

# *Virginia Regulatory Town Hall*

## Final Regulation 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>	9 VAC 5-40-6000 et seq.
<b>Secondary Action(s):</b>	9 VAC 5-20-21, 9 VAC 5-20-202
<b>Action Title:</b>	Hospital/medical/infectious Waste Incinerators, Rev. S97
<b>Date:</b>	March 30, 2000

Please refer to the Administrative Process Act (§ 9-6.14:9.1 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*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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.*

The proposed regulation applies to hospital/medical/infectious waste incinerators (HMIWIs), and includes emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. Special HMIWI operator training and qualification requirements are included in order to assure proper facility operation and compliance with the emissions limitations; sources are also required to prepare overall waste management plans. Compliance, emissions testing, and monitoring requirements are delineated, as well as recordkeeping and reporting of such test results. Finally, specific compliance schedules are provided.

### 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. 9 VAC 5-40-6000 D has been rewritten to clarify that the only facilities exempted from the regulation are those subject to 9 VAC 5 Chapter 40, Article 46 (9 VAC 5-40-7950 et seq.).
2. The definitions of "body fluids" and "medical/infectious waste" in 9 VAC 5-40-6010 C have been revised to be consistent with Virginia Waste Management Board's definitions.
3. The minimum frequency for data measurement and data recording with regard to the maximum charge rate has been corrected from "continuous" and "once per hour" to "once per charge" (Table 4-44B).

### 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 March 30, 2000, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, Hospital/medical/infectious Waste Incinerators (9 VAC Chapter 40, Article 44). The regulation amendments are to be effective on July 1, 2000.

### 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 will require the owners of hospital/medical/infectious waste incinerators (HMIWIs) to limit emissions of organics (such as dioxins/furans), metals (such as particulate matter), and acid gases (such as sulfur dioxide and hydrogen chloride) to a specified level necessary to protect public health and welfare. The regulation is being proposed to meet the requirements of Section 111(d) and Section 129 of the federal Clean Air Act, and 40 CFR Part 60 Subpart Ec 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. The regulation identifies the sources and geographic areas to which the regulation applies, as well as exemptions [9 VAC 5-40-6000].
2. Terms unique to the article are defined [9 VAC 5-40-6010].
3. Emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury are established [9 VAC 5-40-6020 through 9 VAC 5-40-6100].
4. Cross references to existing state requirements for visible emissions, fugitive dust/emissions, odor, and toxic pollutants are provided [9 VAC 5-40-6110 through 9 VAC 5-40-6140].
5. HMIWI operator training and qualification requirements are specified [9 VAC 5-40-6150].
6. Waste management plans are required. The regulation includes required elements of such plans, which are intended for sources to separate certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from the incinerated waste [9 VAC 5-40-6160].
7. The regulation requires that sources achieve and maintain compliance with the emission limitations and work practices, along with requirements for inspections; compliance, emissions testing, and monitoring; recordkeeping and reporting; and compliance schedules [9 VAC 5-40-6170 through 9 VAC 5-40-6200].
8. Cross references to existing state requirements for compliance, emissions testing, and monitoring; recordkeeping and reporting; registration, facility and control equipment maintenance or malfunction; and permits are provided [9 VAC 5-40-6180; 9 VAC 5-40-6190; and 9 VAC 5-40-6210 through 9 VAC 5-40-6230].

## 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: A limited segment of the general public may experience an economic disadvantage in increased fees where affected HMIWIs must install pollution control systems. However, the general public will experience a number of health and welfare advantages. HMIWI emissions cause a number of serious health effects, including cancer. Therefore, reduction of these emissions will reduce disease and its related costs. Reduction of HMIWI emissions will also reduce the risk of damage to vegetation and property, which will in turn enhance property values, tax revenues, payroll, and other socioeconomic components. Generally, the wide availability of alternatives to incineration will limit disadvantages, and may in fact provide a benefit in the form of reduced costs.

A limited number of HMIWIs may experience an economic disadvantage if they must install pollution control systems. HMIWIs as well as industry in general will also benefit from the rule: overall ozone reductions may lessen the risk of current attainment areas being designated nonattainment, and current nonattainment areas being reclassified to a more serious classification.

