

**STATEMENT OF CONSIDERATION RELATING TO
401 KAR 61:036
Amended After Comments**

Energy and Environment Cabinet
Department for Environmental Protection
Division for Air Quality

I. The virtual public hearing on 401 KAR 61:036 scheduled for February 24, 2021 at 10:00 a.m. was cancelled in accordance with KRS 13A.270(7). However, written comments were received during the public comment period.

II. The following individual submitted written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Gregg Worley, Chief, Air Analysis and Support Branch	United States Environmental Protection Agency (US EPA)

III. The following individuals responded to comments:

<u>Name and Title</u>	<u>Affiliation</u>
Melissa Duff, Director	Division for Air Quality
Cassandra Jobe, Regulations Supervisor	Division for Air Quality
Chris Ewing*, Environmental Scientist	Division for Air Quality

*Cabinet representative

IV. Summary of Comments and Responses to 401 KAR 61:036

(1) Subject Matter: Definitions

(a) Comment: Gregg Worley, US EPA

The language as proposed states: “(2) "Administrator" means the Secretary of the Energy and Environment Cabinet unless a specific provision of 40 C.F.R. Part 60, Subpart Cf states that the United States Environmental Protection Agency retains authority.”

The EPA will include language in the Federal Register for the plan approval clarifying that “The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR 60.30f(c).”

(b) Response:

The Cabinet acknowledges this comment and amends the definition of “Administrator” accordingly.

(2) Subject Matter: State plan requirements

(a) Comment: Gregg Worley, US EPA

The proposed regulation, 401 KAR 61:036 “Emission guidelines and compliance times for municipal solid waste (MSW) landfills”, contains language that appears to incorporate-by-reference/adopt-by-reference the language promulgated in 40 CFR Part 60, subpart C_f. However, subpart C_f does not include “model rule” language that can be largely adopted or incorporated by reference “as is.” The requirements for the provisions contained in subpart C_f are directed to the state and explain what must be included in an approvable state plan rather than imposing requirements on regulated sources. See, e.g., 40 CFR § 60.33f(a) (“For approval, a state plan must require...”). Thus, these provisions cannot be incorporated-by-reference/adopted-by-reference in a state plan “as-is”; rather, they must be modified using language that imposes the requirements to regulated sources instead of the state. Incorporating Subpart C_f by reference may be a viable option only if the state regulation clearly requires landfills to meet the relevant provisions in the emission guidelines. The current language is unacceptable because it simply states that source owners and operators are subject to various provisions in Subpart C_f, which are directed to the state. .

(b) Response:

The Cabinet acknowledges the comment and amends Section 3 of the regulation to provide clarity.

V. Summary of Action Taken by Promulgating Agency

Comments were considered and the following amendments are proposed:

Page 1

Section 1(1)

Line 20

After “Subpart C_f”, insert “, or an approved state plan as published in 40 C.F.R. Part 62, Subpart S”

Page 2
Section 3
Line 6

After “Compliance Requirements.” Delete (1).

Page 2
Section 3
Line 7

After “comply with”, insert “the applicable requirements established in”.

Page 3
Section 3(2)
Line 8

Insert “(1)”. Delete (2).

Page 3
Section 3(3)
Line 9

Insert “(2)”. Delete (3).

Page 3
Section 3(4)
Line 10

Insert “(3)”. Delete (4).

Page 3
Section 3(5)
Line 12

Insert “(4)”. Delete (5).

Page 3
Section 3(5)
Line 13

After “July 1, 2020”, insert “;”.
Delete “:”.

Page 3
Section 3(6)
Line 14

Insert “(5)”. Delete (6).

Page 3
Section 3(7)
Line 15

Insert “(6)”. Delete (7).

Page 3

Section 3(8)

Line 16

Insert “(7)”. Delete (8).

Page 3

Section 3(9)

Line 17

Insert “(8)”. Delete (9).

Page 3

Section 3(10)

Line 18

Insert “(9)”. Delete (10).

Page 3

Section 3(11)

Line 19

Insert “(10)”. Delete (11).