

Virginia Regulatory Town Hall

Final Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	Article 43 (9 VAC 5-40-5800 et seq.) of 9 VAC 5 Chapter 40
Secondary Action(s):	None.
Action Title:	Municipal Solid Waste Landfills
Date:	September 12, 2003

Please refer to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), Executive Order Twenty-Five (98), and the Virginia Register Form, Style and Procedure Manual for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation.

Facilities to which the rule applies are municipal solid waste landfills which commenced construction, reconstruction, or modification before May 30, 1991. In the Northern Virginia VOC Control Area, the design capacity applicability criteria is 1.0 million megagrams (Mg) or more; the emission rate applicability criteria is emissions of nonmethane organic compounds (NMOCs) greater than or equal to 23 Mg per year. In the remainder of the Commonwealth, the design capacity applicability criteria and the emissions rate applicability criteria are 2.5 million Mg in capacity and 50 Mg per year or more in emissions, respectively.

Landfills with a design capacity equal to or greater than the design capacity applicability criteria must determine their NMOC emissions. If the NMOC emission rate is less than the emission rate applicability criteria, the landfill must submit an emission report, and recalculate the NMOC emission rate until it is equal to or greater than the emission rate applicability criteria or the landfill is closed. If the calculated NMOC emission rate is equal to or greater than the emission rate applicability criteria, a collection and control system design plan must be submitted, followed by the installation of a collection and control system.

Active collection systems must be designed to handle the maximum expected gas flow rate at a sufficient extraction rate, and be designed to minimize off-site gas migration. Passive collection systems must be installed with liners, then either destroy the collected gas or treat it for sale or use. Operational standards direct how landfills must operate collection systems in order to minimize emissions and operate safely. Test methods and procedures are provided in order for sources to calculate the NMOC emission rate. Once the NMOC emission rate is established, the landfill is classified as Tier 1, 2, or 3, depending on whether the NMOC emission rate is less or greater than the emission rate applicability criteria; if the NMOC concentration is determined using a specific sampling procedure; or if the NMOC mass emission rate is determined using specific equations.

Compliance is determined through specific methods. Monitoring of operations is achieved through the installation of various sampling ports and devices. Reporting and recordkeeping requirements are delineated. Finally, installation of emission collection and control equipment capable of meeting the standards must be accomplished by 30 months after the rule's effective date.

The proposed amendments to the regulation are being made to make the regulation consistent with changes made to 40 CFR Part 60 Subparts Cc and WWW of federal regulations, in order to meet the requirements of § 111(d) of the Clean Air Act.

Substantial Changes Made Since the Proposed Stage

Please briefly and generally summarize any substantial changes made since the proposed action was published. Please provide citations of the sections of the proposed regulation that have been substantially altered since the proposed stage.

1. The requirement to obtain a federal operating permit has been revised to reference 9 VAC 5-80-80 C of the primary operating permit regulation rather than a generic date tied to plan approval or a specific date that is no longer relevant. [9 VAC 5-40-5800 C]
2. The definition of "industrial solid waste" has been revised to better delineate the relationship among the federal law and regulations, and state regulations. [9 VAC 5-5810 C]
3. The definition of "municipal solid waste landfill" has been revised to reference RCRA regulations in addition to the Virginia regulations, and to better delineate the relationship among the federal law and regulations, and state regulations. [9 VAC 5-5810 C]

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency, including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On September 12, 2003, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution", specifically Municipal Solid Waste Landfills (9 VAC Chapter 40, Article 43). The regulation amendments are to be effective on a date as provided in the Administrative Process Act.

Basis

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation adopted. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to adopt the regulation and that it comports with applicable state and/or federal law.

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. Written assurance from the Office of the Attorney General that (i) the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments and that (ii) the proposed regulation amendments comport with the applicable state and/or federal law is available upon request.

Purpose

Please provide a statement explaining the rationale or justification of the regulation as it relates to the health, safety or welfare of citizens.

The purpose of the regulation is to establish emission standards that require the owners of municipal solid waste landfills (MSWLs) to limit emissions of volatile organic compounds (VOCs) and non-methane organic compounds (NMOCs) to a specified level necessary to protect public health and welfare. The purpose of the proposed amendments is to amend the regulation in order to meet the requirements of § 111(d) of the federal Clean Act, and 40 CFR Part 60 Subpart Cc of federal regulations.

