a 24-inch native sand layer, an 18-inch imported silt evapotranspiration layer, and a 6-inch topsoil layer. Lake County has demonstrated that the infiltration layer 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 & Control Plan."

## II. EPA's Action

### A. Determination To Approve Lake County's Site-Specific Flexibility Request

After completing a review of Lake County's final site-specific flexibility application request, dated July 11, 2007, and the amendments to that application dated March 17, 2008, and January 22, 2009, EPA is proposing to approve Lake County's site-specific flexibility request to install an alternative final cover.

EPA is basing its 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 pilot test consisted of the construction of two landfill cover test plots at the Lake County landfill facility. One plot used a landfill cover design with a flexible membrane liner, and the other plot used an evapotranspiration cover design. 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 the movement of leachate through the system.

EPA considered certain issues pertaining to the proposed alternative final cover, including the need for stringent quality assurance/quality control during construction, such as oversight throughout construction to ensure soils for each layer of the cover have the necessary physical properties and are installed so as to perform as designed.

In accordance with its application and the "Construction Quality Assurance & Control Plan," Lake County has pledged to provide the oversight required. EPA is also requiring as part of its approval of the final cover design, that Lake County:

- Submit an Operations and Maintenance Plan at 50% final design that includes an inspection schedule (at least quarterly) and remediation plan to address any potential rodent damage,
- Achieve re-vegetation rates of greater than 50% by the end of the first season and a complete stand of native grasses by the end of the third season, and
- Place documentation demonstrating compliance with the "Construction Quality Assurance and Control Plan," 40 CFR 258.60(a)(1), (2), and (3), and the above requirements in the landfill operating record.

### III. 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 is also 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 conservative 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 Lake

County's application will affect only the 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 July 11, 2007 and January 22, 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. EPA specifically solicits any additional comment on this determination from Tribal officials of the Confederated Salish and Kootenai Tribes.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, (*e.g.*, materials specification, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide 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, Municipal landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: January 15, 2010.

**Carol Rushin,**

*Acting Regional Administrator, Region VIII.*

For the reasons stated in the preamble, 40 CFR part 258 is proposed to be 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 and dated July 11, 2007, and amended March 17, 2008, and January 22, 2009 is hereby incorporated into this provision by this reference. 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 feet-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" application of May 2007, and the "Construction Quality Assurance & Control Plan for the Lake County Class II Landfill Unit Landfill Closure Project" of 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.

(b) [Reserved]

[FR Doc. 2010-2794 Filed 2-9-10; 8:45 am]

BILLING CODE 6560-50-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Federal Emergency Management Agency**

#### **44 CFR Part 67**

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-B-1087]

#### **Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before May 11, 2010.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at

the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1087, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

#### **FOR FURTHER INFORMATION CONTACT:**

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

**National Environmental Policy Act.** This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

**Regulatory Flexibility Act.** As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

**Executive Order 12866, Regulatory Planning and Review.** This proposed rule is not a significant regulatory action