

will evaluate residual risks and promulgate standards to address residual risks within 8 years of promulgation of the final rule. In addition, section 112(d)(6) requires review of the final rule every 8 years. At that time, we will consider any new information on the prevalence and emissions of aerobic bioreactors to determine if additional requirements are necessary.

D. Mercury

Comment: Four commenters questioned the reliability of the available mercury data. Some commenters quoted mercury emissions tests that showed mercury emissions from MSW landfills to be insignificant.

Response: We considered data from a number of studies, including one specifically mentioned by the commenters, prior to proposal. We found insufficient data to adequately characterize the concentrations of mercury in landfill gas or determine their significance. Based on the available information, we concluded that the MACT floor for mercury is no emissions reductions and because there are no alternatives above that floor, the MACT standard is also no reduction in emissions.

Comment: Other commenters wrote in support of the cooperative efforts of EPA and the Environmental Research and Education Foundation to conduct tests for HAP metals such as mercury in landfill gas and emissions from gas combustion. The commenters suggested waiting until the test results are complete before making any decision on mercury controls. Another commenter also asked us to clarify the level of mercury emissions from MSW landfill gas and requested that we investigate beyond-the-floor control options.

Response: We find that the currently available data support the promulgation of the rulemaking without a mercury emissions limit. Because there are no control devices, pollution prevention practices or other techniques to reduce landfill mercury emissions, we could not identify any beyond-the-floor control options, and we consider the MACT for new and existing landfills to be no reduction in mercury emissions.

E. Title V Operating Permits

Comment: A commenter recommended that we delete the requirement mandating that area sources be required to obtain a title V permit and instead allow part 60 to address the permitting of area source landfills. The commenter further suggested that if we retain the requirement of permitting area source

landfills, that we justify why area source landfills must be permitted.

Response: In response to that comment, title V requirements included in § 63.1935 at proposal have been deleted. We further respond that section 502(a) of the CAA requires any source, including an area source, subject to standards or regulations under section 111 or 112 of the CAA to operate in compliance with a title V permit after the effective date of any title V permits program. This section states that the Administrator may promulgate regulations to exempt one or more source categories, in whole or in part, from the requirements of the section if the Administrator finds that compliance with title V requirements is impracticable, infeasible, or unnecessarily burdensome on such categories. Thus, we do not need to justify requiring title V permits. The CAA mandates criteria that must be met to justify an exemption for any category of sources. According to section 502(a), however, the Administrator may not exempt any major source from the requirements of title V.

Although section 502(a) requires that area sources subject to regulations under section 111 or 112 be permitted unless the test in this section is met (i.e., the Administrator finds that compliance with title V permitting requirements is impracticable, infeasible, or unnecessarily burdensome), we are not applying this test to the landfills NESHAP.¹ Rather, consistent with what the commenter suggested, EPA is allowing the EG/NSPS for MSW landfills to address the permitting requirements for area source landfills. This approach is justified because the same universe of area source landfills would have been required to apply for a title V permit under the final rule (if the final rule were promulgated as proposed) as is currently subject to title V permitting requirements under the NSPS for landfills and whatever plan is used to implement 40 CFR part 60, subpart Cc in an area (i.e., an EPA approved and effective section 111(d) State or tribal plan for landfills or the landfills Federal plan (40 CFR part 62, subpart GGG)). Moreover, most area

source landfills which have a design capacity equal to or greater than 2.5 million Mg and 2.5 million m³ have already been required to apply for a title V permit due to either the NSPS for landfills, an EPA approved and effective section 111(d) State or tribal plan for landfills, or the landfills Federal plan. See 40 CFR 60.752(c), 60.32c(c), and 62.14352(e). See also the "Clarification of Title V Permitting Requirements" section of the EG/NSPS direct final rule amendments for MSW Landfills (63 FR 32743, 32746, June 16, 1998). In fact, unless the owner/operator of a MSW landfill only recently commenced construction of the landfill and has not yet been required to file a design capacity report (which the NSPS requires within 90 days after the owner/operator commences construction), all area source landfills of the design capacity noted above and which meet the definition of new or existing under the EG/NSPS should have already applied for a title V permit. As a result, EPA believes that it is unnecessary for area sources to be required to apply for a title V permit as a result of the landfills NESHAP.

If a MSW landfill is a major source or is a part of a major source as defined under one or more of title V's three major source definitions (section 112, section 302, and part D of title I of the CAA),² a title V application from such a source may be due even earlier than the deadlines established by 40 CFR part 60, subpart WWW, any EPA approved and effective section 111(d) State or tribal plan, or the landfills Federal plan. When a source is subject to title V for more than one reason (e.g., meeting the title V applicability criteria in subpart WWW as well as having the potential to emit one or more pollutants at major source levels), the 12-month timeframe (or earlier if required by the title V permitting authority) for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. See CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b), and 71.5(a)(1). See also the "Clarification of Title V Permitting Requirements" section of the EG/NSPS direct final rule for MSW Landfills (63 FR 32743, 32746, June 16, 1998).³

¹ It is important to note that the determination regarding the permitting of area sources under this NESHAP does not affect the permitting of area sources under other section 111 or 112 standards. Rather, to exempt area sources under either a section 111 or 112 standard, the test in section 502(a) must be met. If commenters choose to try and meet this test when commenting on a proposed section 111 or 112 standard, they must submit comments which document in detail the ways in which title V requirements are impracticable, infeasible, or unnecessarily burdensome for the source category in question.

² For information on aggregating emissions units to determine what is a source under title V, see the definition of *major source* in 40 CFR 70.2, 71.2, and 63.2. Nothing in this subpart revises how affected sources are aggregated for purposes of determining whether an affected source is a part of an area, nonmajor, or major source under any provisions of the CAA or EPA's regulations.

³ Consistent with the above, it is important to note that an application deadline once established