Substance

Please identify and explain the new substantial provisions, the substantial changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the changes.

1. General cross-references to "design applicability criteria" and "emission rate applicability criteria" have been replaced with specific criteria throughout the regulation.
2. Specific design capacity criteria have been revised for consistency with 40 CFR Part 60.
3. Revisions have been made to comply with the following regulatory revisions promulgated by EPA: June 16, 1998 (63 FR 32743), February 24, 1999 (64 FR 9258), April 10, 2000 (65 FR 18906), October 17, 2000 (65 FR 61778).
4. Minor revisions for clarity and minor corrections have been made.

Issues

Please provide a statement identifying the issues associated with the regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or amended provisions; and 2) the primary advantages and disadvantages to the agency or the Commonwealth. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1. Public: There are no disadvantages to the public associated with this action. The regulation will be improved by incorporation of EPA's clarifications and corrections. This will result in improved understanding and implementation of the regulation, which improves compliance, and more efficient and effective source operation. Ultimately, this will contribute to the reduction of air pollution and a concurrent improvement in public health and welfare.
2. Department: There are no disadvantages to the Department associated with this action. Improved understanding and implementation of the regulation will result in

improved compliance, which will result in more efficient and effective operation of sources. Additionally, submission of this regulation as part of the § 111(d) plan will enable the Department to implement the program without EPA oversight.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A summary and analysis of the public testimony, along with the basis for the decision of the Board, is attached.

Detail of Changes

Please detail any changes, other than strictly editorial changes, made since the publication of the proposed regulation. This statement should provide a section-by-section description of changes.

1. The requirement to obtain a federal operating permit has been revised to reference 9 VAC 5-80-80 C of the primary operating permit regulation rather than a generic date tied to plan approval or a specific date that is no longer relevant. [9 VAC 5-40-5800 C]
2. The definition of "industrial solid waste" has been revised to better delineate the relationship among the federal law and regulations, and state regulations. [9 VAC 5-5810 C]
3. The definition of "municipal solid waste landfill" has been revised to reference RCRA regulations in addition to the Virginia regulations, and to better delineate the relationship among the federal law and regulations, and state regulations. [9 VAC 5-5810 C]

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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. 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.

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR
REGULATION REVISION B02
CONCERNING

MUNICIPAL SOLID WASTE LANDFILLS
(9 VAC 5 CHAPTER 40)

INTRODUCTION

At the November 2002 meeting, the Board authorized the Department to promulgate for public comment a proposed regulation revision concerning municipal solid waste landfills.

A public hearing was advertised accordingly and held in Richmond on April 9, 2003 and the public comment period closed on April 25, 2003. The proposed regulation amendments subject to the hearing are summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering municipal solid waste landfills. A summary of the amendments follows:

1. General cross-references to "design applicability criteria" and "emission rate applicability criteria" have been replaced with specific criteria throughout the regulation. [9 VAC 5-40-5810 C (definition of "design capacity"), 9 VAC 5-40-5820 B, 9 VAC 5-40-5820 B 2, 9 VAC 5-40-5820 C, 9 VAC 5-40-5820 C 1, 9 VAC 5-40-5820 C 1 b, 9 VAC 5-40-5820 C 1 b (1), 9 VAC 5-40-5820 C 2, 9 VAC 5-40-5820 C 2 b, 9 VAC 5-40-5820 C 2 e (3), 9 VAC 5-40-5855 A, 9 VAC 5-40-5855 B, 9 VAC 5-40-5855 C, 9 VAC 5-40-5855 D, 9 VAC 5-40-5860 B 2, 9 VAC 5-40-5860 B 2 a, 9 VAC 5-40-5860 B 2 b, 9 VAC 5-40-5860 B 3 b, 9 VAC 5-40-5860 B 3 c, 9 VAC 5-40-5860 B 4, 9 VAC 5-40-5860 B 4 a, 9 VAC 5-40-5860 B 4 b, 9 VAC 5-40-5880 C 3, 9 VAC 5-40-5880 D 1 b, 9 VAC 5-40-5880 E, 9 VAC 5-40-5880 E 1, 9 VAC 5-40-5880 E 2, 9 VAC 5-40-5880 G 1 c, 9 VAC 5-40-5890 H]
2. Specific design capacity criteria have been revised for consistency with 40 CFR Part 60. [9 VAC 5-40-5820 A 1 and 2, 9 VAC 5-40-5920 D]
3. Minor revisions for clarity promulgated by EPA on February 24, 1999 have been made. [9 VAC 5-40-5810 C (definition of "modification"), 9 VAC 5-40-5820 B 1, 9 VAC 5-40-5820 C, 9 VAC 5-40-5820 C 1 b (1), 9 VAC 5-40-5824 A 3 b]

