

## *Virginia Regulatory Town Hall*

### Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	State Air Pollution Control Board
<b>Regulation Title:</b>	Regulations for the Control and Abatement of Air Pollution
<b>Primary Action:</b>	Article 43 (9 VAC 5-40-5800 et seq.) of 9 VAC 5 Chapter 40
<b>Secondary Action(s):</b>	None.
<b>Action Title:</b>	Municipal Solid Waste Landfills
<b>Date:</b>	April 4, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) for more information.

#### Purpose \*

*Please describe the subject matter and intent of the planned regulation.*

The purpose of the proposed action is to amend the regulation that controls emissions from municipal solid waste landfills (MWSLs) in order to meet the requirements of § 111(d) of the federal Clean Act, and 40 CFR Part 60 Subpart Cc of federal regulations.

#### Statutory Authority

*Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation contemplated.*

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

#### Need \*

*Please provide an explanation of the need for the contemplated regulation and potential consequences that may result in the absence of the regulation. Also set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens or would be essential for the efficient and economical performance of an important*

*governmental function. Include a discussion of the problems the regulation's provisions are intended to solve.*

Section 111(d) of the Clean Air Act requires U.S. Environmental Protection Agency (EPA) to establish procedures under which states submit plans to control certain existing sources of certain pollutants. EPA implemented § 111(d) by promulgating Subpart B of 40 CFR Part 60, which establishes procedures and requirements for adoption and submittal of state plans for control of "designated pollutants" from "designated facilities." Designated pollutants are pollutants which are not included on a list published under § 108(a) of the Clean Air Act (National Ambient Air Quality Standards) or § 112(b)(1)(A) (hazardous air pollutants), but for which standards of performance for new sources have been established under § 111(b). A designated facility is an existing facility which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were new.

Subpart B of 40 CFR Part 60 provides that EPA publish guideline documents for development of state emission standards after promulgation of any standards of performance for designated pollutants. The documents must specify emission guidelines and times for compliance and include other information such as discussion of the pollutant's effects on public health and welfare and description of control techniques and their effectiveness and costs. The emission guidelines reflect the degree of emission reduction attainable with the best adequately demonstrated systems of emission reduction, considering costs as applied to existing facilities.

After publication of a final guideline document for the pollutant in question, the states must develop and submit plans for control of that pollutant from designated facilities. After the final plan submittal date, EPA approves or disapproves each plan (or portion thereof). If a state plan (or portion thereof) is disapproved, EPA promulgates a federal plan (or portion thereof). These and related provisions of Subpart B are basically patterned after § 110 of the Clean Air Act and 40 CFR Part 51 (concerning adoption and submittal of state implementation plans under § 110).

Because failure to develop an adequate regulation will result in imposition of a federal program, meeting the basic requirements of the law and its associated regulations will ensure that Virginia retains its rights to govern Virginia sources, and result in the efficient and economical performance of an important governmental function.

Control of designated pollutant controls is important for two reasons. First, only a limited number of air pollutants potentially harmful to human health are regulated at the federal level. Second, health risks from small exposures to designated air pollutants can be high, depending on the substances involved. The primary components of MSWL emissions are nonmethane organic compounds (NMOC), which include volatile organic compounds (VOCs), hazardous air pollutants, and odorous compounds, and methane, both of which are capable of causing serious adverse health and welfare effects.

Regulating MSWL emissions for new sources under § 111(b) of the Act (NSPSs) establishes MSWL emissions as a designated pollutant, and requires EPA to promulgate guidelines for states to use in developing regulations to control pollutants from existing MSWLs. The specific emissions guidelines for existing MSWLs (which commenced construction, reconstruction or modification before May 30, 1991) have been promulgated in subpart Cc of Part 60 of the Code of Federal Regulations. State regulations must be no less stringent than the guidelines.

On January 7, 1999, the State Air Pollution Control Board approved a final regulation implementing the requirements of subpart Cc, which was then submitted to EPA on August 11, 2000 as part of the state's §111(d) Plan. EPA notified the state on February 7, 2001 that the plan is not approvable due to a number of deficiencies, including several associated with the regulation. Therefore, it is necessary to initiate a new regulatory action in order to amend the regulation in such a way as to address deficiencies identified by EPA.

### Potential Issues \*

*Please supply a statement delineating any potential issues that may need to be addressed as the regulation is developed.*

1. Revise the regulation in order to meet deficiencies identified by EPA in their review of the state § 111(d) Plan.
2. Revise the regulation in order to address any subsequent requirements that may be promulgated by EPA during the regulatory development process.

