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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	Primary action: Article 43.1, 9VAC5-40 Secondary actions: 9VAC5-20-21; Article 43 of 9VAC5-40
<b>Regulation title(s)</b>	Regulations for the Control and Abatement of Air Pollution
<b>Action title</b>	Adopt a new regulation for municipal solid waste landfills that incorporates new EPA requirements (Rev. H16)
<b>Final agency action date</b>	September 5, 2016

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Currently, air pollution from landfills is regulated in Virginia under Article 43, Emission Standards for Municipal Solid Waste Landfills (9VAC5-40-5800 et seq. of 9VAC5-40, Existing Stationary Sources). Article 43 was originally designed to control two separate pollutants: (i) ozone in the northern Virginia ozone nonattainment area as required by § 110 of the Clean Air Act and implemented by 40 CFR Part 51, and (ii) nonmethane organic compounds as required by § 111 of the federal Clean Air Act and implemented by Subpart Cc of 40 CFR Part 60, which is applicable statewide. On August 29, 2016 (81 FR 59276), the U.S. Environmental Protection Agency (EPA) promulgated new emissions guidelines for municipal solid waste landfills, Subpart Cf of 40 CFR Part 60. The amendments were made in order to reduce emissions of landfill gas, which contains both nonmethane organic compounds and methane. In order to adopt the requirements of Subpart Cf while maintaining the state-only requirements specific to the northern Virginia ozone nonattainment area, a new Article 43.1 is being promulgated. This will enable the adoption of the new statewide standards without affecting the more restrictive requirements of Article 43 applicable to the nonattainment area.

## Acronyms and definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

EPA - U.S. Environmental Protection Agency

## Statement of final agency action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

On September 5, 2016, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled Regulations for the Control and Abatement of Air Pollution, specifically, Article 43.1 , Emission Standards for Municipal Solid Waste Landfills, 9VAC5-40-5925 et seq. of 9VAC5-40 (Existing Stationary Sources). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. EPA regulations.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

## Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

It is not anticipated that these regulation amendments will have a direct impact on families.

## All changes made in this regulatory action

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section	Proposed new section	Current requirement	Proposed change and rationale
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number	number, if applicable		
<b>9VAC5 Chapter 20</b>			
9VAC5-20-21 B		Documents incorporated by reference.	Update reference to the most recent (2016) version of the Code of Federal Regulations, and create a transition between the 2016 and 2017 federal code books. Needed in order to adopt the federal regulations by reference.
<b>9VAC5 Chapter 40</b>			
Article 43			
9VAC5-40-5800	Subsection F	Applicability and designation of affected facility	Specifies facilities that are subject to Article 43.1. Needed for clarity, to retain the provisions of Part 43 necessary for the more restrictive requirements for ozone, and to provide a transition between federal and state standards.
Article 43.1			
	9VAC5-40-5925	Applicability of the regulation.	Added to indicate applicability of the rule. Needed in order for the state to properly implement federal and state rules.
	9VAC5-40-5930	Definitions of terms used in the regulation.	Added to specify certain terms used in the regulation. Needed in order for the state to properly implement the federal rule.
	9VAC5-40-5935	Emission limits and emission standards	Added in order for sources to know what emissions limits and standards must be met. Needed in order for the state to properly implement the federal rule.
	9VAC5-40-5940	Standard for visible emissions and fugitive dust/emissions	Added in order for the sources to know what visible emissions and fugitive dust/emissions standards must be met. Needed in order for the state to properly implement federal and state rules.
	9VAC5-40-5945	Standard for odor	Added in order for sources to know what odor standards must be met. Needed in order for the state to properly implement state rules.
	9VAC5-40-5950	Compliance schedule	Added in order for sources to know what compliance schedule must be met. Needed in order for the state to properly implement the federal rule.
	9VAC5-40-5955	Operating requirements	Added in order for sources to know how to properly operate. Needed in order for the state to properly implement federal and state rules.
	9VAC5-40-5960	Compliance	Added in order for sources to know how to demonstrate compliance with the requirements of the regulation. Needed in order for the state to properly implement federal and state rules.
	9VAC5-40-5965	Test methods and procedures, monitoring of operations	Added in order for sources to know what testing and monitoring requirements must be met. Needed in order for the state to properly implement federal and state rules.
	9VAC5-40-	Reporting and	Added in order for sources to know what

	5970	recordkeeping	reporting and recordkeeping requirements must be met. Needed in order for the state to properly implement the federal rule.
	9VAC5-40-5975	Registration	Added in order for sources to know what registration requirements must be met. Needed in order for the state to properly implement state rules.
	9VAC5-40-5980	Facility and control equipment maintenance or malfunction	Added in order for sources to know what to do in the event of a malfunction. Needed in order for the state properly implement federal and state rules.
	9VAC5-40-5985	Other permits	Added in order to direct sources to the possibility of other permitting requirements. Needed in order for the state to properly implement state rules.
	9VAC5-40-5990	Documents incorporated by reference	Added in order for sources to know what federal standards have been incorporated and are being administered by the state. Needed in order for the state to properly implement the federal rule.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

These regulations meet the minimum requirements of the federal Clean Air Act and the minimum requirements of 40 CFR Part 60. Any less stringent compliance requirements, any delays in adopting the standards, any different compliance or reporting requirements, any substitution of performance standards, and any exemption of small businesses from these requirements will not meet the minimum federal requirements. Any such changes would compromise the effectiveness of the regulations in protecting the health and welfare of the public, and could potentially subject the Commonwealth to federal control over the state permitting program.

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