4. Minor revisions for clarity promulgated by EPA on April 10, 2000 have been made. [9 VAC 5-40-5860 B 1 b, 9 VAC 5-40-5870 C, 9 VAC 5-40-5870 D 1, 9 VAC 5-40-5880 E, 9 VAC 5-40-5890 D 2]
5. Minor revisions for clarity have been made to address additional issues identified by EPA. [9 VAC 5-40-5810 C (definitions of "closed landfill," "design capacity," "federal operating permit" "household waste," "industrial solid waste," and "landfill"), 9 VAC 5-40-5820 B, 9 VAC 5-40-5820 D, 9 VAC 5-40-5850 G, 9 VAC 5-40-5850 H, 9 VAC 5-40-5855 A, 9 VAC 5-40-5860 A, 9 VAC 5-40-5880 C 2 a, 9 VAC 5-40-5880 C 2 b, 9 VAC 5-40-5880 F, 9 VAC 5-40-5890 D 4]
6. Minor corrections have been made. [9 VAC 5-40-5800 D 1, 9 VAC 5-40-5810 A, 9 VAC 5-40-5810 C (definitions of "CERCLA," "gas management system," "NMOC," and "offsite gas migration"), 9 VAC 5-40-5820 C 2 a (4), 9 VAC 5-40-5820 C 2 c (2) (b), 9 VAC 5-40-5822, 9 VAC 5-40-5850 C 3, 9 VAC 5-40-5850 C 5, 9 VAC 5-40-5850 E, 9 VAC 5-40-5850 E 4, 9 VAC 5-40-5870 F, 9 VAC 5-40-5880 H 5, 9 VAC 5-40-5890 E 1 b, 9 VAC 5-40-5910, 9 VAC 5-40-5920 B]

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Richmond, Virginia on April 9, 2003. No one attended the hearing; one written comment was received during the public comment period. As required by law, notice of this hearing was given to the public on or about February 24, 2003 in the Virginia Register and in seven major newspapers (one in each Air Quality Control Region) throughout the Commonwealth. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the Department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report which is on file at the Department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the Board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The Board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The Board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT:** Federal operating permits.

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: There are apparent conflicts between the Title V permit application due date stipulated in the Virginia landfill regulation (9 VAC 5-40-5800 C), the Commonwealth's approved Title V permit program (9 VAC 5-80-50 et seq.), and the federal § 111(d) landfill plan (64 FR 60689) and the related EG, subpart Cc. Nevertheless, we believe this issue can be resolved if the department concurs with the following interpretation of 9 VAC 5-80-50 et seq.'s requirements.

9 VAC 5-40-5800 C, requires submittal of the Title V permit applications within 90 days after the effective date of the § 111(d) plan approval for affected landfills, which are not otherwise subject to Title V permit requirements. To date EPA has not approved the state plan.

The second application due date is stipulated under the provisions of 9 VAC 5 Chapter 80, Permits for Stationary Sources, Part II, Permit Procedures. 9 VAC 5-80-50 A 2, Applicability, states that an affected source is "Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 [i.e., Federal plan] of the federal Clean Air Act." The cited federal plan is a requirement under § 111 of the Act. Also, 9 VAC 5-80-80 C, Applications, states, "The owner of a stationary source applying for a permit under this article for the first time shall submit an application within 12 months after the source becomes subject to this article, except that stationary sources not deferred under 9 VAC 5-80-50 D shall submit their applications on a schedule to be determined by the department but no later than 12 months following the effective date [March 12, 1998] of approval of this article [Article 1, Federal Operating Permits for Stationary Sources] by the administrator, to include approval for federal delegation purposes [Title V Program approval]. (Emphasis added.)

EPA's interim approval of the Commonwealth's federal operating permit program became effective on March 12, 1998. We do not believe that the emphasized language of the 9 VAC 5-80-80 C exception clause applies to those landfills that are subject to the requirements of 9 VAC 5 Chapter 40 because 12 months after the effective date (March 12, 1999) of approval of the Commonwealth's Federal Operating Permits rule by the administrator [EPA], there was neither an approved state nor promulgated federal plan in place.

