

**TENTATIVE AGENDA/MINI BOOK  
STATE AIR POLLUTION CONTROL BOARD MEETING**

**WEDNESDAY, NOVEMBER 6, 2002  
SHERATON  
I-64 & BROAD STREETS  
RICHMOND, VIRGINIA**

**Convene - 10:00 A.M.**

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**II. Final Regulations**

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Chesapeake Bay Watershed 6

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**Adjourn**

**NOTE:** The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

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**SUBJECT:** Municipal Solid Waste Landfills (Article 43 of 9 VAC 5 Chapter 40, Revision B02) - Regulation Development Report and Request to Publish Proposal for Public Comment

**SPEAKER:** Karen G. Sabasteanski  
Policy Analyst, Office of Air Regulatory Development  
Department of Environmental Quality

**INTRODUCTION:** Section 111(d) of the Clean Air Act requires EPA to promulgate guidelines for states to use in developing regulations to control pollutants from existing municipal solid waste landfills. The primary components of emissions from municipal solid waste landfills are nonmethane organic compounds (including VOCs, hazardous air pollutants, and odorous compounds), and methane, both of which are capable of causing serious adverse health and welfare effects. The specific emissions guidelines for existing landfills (which commenced construction, reconstruction or modification before May 30, 1991) were promulgated in subpart Cc of Part 60 of the Code of Federal Regulations.

On January 7, 1999, the State Air Pollution Control Board approved a final regulation implementing the Part 60 requirements, 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 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.

The Department is requesting approval of a proposal for public comment that meets federal statutory and regulatory requirements. Approval of the proposal will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

**PUBLIC PARTICIPATION ACTIVITIES:** 1. To solicit comment from the public on the notice of intended regulatory action, the Department issued a notice that provided for receiving comment during a comment period and at a public meeting. The summary and analysis of public input is included in the attached agency background document.

2. The notice of intended regulatory action included a statement inviting comment on whether the Department should use an ad hoc advisory group to assist the Department in the development of the proposal. Since the department did not receive written responses from at least five persons during the associated comment period indicating that the department should use an ad hoc advisory group, the department did not use an ad hoc advisory group.

### **SUMMARY OF DRAFT REGULATION AMENDMENTS**

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," and "industrial solid waste"), 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 5-40-5870 F, 9 VAC 5-40-5890 E 1 b, 9 VAC 5-40-5910, 9 VAC 5-40-5920 B]

## **DEPARTMENT RECOMMENDATION**

It is recommended that the Board authorize the Department to promulgate the attached proposal for public comment.

**SUBJECT:** Visible Emissions and Fugitive Dust/Emissions (Rev. C00) - Public Participation Report and Request for Board Action

**SPEAKER:** Karen G. Sabasteanski  
Policy Analyst, Office of Air Regulatory Development  
Department of Environmental Quality

**INTRODUCTION:** Currently, the regulations concerning visible emissions and fugitive dust/emissions (Rules 4-1 and 5-1) conflict with Virginia statutory law: 9 VAC 5-40-90 2 and 9 VAC 5-50-90 2 allow oil to be applied to dirt roads, material stockpiles, and other surfaces which may create airborne dust. This violates § 62.1-44.34:18 of the Code of Virginia, which prohibits the discharge of oil upon land.

In addition to revising the regulations to comply with the Code, we also wish to make some minor editorial changes, primarily for consistency with the Regulations for the Control and Abatement of Air Pollution.

Under the provisions of § 2.2-4006 A 4 a of the Administrative Process Act, we request that the Board adopt the amendments as final regulations because they are necessary to conform to Virginia statutory law (§ 62.1-44.34:18 of the Code of Virginia).

The Department is requesting approval of draft final regulation amendments that meet state statutory and regulatory requirements. Approval of the amendments will ensure that

the Commonwealth will be able to meet its state legal obligations.

**PUBLIC PARTICIPATION REQUIREMENTS:** Because the state regulations are necessary to conform to Virginia statutory law, the state regulations are exempt from all state public participation requirements under the provisions of § 2.2-4006 A 4 a of the Administrative Process Act. However, an agency claiming an exemption must provide to the Registrar of Regulations (i) a statement citing the specific Virginia Code section referencing the exemption being claimed and (ii) confirmation from the Office of the Attorney General. In order to meet federal requirements for public participation, the public participation activities described below were conducted.

