UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

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Ref: 8RA-IO

John R. Jacus
Davis Graham & Stubbs LLP
1550 17th Street, #500
Denver, Colorado 80202

Re: Applicability Determination Request of Twin Landfill Corporation, Milner Landfill, Routt County Colorado—NSPS at 40 CFR Part 60, Subpart WWW

Dear Mr. Jacus:

I am responding to your letter, dated April 13, 2020, requesting an applicability determination regarding Standards of Performance for Municipal Solid Waste Landfills, 40 CFR 60.750 – 60.759 (Subpart WWW). Principally, you question whether the Twin Landfill Corporation's Milner facility in Routt County Colorado ("Milner Landfill" or the "Facility") is now subject to the gas collection and control system (GCCS) installation requirements of § 60.752(b)(2)(ii). Subordinate to this larger question, you pose several other general questions relevant to Milner Landfill: 1) When must a Subpart WWW affected facility using Tier II testing to determine the facility-specific nonmethane organic compound (NMOC) emission rate, which fails to complete a 5-year NMOC concentration, retest as required by § 60.754(a)(3)(iii), subsequently recalculate the NMOC emission rate using default NMOC concentration values; 2) When must an annual NMOC emission rate report using invalid Tier II test results be revised using default NMOC concentration values; 3) When does the GCCS design plan one-year compliance deadline established in § 60.752(b)(2)(i) begin; and 4) Can Milner Landfill return to annual NMOC emission rate reporting using Tier II testing data submitted in September 2019?

As discussed below, the EPA determines that Milner Landfill, referencing the larger question presented by your letter, may return to annual NMOC emission rate reporting based upon valid Tier II test results and is not required under Subpart WWW to install a GCCS at this time.

Facility Background

Your request letter indicates:

- Milner Landfill was originally opened in the 1960s and became subject to Subpart WWW in 2002 when the facility's design capacity expanded to 4.4 million megagrams (Mg);
- Milner Landfill "began Tier II testing in 2003 under § 60.754(a)(3) and conducted tests every five years" thereafter, determining facility specific NMOC concentration values in 2003, 2008 and 2013;
- Milner Landfill's annual NMOC emission rate report is due on March 1 of each year;
- Milner Landfill's 2013 site-specific Tier II NMOC concentration data expired on May 10, 2018;
- The Facility did not perform a 5-year Tier II retest before the May 10, 2018 expiration date of the 2013 data; and

- Milner Landfill submitted its annual emission rate report, due on March 1, 2019, using the expired 2013 NMOC concentration data.

Following this series of events, your letter states that the Colorado Air Pollution Control Division (APCD) required Milner Landfill to submit a revised annual emission rate report using the default NMOC concentration value found in § 60.754(a)(1) given that there was no valid Tier II data available. The use of a default concentration value resulted in the projected emissions of the Facility being in excess of the 50 Mg per year standard, triggering the compliance requirements of § 60.752(b)(2), including the requirement to submit a GCCS design control plan within one (1) year of exceeding the standard. The APCD interpreted the 1-year compliance schedule set forth by § 60.752(b) as establishing a GCCS design plan submittal deadline of May 10, 2019. Further details confirmed by your letter and follow-up communications with APCD include:

- Milner Landfill did not submit a revised annual emission rate report, nor did the Facility prepare a GCCS design plan before May 10, 2019;
- The Facility submitted a Tier II testing protocol to APCD on May 9, 2019 and conducted new Tier II testing between June 17 and 27, 2019, and calculated an NMOC emission rate below the 50 Mg per year performance standard;
- However, APCD did not approve the test protocol, nor did APCD observe the testing or review the results and maintains that the testing results are not valid for use in emissions calculations or compliance determinations;[1] and
- Milner Landfill submitted a GCCS design plan on February 28, 2020.

At this time, Milner Landfill would like to return to a Tier II testing schedule and not be required to install a GCCS under the requirements of § 60.752(b)(2)(ii).

Subpart WWW Requirements

The provisions of Subpart WWW apply to all affected facilities as defined in § 60.750. Each affected facility with a design capacity equal to or greater than 2.5 million Mg and 2.5 million cubic meters shall either comply with the requirements and compliance timeline of § 60.752(b)(2) or calculate an NMOC emission rate for the facility using the procedures specified in § 60.754.[2] If the calculated NMOC emission rate is less than 50 Mg per year, the facility shall initially submit, and annually thereafter, an emission rate report and recalculate the NMOC emission rate annually until such time as the calculated NMOC emission rate is equal to or greater than 50 Mg per year, or the landfill is closed.[3]

If the annual recalculation of the facility's NMOC emission rate following the procedures specified in § 60.754 yields an emission rate greater than 50 Mg per year, the facility is subject to the requirements and compliance schedule of § 60.752(b)(2).[4] Requirements and the corresponding compliance deadlines are: 1) Submit a GCCS design plan within one year; and 2) Install an acceptable GCCS within 30 months after the first report in which the emission rate equals or exceeds 50 Mg per year, unless Tier II or Tier III sampling demonstrates that the NMOC emission rate is less than 50 Mg per year.