The federal plan, promulgated on November 8, 1999, became effective on January 7, 2000. Any landfill with a design capacity greater than the federal plan and related emission guideline capacity thresholds is subject to the VAC operating permits' rule, as provided under 9 VAC 5-80-50 D. Under the landfill rule, 9 VAC 5-40-5880 C, the initial design capacity reports were due on or before June 30, 1999. Therefore, for those landfills that exceeded the emission guideline design capacity thresholds and became subject to the Commonwealth's federal operating permit rules, submittal of the initial federal operating permit application was due on or before June 30, 2000. Assuming this interpretation is correct, the last sentence of 9 VAC 5-40-5800 C of the landfill rule should be revised to remove the conflict between the June 30, 2000 date stipulated by application of 9 VAC 5-80-50 D and the "90 days after the effective date of the 111(d) plan approval for affected landfill" date stipulated by 9 VAC 5-40-5800 C. A suggested revision follows:

"For purposes of submitting a timely application for a federal operating permit, the owner of an MSW landfill subject to this article with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters shall submit an operating permit application no later than June 30, 2000."

Also note that there may exist some landfills that are subject to the federal plan that may have already been required to submit applications by March 12, 1999 because they were major sources due to other federal requirements. In short, it appears that, under the Virginia operating permit rule, each affected landfill was required to have submitted its initial Title V application on or before June 30, 2000, which is slightly more than 9 months before the Federal plan due date of April 6, 2001, and 9 VAC 5-40-5800 C should be modified to reflect this fact. If the department agrees with EPA's interpretation of the Virginia operating permit rule due date for the submittal of Title V permit applications for affected facilities, this issue is resolved for purposes of EPA § 111(d) plan review and approval. In any case, under the federal plan, all affected landfills were required to submit their Title V application on or before April 6, 2001.

RESPONSE: Even if it were legally feasible, Virginia does not regulate retroactively because to do so would be unenforceable. The effective dates for the emission guidelines, NSPS, Virginia regulation, and federal plan have all come and gone; changing the dates in the Virginia regulation would accomplish nothing.

However, we recognize that the provisions of the primary operating permit regulation (Article 1 of 9 VAC 5 Chapter 80) may override the landfill-specific provisions of 9 VAC 5-40-5800 C. In order to clarify this, the text has been revised to reference 9 VAC 5-80-80 C rather than a generic date tied to plan approval or a specific date that is no longer relevant.

2. **SUBJECT:** Applicability criteria.

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: The regulation establishes two separate applicability criteria. Criteria 1 (9 VAC 5-40-5820 A 1) for the Northern Virginia VOC Control area applies to those landfills that have a design capacity greater than or equal to 1.0 million megagrams and 1.0 million cubic meters, and a 23 Mg/yr NMOC emission rate, or greater. Criteria 2 (9 VAC 5-40-5820 A 2) for the remaining geographical area of Virginia applies to those landfills that have a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters, and a 50 Mg/yr NMOC emission rate, or greater.

The applicability design capacity and emission rate thresholds for the Northern Virginia VOC Control area are more stringent than the thresholds in the landfill emission guidelines, and those for the remainder of the geographical area of Virginia. In general, Criteria 1 is an acceptable and approvable provision of the Virginia landfill rule. However, for purposes of the §111(d) plan, and as discussed below, EPA will approve the Virginia plan in a manner that conforms the landfill design capacity threshold to that in subpart Cc. EPA is not requesting a revision of the VAC landfill rule as a result of this comment.

Pursuant to 40 CFR 60.24(g), EPA may approve a state plan with an applicability emission rate standard that is more stringent than the EG subpart Cc limitation. However, EPA Region III, in conjunction with EPA's Office of General Counsel, has concluded that EPA lacks the authority to approve a state plan to the extent that plan purports to apply to facilities outside the scope of the promulgated landfill EG, subpart Cc applicability thresholds. Under subpart Cc an affected MSW landfill must have a capacity of both 2.5 million megagrams and 2.5 million cubic meters, or greater; and as proposed, a NMOC emissions rate of 23 Mg/yr, or greater, is allowable under the cited provision of subpart B. Criteria 1 therefore applies to landfills that are not covered under subpart Cc.

