



## EPA Stays Landfill Methane Rules

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EPA recently announced a 90-day stay for reconsideration of rules governing performance standards and emissions from Municipal Solid Waste (MSW) Landfills. The final rules issued in July 2016 established new source performance standards (NSPS) to reduce emissions of landfill gas from new, modified, and reconstructed MSW landfills and revised guidelines for reducing emissions at existing MSW landfills. In October, 2016, industry petitioners requested reconsideration of the final rules.

Under the Clean Air Act, EPA may consider a request for reconsideration of a final rule or regulation only if it was “impracticable” to raise the objection during the public comment period or if grounds for the objection arose after the comment period. In either case, EPA must also determine that the objection is centrally relevant to the outcome of the rule. If these criteria are met, EPA may stay the rule for reconsideration for a period not to exceed 90 days.

In this case, EPA found one issue raised by petitioners met the Clean Air Act criteria for reconsideration of a final rule. When the rules were proposed, EPA included Tier 4 surface emissions monitoring (SEM) as an optional monitoring method. This optional method was based on surface monitoring to demonstrate that emissions were below specific thresholds. The Tier 4 SEM method would allow landfills exceeding certain modeled emission rates using other methodology (Tiers 1, 2, or 3) to demonstrate site-specific surface methane emissions are low. A landfill demonstrating surface emissions below 500 parts per million (ppm) for four consecutive quarters would not trigger the requirement to install a gas collection and control system, even if Tier 1, 2, or 3 calculations indicated the 34 million megagrams per year threshold for installation of controls was exceeded.

However, when the final rules were published, significant restrictions on the use of Tier 4 SEM were included, such as limits on wind speed, the use of wind barriers, and restricting the use of Tier 4 SEM to certain landfills. EPA determined that because these restrictions were not part of the proposed rules and were added without public review and comment, it was “impracticable” for petitioners to raise any objections during the comment period. EPA also found petitioners’ objections to Tier 4 SEM restrictions were centrally relevant to the outcome of the rule. Because Tier 4 SEM can be used to determine when and if gas collection and control systems must be installed, the restrictions reduced the intended flexibility of the rules.

While EPA focused particularly on Tier 4 SEM restrictions within the rules, the Agency felt it necessary to stay the rules in their entirety because the provisions were integrally linked to how the rules function as a whole. The 90-day stay for reconsideration began on May 31, 2017. Landfill owners and operators should stay tuned; the fate of the Tier 4 SEM option is yet to be determined.

82 Fed. Reg. 24878 (May 31, 2017).

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