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[1] Inter-agency communication with CDPHE APCD, June 8, 2020.
[2] 40 CFR 60.752(b).
[3] 40 CFR 60.752(b)(1).
[4] 40 CFR 60.752(b)(1)(ii)(A).

For a facility using Tier II testing to demonstrate an NMOC emission rate below the 50 Mg per year standard, Subpart WWW requires that the facility shall use the Tier II test derived site-specific NMOC concentration value to recalculate the NMOC emission rate using the equations provided in § 60.754. If the NMOC emission rate is greater than the standard, the facility owner or operator shall comply with the GCCS requirements and compliance timelines of § 60.752(b)(2). If the NMOC emission rate is below the standard, the owner or operator shall retest the site specific NMOC concentration every 5 years using the Tier II testing protocol provided in § 60.754(a)(3).[5] A failure to complete a valid Tier II 5-year retest disqualifies the facility from the Tier II procedure for making annual emission rate reports based on a site-specific NMOC concentration and obligates the facility to either make its annual report using the Tier I default NMOC concentration value or else comply with the requirements for Tier III. A facility may return to Tier II testing under specific conditions, which will be discussed as they apply to Milner Landfill later in this letter.

Applicability Determination Request

Your letter quotes extensively the sections of Subpart WWW relevant to establishing reporting and compliance schedules for affected facilities. Specifically, §§ 60.752 and 60.757 are quoted throughout in your efforts to establish a plain reading of the requirements for a facility which has missed a Tier II 5-year retest, and, perhaps most importantly, the compliance timeline for fulfilling those requirements. Additionally, your letter includes reference to previous EPA applicability determinations that, in places, support your reading of Subpart WWW (e.g., ADI Record No. 0500098).

We agree that in this case a plain reading of the regulatory text of Subpart WWW is the simplest way to provide a response to the questions raised by your letter. We will use such a reading, supported by previous ADI records and docket items associated with the Subpart WWW rulemaking action, to respond to your letter's questions fully in the section below.

EPA Determination

Based on the information provided in your letter, Milner Landfill failed to conduct a 5-year Tier II retest by the expiration date of its valid 2013 Tier II test derived NMOC concentration value: May 10, 2018. Subsequently, the Facility incorrectly submitted its annual emission rate report on March 1, 2019 using the invalid 2013 Tier II NMOC concentration value for a demonstration of the landfill's NMOC emission rate. These facts are agreed upon. We will now answer your questions regarding the implementation and enforcement of Subpart WWW with respect to those facts. Please note that while the questions presented in your letter were broadly worded to apply to hypothetical scenarios, we will rephrase and answer them to apply specifically to Milner Landfill and the facts of this request. This applicability determination is a case-specific application of Subpart WWW requirements and is not intended as, nor should it be construed as, a general regulatory interpretation.

Q1: When may Milner Landfill have been required to recalculate its NMOC emission rate using default concentration values following the failure to complete a 5-year retest by May 10, 2018?

A1: Your letter quotes Subpart WWW extensively in your analysis of this question. Specifically, your letter uses excerpts of § 60.752 and infers from a reading of that section that the *calculation* of an affected facility's NMOC emission rate is equal to and coincident with the *reporting* of that facility's

[5] 40 CFR 60.754(a)(3).

NMOC emission rate. Although Subpart WWW does require both the annual recalculation and annual reporting of the facility's NMOC emission rate, it is not clear that these two operations must coincide nor that a calculation of the emission rate means the same thing as an annual reporting of the emission rate. Subpart WWW is clear that calculation of an NMOC emission rate may at times be distinct and necessarily precede the reporting of the emission rate. "*If* the *calculated* NMOC emission rate is less than 50 megagrams, [then] the owner or operator shall [s]ubmit an annual emission report to the Administrator[.]"[6] Your letter is correct that a facility must at a minimum recalculate the NMOC emission rate annually for the purposes of the annual emission rate report, but calculation of the emission rate may occur at any time. A plain reading of § 60.752(b)(1)(ii) supports this: "[the owner or operator shall] recalculate the NMOC emission rate annually using the procedures specified in § 60.754(a)(1) *until such time* as the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, *or the landfill is closed.*"[7] Just as, for example, a closure report may be submitted between annual emission rate reports, so may the facility calculate, and perhaps report, a NMOC emission rate at any time, especially if required for compliance assurance by the regulating agency. This is further supported by Subpart WWW granting the Administrator, or her delegee, authority to request additional information to verify the reported NMOC emission rate.[8] Requesting such information would necessarily require a calculation and reporting of the NMOC emission rate separate from the annual reporting of the emission rate.

