

Advocacy Recommends Additional Flexibilities to Minimize the Impact on Small Landfills

On October 23, 2015, the Office of Advocacy's Acting Chief Counsel, Claudia R. Rodgers, sent a letter to the Environmental Protection Agency (EPA) Administrator Gina McCarthy commenting on two rulemaking notices concerning air emissions from Municipal Solid Waste (MSW) Landfills. A copy of Advocacy's comment letter may be accessed at <http://www.sba.gov/advocacy>.

On August 27, 2015, EPA published two notices of rulemaking on air emission standards for Municipal Solid Waste (MSW) Landfills under section 111 of the Clean Air Act. These notices are (1) a supplemental proposed rule for its July 17, 2014, proposal to revise the New Source Performance Standards (NSPS) for MSW Landfills under section 111(b) (80 Fed. Reg. 52,162), and (2) a notice of proposed rulemaking (NPRM) on Emission Guidelines for existing MSW Landfills under section 111(d) (80 Fed. Reg. 52,099). EPA certified both proposals would not have a significant economic effect on a substantial number of small entities and did not prepare an Initial Regulatory Flexibility Analysis. However, EPA, the Office of Management and Budget and the Office of Advocacy did conduct a Small Business Regulatory Enforcement and Fairness Act (SBREFA) panel for these rules and issued a report on July 21, 2015.

- Advocacy disagrees with EPA's certification of the supplemental proposed NSPS because with so few small entities expected to establish new landfills, even a very small number can be "a substantial number" for the purposes of the Regulatory Flexibility Act.
- Advocacy recommends that EPA adopt the flexibilities proposed by the small entity representatives to the SBREFA panel.
- Advocacy commends EPA's outreach on the Emission Guidelines and the flexibilities proposed. Advocacy recommends the following further improvements.
 - EPA should consider allowing more landfills to close and remain under the current regulations.
 - EPA should ensure that its compliance alternative (called Tier 4 in the rulemaking) is not overly strict and provides the intended flexibility.
 - EPA should allow small entities to incorporate startup, shutdown, and maintenance and repair activities into an approved design plan.

For more information, visit Advocacy's Web page at <http://www.sba.gov/advocacy>, or contact Assistant Chief Counsel David Rostker by email at david.rostker@sba.gov or by phone at 202-205-6966.