While states, as a matter of state law, may set their design capacity thresholds at whatever level they deem appropriate, EPA can only approve that part of the plan that is consistent with the applicability thresholds of 40 CFR subparts B and Cc. Based on the submitted August 2000 state plan inventory, only one Northern Virginia VOC Control area landfill, Fairfax County, meets the subpart Cc thresholds. As a matter of federal law, EPA will only consider this landfill to be an affected source under the emissions guidelines and federally approved state plan. A second Northern Virginia VOC Control area landfill that reportedly exceeds the state's design capacity threshold, but not the emissions guidelines threshold, will not be an affected source under the EPA-approved Virginia plan. This exclusion makes no material difference with respect to the plan's approvability because the plan covers those facilities required to be covered under the emissions guidelines, subpart Cc, and 40 CFR part 60, subpart B.

The plan narrative needs to concur that, for purposes of the § 111(d) plan only, an affected MSW landfill, located in Northern Virginia VOC Control area, is one that has a design capacity of both 2.5 million megagrams and 2.5 million cubic meters, or greater, and has a NMOC emissions rate of 23 Mg/yr, or greater.

RESPONSE: Region III's assertion that the § 111(d) plan applies only to affected MSW landfills and that an affected MSW landfill is one that has a design capacity of both 2.5 million megagrams and 2.5 million cubic meters, or greater, and has a NMOC emissions rate of 50 Mg/yr, or greater is not consistent with the conceptual design of the federal regulation.

First, the term "affected MSW landfill" exists neither in the applicable regulations relating to the implementation plans found in 40 CFR part 60, nor in those relating to the federal plan in 40 CFR part 62.

Second, the applicability provisions of the federal regulations do not support this interpretation. Region III overlooks the fact that there is a difference between applicability of subpart Cc as a whole, as reflected in 40 CFR 60.32c, and applicability of the emission controls, as reflected in 40 CFR 60.33c. The applicability requirements of 40 CFR 60.32c are limited only by date of construction, reconstruction, or modification; there are no thresholds. The thresholds are contained in 40 CFR 60.33c (which contains the applicability requirements for the emission control requirements) not subpart Cc as a

whole. The application of the state rule as a whole is reflected in the applicability requirements of 9 VAC 5-40-5800, which are limited only by date of construction, reconstruction, or modification. Only the control requirements of 9 VAC 5-40-5820 apply based on design capacity. This tiered applicability concept is also reflected in the corresponding NSPS (40 CFR 60.750 and 752) and the associated federal plan (40 CFR 60.14531 and 14532).

The requested limiting statement for the plan implies that all landfills below the design capacity thresholds in the guidelines would not be subject to the plan and, therefore, would not need to submit an initial design capacity report or an amended design capacity report. This is contrary to the federal regulations. Only the control requirements are based on design capacity, not the applicability of the guidelines as a whole.

However, we have no objections to limiting the applicability of the control requirements of 9 VAC 5-40-5820 to those landfills subject to 40 CFR 60.33c. In fact, we have, on at least two occasions, attempted to include language in the plan narrative that would limit the applicability of the control requirements to reflect the guidelines (draft plan of July 2, 1999 and proposed plan of May 12, 2000). In both instances, Region III would not accept these attempts. In a letter of September 19, 2001 (identifying the specific plan deficiencies that are cause for a disapproval action), Region III said:

Include an affirmative statement that the more stringent design capacity and nonmethane organic compounds (NMOC) emission rate applicability requirements of 9 VAC 5-40-5820 A. 1. and the related MSW Landfill Rule (4-43) provisions for the Northern Virginia Volatile Organic Compound Emissions Control Area are part of the III(d) plan.

Region III now says it, in conjunction with EPA's Office of General Counsel, has concluded that EPA lacks the authority to approve a state plan to the extent that plan purports to apply to facilities (i.e. those subject to the more restrictive control requirements in Northern Virginia) outside the scope of the promulgated landfill EG, subpart Cc applicability thresholds.

We believe the following amendment to the plan narrative is the appropriate solution to this issue since it is consistent with the federal requirements:

For purposes of the 111(d) plan only, the provisions of 9 VAC 5-40-5800 (governing the applicability of the rule) shall be implemented in a manner consistent with 40 CFR 60.32c. That is, they shall apply to each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.