In the case of Milner Landfill, APCD maintains the enforcement authority to require a calculation of the NMOC emission rate using default concentration values at any time after the expiration of a site-specific NMOC concentration value and was correct in requiring the calculation of the rate using the Tier I default NMOC concentration values following the March 2019 discovery of the failed 2018 5-year retest.

Q2: Under what conditions must Milner Landfill revise an annual NMOC emission rate report using default NMOC concentration values?

A2: Milner Landfill conducted Tier II testing in May 2013 and correctly based its annual emission rate reports on the associated NMOC concentration value for the reporting years 2014 – 2018. Subpart WWW requires any facility using Tier II procedures to demonstrate compliance with the performance standard to retest the site specific NMOC concentration every 5 years. If an affected facility subject to Subpart WWW fails to meet its 5-year retest requirement, that facility must use the Tier I default NMOC concentration value in subsequent emission calculations and reporting until such time as there is an approved return to Tier II testing. Milner Landfill failed to comply with the 5-year retest requirement necessary to calculate the NMOC emission rate using a site-specific NMOC concentration associated with valid Tier II test results. Following this deviation from the Tier II requirements, Milner Landfill submitted its March 2019 annual emission rate report using an expired, invalid site-specific NMOC concentration value. According to Subpart WWW, as noted above, Milner Landfill should have submitted its 2019 annual emission rate report using the only valid NMOC concentration value available - the default value found in § 60.754(a)(1). Deadlines for revising inaccurate annual emission rate reports in the context of this applicability determination request are not given by Subpart WWW. The

[6] 40 CFR 60.752(b)(1) [emphasis added].
[7] 40 CFR 60.752(b)(1)(ii) [emphasis added].
[8] 40 CFR 60.757(b).

EPA grants states broad authority in enforcing adopted new source performance standards, provided the enforcement is not less stringent than the federal standard.[9] EPA's determination is that it was appropriate to require Milner Landfill to submit a revised annual emission rate report using default values, back-dated to the submittal deadline of March 1, 2019.

Q3: By what date is Milner Landfill required to submit a GCCS design plan under Subpart WWW?

A3: Milner Landfill failed to complete a 5-year Tier II retest before the expiration of the site-specific NMOC concentration value established in 2013. As of May 10, 2018, a calculation of Milner Landfill's NMOC emission rate would necessarily need to be completed using the default concentration value found in § 60.754(a)(1). If calculation of the facility's NMOC emission rate results in an exceedance of the 50 Mg per year performance standard, established by Subpart WWW, the facility must comply with the GCCS design plan requirements according to § 60.752(b)(2).

Subpart WWW is clear that the compliance schedule for GCCS design plan submittal is within 1 year of the *calculated* NMOC emission rate being equal to or greater than 50 Mg per year. However, it is not clear what *instance* of calculating the emission rate may initiate the compliance schedule. Reference to previous ADI records relevant to your request does not resolve this question. One entry initiates the 1-year compliance schedule on the date of valid Tier II test result expiration, given that a calculation of the emission rate following that date would result in a performance standard exceedance.[10] Another entry starts the 1-year compliance schedule on the date of calculation being reported in an annual emission rate report showing an NMOC emission rate based on the default concentration value exceeding the standard.[11] Another record describes a landfill that conducted its 5-year retest and submitted a report of that Tier II test, including a revised NMOC emission rate, the following month. In that case it was that report following the retest, submitted between annual reports, that initiated the compliance schedule.[12] Neither the rulemaking notices for Subpart WWW nor the background documents for that rulemaking address your question directly.[13, 14, 15] Accordingly, we will address this question with reference solely to the language of Subpart WWW.

The first reference of a 1-year deadline for GCCS design plan submittal is in § 60.752(b)(2)(i): The owner or operator shall "submit a [GCCS] design plan prepared by a professional engineer to the Administrator within 1 year," "if the calculated NMOC emission rate is equal to or greater than 50 megagrams per year." As mentioned above, this does not define the specific iteration of the calculation that triggers the compliance deadline. Looking elsewhere for clarification, § 60.757(c) states that operators subject to § 60.752(b)(2)(i), "shall submit a [GCCS] design plan to the Administrator within 1 year *of the first report* required under [§ 60.757(b)] in which the emission rate equals or exceeds 50 Mg per year [*emphasis added*]." The required reports referenced here are initial and annual NMOC emission rate reports. While states may exercise enforcement discretion to assure regulatory compliance, so long as the state's requirements are no less stringent than the federal standard, Subpart WWW allows the 1-year GCCS design plan compliance schedule to start at the date of the first annual emission rate report