**PUBLIC PARTICIPATION ACTIVITIES:** To solicit comment from the public on the proposed regulation amendments, the Department issued a notice that provided for receiving comment during a comment period and at a public hearing. There were no hearing attendees, and no public testimony or comment was received.

**SUMMARY OF PROPOSED AMENDMENTS:** Below is a brief summary of the substantive amendments that were originally proposed for public comment.

1. The word "oil" has been struck from the list of materials used to suppress dust on dirt roads, material stockpiles, and other surfaces which may create airborne dust. [9 VAC 5-40-90 2 and 9 VAC 5-50-90 2]
2. Minor corrections for consistency have been made. [9 VAC 5-40-120 A, B, and C; 9 VAC 5-50-120 A, B, and C]

**SUMMARY OF CHANGES TO PROPOSAL:** No changes are recommended to the original proposal.

### **DEPARTMENT RECOMMENDATION**

1. It is recommended that the Board adopt the attached proposal, with an effective date of February 1, 2003.
2. In adopting this proposal, the Board should affirm 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.
3. It is recommended that the proposal, if adopted, be submitted to EPA as a State Implementation Plan Revision.

**SUBJECT:** Federal Documents Incorporated by Reference (9 VAC 5 Chapter 20, Rev. I02) - Request for Board Action

**SPEAKER:** Karen G. Sabasteanski  
Policy Analyst, Office of Air Regulatory Development  
Department of Environmental Quality

**INTRODUCTION:** The purpose of the proposed action is to amend the regulations to incorporate newly promulgated federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and national emission standards for hazardous air pollutants for source categories (Maximum

Achievable Control Technology, or MACT), Rules 5-5, 6-1, and Rule 6-2, respectively, of the agency's regulations.

The Board must incorporate newly promulgated NSPS, NESHAP, and MACT in order for the Department to obtain authority from the U.S. Environmental Protection Agency (EPA) to enforce these standards. If the Board does not do so, authority to enforce the standards remains with the federal government. Further, the standards reflect the most current technical research on the subjects addressed by the standards. To continue to follow the old standards would mean relying on inaccurate and outdated information.

The Department is requesting approval of draft final regulation amendments that meet federal statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

**SUMMARY OF AMENDMENTS TO REGULATION:** The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2002. Below is a list of the new standards the Department is recommending be incorporated into the state regulations by reference:

1. No new NSPS are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
2. No new NESHAP are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
3. Incorporation of 7 national emission standards for hazardous air pollutants for source categories (MACT) as follows:
  - a. Subpart VVVV - Boat Manufacturing (40 CFR 63.5680 through 63.5779).
  - b. Subpart TTTT - Leather Finishing Operations (40 CFR 63.5280 through 63.5460).
  - c. Subpart HHHH - Wet-formed Fiberglass Mat Production (40 CFR 63.2980 through 63.3079).
  - d. Subpart UUU - Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 CFR 63.1560 through 40 CFR 63.1579).
  - e. Subpart SSSS - Surface Coating of Metal Coil (40 CFR 63.5080 through 63.5209)
  - f. Subpart UUUU - Cellulose Products Manufacturing (40 CFR 63.5480 through 63.5610).
  - g. Subpart QQQ - Primary Copper Smelting (40 CFR 63.1440 through 63.1459).

**PUBLIC PARTICIPATION REQUIREMENTS:** Because the state regulations are essentially the same as the federal, the state regulations are exempt from all state public participation requirements under the provisions of § 2.2-4006 A 4 c of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the state public participation requirements and must notify the agency accordingly. This notification and the notice of adoption will subsequently be published in the Virginia Register. Because the regulations will not be submitted as a SIP revision, they are not subject to federal public participation requirements either. Therefore, there was no public hearing or public comment period. In adopting the regulation amendments under the provisions of § 2.2-4006, the Board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

### **DEPARTMENT RECOMMENDATION**

1. It is recommended that the Board adopt the attached proposal, with an effective date of February 1, 2003.
2. In adopting this proposal, the Board should affirm 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.
3. It is recommended that the proposal, if adopted, be submitted to EPA in order to retain delegation of authority to enforce the EPA regulations.