For purposes of the 111(d) plan only, the provisions of 9 VAC 5-40-5820 A 1 (governing the applicability of the control requirements) shall be implemented in a manner consistent with 40 CFR 60.33c. That is, they shall apply to each MSW landfill that (i) has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition; (ii) has a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters; and (iii) has a nonmethane organic compound emission rate of 50 megagrams per year or more.

No change has been made to the regulation as a result of this comment.

3. **SUBJECT:** Definition of "municipal solid waste landfill."

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: The definition of "municipal solid waste landfill" as originally proposed under the Virginia plan included a reference to 9 VAC 20-80-250 (Solid Waste Management Regulations). It was EPA's understanding that the referenced regulation was the Commonwealth's version of RCRA Subtitle D wastes provision § 257.2. That plan definition it appears was consistent with the definition given in the EG and the related new source performance standards (NSPS), 40 CFR 60.751; however, that is not now the case with the amended plan definition. In order for the plan definition to be consistent with the federal definition, it must include a reference to either the "RCRA Subtitle D wastes (§ 257.2 of this title)" provision, or the Commonwealth's equivalent solid waste regulatory provision, 9 VAC 20-80-250, as applicable.

RESPONSE: We are pleased that EPA recognizes the definition as acceptable, although the proposed version had not been amended. In order to meet EPA's concerns about consistency, and to better delineate the relationship among the federal law and regulations, and state regulations, the regulation has been revised to reference the RCRA regulations in addition to the Virginia regulations. The definition of "industrial solid waste" has been similarly revised.

4. **SUBJECT:** Closure reporting.

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: Consistent with EPA landfill regulatory amendments, it appears that the exclusion of the VAC 20-80-250 E is applicable only to 9 VAC 5-40-5820 C 2 e (1), and not 9 VAC 5-40-5880 F. Is this regulatory interpretation correct? If not, the VAC regulatory amendment must be revised to be consistent with the requirement of 60 CFR 60.757(d), which includes a reference 40 CFR 258.60. As originally proposed, the referenced 9 VAC 5-40-5880 F reporting provision required that each affected landfill owner submit a closure report, and such additional information as may be necessary to verify that permanent closure had taken place in accordance with the requirements of 9 VAC 20-80-250 E. That would have been consistent with the federal reporting provision of 60 CFR 60.757(d), assuming 9 VAC 20-80-250 E is equivalent to the requirements of 40 CFR 258.60.

RESPONSE: 9 VAC 5-80-250 E is in fact referenced in 9 VAC 5-40-5880 F; it is also consistent with EPA's regulations. We are not sure, therefore, how EPA came about its conclusions in this comment. Based on later discussion, EPA has acknowledged that the current language in the Virginia regulation is consistent with federal requirements and therefore acceptable.

No change has been made to the regulation as a result of this comment.

5. **SUBJECT:** Upcoming federal rule amendments.

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: On May 23, 2002, EPA proposed (67 FR6476) additional landfill rule amendments. Although the proposed amendments would amend the landfill NSPS, they would also serve to amend the emission guidelines. We hope that the emission guideline amendments will be promulgated within the next few months, and then incorporated into the Virginia regulatory development process that will amend the existing landfill rule. It now appears the amendments will be promulgated during the fall of this year.

RESPONSE: The primary reason this regulatory action was initiated was in order to incorporate EPA revisions to the emission guidelines and NSPS that had transpired after our promulgation of the original rule. In its latest proposal EPA states, "The proposed amendments will not change the basic control requirements of the final rule or the level of health protection it provides, but will improve implementation, compliance, and regulatory flexibility while reducing unnecessary regulatory burden." While clarification of a regulation is always laudable, we note that it is difficult for states to continually expend resources on constant minor regulatory changes. Because state law requires completion of regulations along a certain schedule, it is unlikely, given the schedule under which this regulation is operating, that a federal regulation finalized in the fall of this year will appear in time for incorporation into this regulatory action.

6. **SUBJECT:** §110 State Implementation Plan (SIP)

COMMENTER: U.S. Environmental Protection Agency, Region III

TEXT: With respect to our preliminary review of the revision to the Virginia State Implementation Plan (SIP), the scope of our review and comments only addresses the applicability and enforcement of the submitted landfill rule (Rule 4-43). We suggest that the SIP proposal address comments 3 and 5.

RESPONSE: See responses to comments 3 and 5.