### Alternatives \*

*Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.*

Alternatives to the proposed regulation amendments are being considered by the Department. The Department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to comply with the requirements of the federal Clean Air Act.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it will not ensure consistency with federal requirements.
3. Take no action to amend the regulations. This option is not being selected because it will result in the imposition of a federal program.

### Public Participation \*

*Please indicate the nature of the comments the Department is soliciting pursuant to this notice and whether a public meeting is to be held to receive comments on this notice. If a public meeting is to be held, indicate where information on the public meeting (i.e. date, time, and place) may be found. Indicate whether it is the Department's intent to hold at least one public hearing on the proposed regulation after it is published in the Virginia Register.*

The Department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the Department in the development of the proposal, (ii) the impacts of the proposed regulation on farm and forest lands, and (iii) the costs and benefits of the alternatives stated in this notice or other alternatives. All comments must be received by the Department by 4:30 p.m. on the first business day after public meeting (see information below) in order to be considered. It is preferred that all comments be provided in writing to the Department, along with any supporting documents or exhibits; however, oral comments will be accepted at the meeting. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the meeting, but must be submitted to Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia, 23240 (e-mail: kgsabastea@deq.state.va.us) (fax number: 804-698-4510). Comments by facsimile transmission will be accepted only if followed by receipt of the signed original within one week. Comments by e-mail will be accepted only if the name, address and phone number of the commenter are included. All testimony, exhibits and documents received are a matter of public record. Only comments (i) related to the potential issues, alternatives, and costs and benefits (see supporting information below) as specified in this notice and (ii) provided in accordance with the procedures specified in this notice will be given consideration in the development of the proposed regulation amendments.

A public meeting will be held by the Department to receive comments on and to discuss the intended action. Information on the date, time, and place of the meeting is published in the Calendar of Events section of the Virginia Register. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

### Ad Hoc Advisory Group \*

*Please indicate the extent to which the participatory approach will be used in the development of the proposed regulation. Indicate whether the Department is will be using an ad hoc advisory group in the development of the proposal.*

The Department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the Department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue must be submitted to the agency contact in writing by 4:30 p.m. the last day of the comment period.

## Legal Requirements

*Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the contemplated regulation. The discussion of these requirements should include a description of their scope and the extent to which the requirements are mandatory or discretionary. Full citations for the legal requirements and, if available, web site addresses for locating the text of the cited legal provisions should be provided.*

### Federal Requirements

Federal Clean Air Act (CAA):

<http://www.epa.gov/ttn/oarpg/gener.html>

Code of Federal Regulations (CFR):

<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>

Federal Register (FR):

[http://www.gpo.gov/su\\_docs/aces/aces140.html](http://www.gpo.gov/su_docs/aces/aces140.html)

The contemplated regulation is mandated by federal law and regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below.

Section 111(d) requires that each state submit a plan which will (i) establish standards of performance for any existing source for any air pollutant for which criteria have not been issued or which is not included on a list published under § 108(a) (or emitted from a source category which is regulated under § 112 or 112(b)) but to which a standard of performance under this section would apply if such existing source were a new source, and (ii) provides for the implementation and enforcement of such standards of performance. The state may take into consideration the remaining useful life of the existing source to which standards apply.

The EPA Administrator has the authority to prescribe a plan for a state in cases where the state fails to submit a plan and to enforce the provisions of such plan in cases where the state fails to enforce them. EPA is required to review and revise, as needed, the performance standards of § 111 periodically.

40 CFR Part 60 subpart B provides the criteria for adoption and submittal of state plans for designated facilities. The issues include: (i) publication of guideline documents, emissions guidelines, and final compliance times; (ii) adoption and submittal of state plans including

public hearings; (iii) emission standards and compliance schedules; (iv) emission inventories and source surveillance, reports; (v) actions by the EPA Administrator; (vi) plan revisions by the state; and (vii) plan revisions by the Administrator. The emission guidelines established by EPA are also contained in 40 CFR Part 60.

40 CFR Part 60, subpart Cc provides the emission guidelines for municipal solid waste landfills. The regulation that states develop based on the emission guidelines must be no less stringent than the guidelines.

The final emissions guidelines and NSPS were originally published by EPA in the Federal Register of March 12, 1996 (61 FR 9905). Amendments to the final rules were made on June 16, 1998 (63 FR 32743), February 24, 1999 (64 FR 9258), April 10, 2000 (65 FR 18906), and October 17, 2000 (65 FR 61778 and 62044).

### Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed 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; 4) increase or decrease disposable family income.*

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.