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[9] 40 CFR 60.10.
[10] *Tier 2 testing deadline*. December 2, 2003. ADI Control No. 0500098.
[11] *Request to conduct additional Tier 2 testing*. December 13, 2002. ADI Control No. 0300027.
[12] *Conducting additional Tier 2 sampling*. August 30, 2007. ADI Control No. 0900027.
[13] 56 FR 24468.
[14] 61 FR 9905.
[15] Air emissions from municipal solid waste landfills – Background information for final standards and guidelines. December 1995. EPA-453/R-94-021.

which calculates an NMOC emission rate equal to or greater than the 50 Mg per year standard. Colorado has incorporated Subpart WWW into state regulations without changes to the reports mentioned under § 60.757(b). Accordingly, the EPA determines that the 1-year deadline should, in this case, be set from the deadline for submittal of the corrected annual emission rate report using the default NMOC concentration value. Milner Landfill's deadline for GCCS design plan submittal was March 1, 2020.

It should be reiterated here that the application of Subpart WWW specifically to Milner Landfill in the context of this request does not address the question of whether an enforcing agency may at other times initiate the GCCS compliance schedule after requiring NMOC emission rate reporting for compliance assurance purposes.

Q4: May Millner Landfill return to annual reporting of its NMOC emission rate using Tier 2 testing?

A4: Milner Landfill was required to use the default NMOC concentration value for its 2019 annual emission rate report. Use of a default concentration value in the annual NMOC emission rate report resulted in a calculation of the emission rate above the 50 Mg per year standard. This reported exceedance triggers the requirements to 1) Submit a GCCS design plan within 1 year, and 2) Install a GCCS within 30 months of the first annual report in which the exceedance is reported, *unless* Tier II or Tier III sampling demonstrates that the emission rate is less than 50 Mg per year, as specified in § 60.757(c)(1) or (2).[16] Section 60.757(c) clarifies when a facility may not be required to submit a GCCS design plan within 1 year of an exceedance reported in an annual emission rate report. The facility owner may elect to perform Tier II testing and submit a revised emission rate report demonstrating an emission rate below 50 Mg per year within 180 days of the first calculated exceedance of the standard. If the facility conducts Tier II testing before the GCCS design plan submittal deadline and demonstrates an emission rate below the standard, the facility is not required to submit a design plan so long as the revised emission rate report is submitted in a timely manner (within 180 days). If the facility does not complete a Tier II test before the design plan submittal deadline, the facility shall fulfill the increment of progress towards compliance of submitting a GCCS design plan. The facility may also submit a revised emission rate report after the GCCS design plan deadline to demonstrate an emission rate below the performance standard but must have fulfilled the increment of progress of having submitted a GCCS design plan. Your letter indicates both that a GCCS design plan was submitted within 1 year of the March 2019 annual emission rate report (on February 28, 2020) and that Milner Landfill attempted new Tier II testing in June 2019. However, APCD maintains that the Tier II testing performed in June 2019 was not in compliance with state requirements. State enforcement decisions regarding Tier II testing protocols are not the subject of this determination. It is the EPA's determination that Milner Landfill may be allowed to resume NMOC emission rate reporting based on a site-specific NMOC concentration value associated with valid Tier II testing results. Milner Landfill has until September 1, 2021 to establish valid Tier II testing results and submit a revised emission rate report based on an approved site-specific NMOC concentration value to avoid the GCCS installation requirements of Subpart WWW. Note that the NMOC concentration value associated with any valid Tier II testing event taking place after the May 10, 2018 expiration of the facility's previous Tier II test results is a stand-in for the concentration value that should have been completed before May 2018, and will become invalid for calculation and reporting purposes on May 10, 2023.

[16] 40 CFR 60.752(b)(2)(i) and (ii).

Following the determinations provided for Questions 1-4, above, it is the EPA's overall determination that Milner Landfill may be permitted to establish valid Tier II test results before September 1, 2021, return to annual emission rate reporting based on those valid Tier II test results, and is not required to install a GCCS at this time.

If you have any questions on this applicability determination or would like to discuss the EPA's determination further, please contact Carl Daly, Acting Director of the EPA Region 8's Air and Radiation Division, at daly.carl@epa.gov or 303-312-6416.

Sincerely,

Gregory Sopkin
Regional Administrator

Cc: Scott Gessler, sgessler@gesslerlawfirm.com
Shannon McMillan, CDPHE, shannon.mcmillan@state.co.us