2. Department: The Department may need to perform additional inspection, monitoring and recordkeeping to ensure that the emissions limitations are being met, which will require increased expenditure in personnel and equipment. However, the increase in data to be gathered and analyzed will benefit the Department by enhancing its ability to make both short- and long-term planning decisions. Furthermore, these sources have been, for the most part, permitted, inspected, and monitored for many years, therefore, little new additional new effort will be expended. It is anticipated that more sources will seek alternatives to incineration, thereby reducing the number of sources the department will need to inspect and monitor.

## 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. 9 VAC 5-40-6000 D has been rewritten to clarify that the only facilities exempted from the regulation are those subject to 9 VAC 5 Chapter 40, Article 46 (9 VAC 5-40-7950 et seq.).

2. The definitions of "body fluids" and "medical/infectious waste" in 9 VAC 5-40-6010 C have been revised to be consistent with Virginia Waste Management Board's definitions.

3. A new subsection A has been added to 9 VAC 5-40-6180 (Compliance, emissions testing, and monitoring) which references the provisions of 9 VAC 5-40-20 (Compliance), 9 VAC 5-40-30 (Emission testing), and 9 VAC 5-40-40 (Monitoring).

4. The minimum frequency for data measurement and data recording with regard to the maximum charge rate has been corrected from "continuous" and "once per hour" to "once per charge" (Table 4-44B).

5. A new subsection A has been added to 9 VAC 5-40-6190 (Recordkeeping and reporting) which references the provisions of 9 VAC 5-40-50 (Notification, records and reporting).

6. The list of metropolitan statistical areas (9 VAC 5-20-202) has been corrected to include Fauquier County.

### 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 fertility disorders, fetal mutation and deformity, chronic and acute illness, premature death, and property damage.

**COMMONWEALTH OF VIRGINIA  
STATE AIR POLLUTION CONTROL BOARD**

**SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR  
REGULATION REVISION S97  
CONCERNING**

**HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS  
(9 VAC 5 CHAPTERS 20 AND 40)**

**INTRODUCTION**

At the May 1999 meeting, the Board authorized the Department to promulgate for public comment a proposed regulation concerning hospital/medical/infectious waste incinerators (HMIWIs).

A public hearing was advertised accordingly and held in Richmond on January 4, 2000 and the public comment period closed on January 24, 2000. The proposed regulation subject to the hearing is 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 concerns hospital/medical/infectious waste incinerators. A summary of the regulation follows:

1. The regulation identifies the sources and geographic areas to which the regulation applies, as well as exemptions [9 VAC 5-40-6000].
2. Terms unique to the article are defined [9 VAC 5-40-6010].
3. Emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury are established [9 VAC 5-40-6020 through 9 VAC 5-40-6100].
4. Cross references to existing state requirements for visible emissions, fugitive dust/emissions, odor, and toxic pollutants are provided [9 VAC 5-40-6110 through 9 VAC 5-40-6140].
5. HMIWI operator training and qualification requirements are specified [9 VAC 5-40-6150].

6. Waste management plans are required. The regulation includes required elements of such plans, which are intended for sources to separate certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from the incinerated waste [9 VAC 5-40-6160].

7. The regulation requires that sources achieve and maintain compliance with the emission limitations and work practices, along with requirements for inspections; compliance, emissions testing, and monitoring; recordkeeping and reporting; and compliance schedules [9 VAC 5-40-6170 through 9 VAC 5-40-6200].

8. Cross references to existing state requirements for registration, facility and control equipment maintenance or malfunction; and permits are provided [9 VAC 5-40-6210 through 9 VAC 5-40-6230].

### **SUMMARY OF PUBLIC PARTICIPATION PROCESS**

A public hearing was held in Richmond, Virginia on January 4, 2000. Three persons attended the hearing, one of whom offered oral and written testimony; one additional written comment was also received during the public comment period. As required by law, notice of this hearing was given to the public on or about November 22, 1999 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:** Title V applicability.

**COMMENTER:** American Waste Industries

**TEXT:** 9 VAC 5-40-6130 and 9 VAC 5-40-6140 contain emissions limits for odor and for toxic pollutants. These parameters are not regulated under the federal rule and are not part of the federally approved state

implementation plan (SIP). Therefore, under the current regulatory scheme, these parameters are not federally enforceable applicable requirements (FEARs).

In our earlier discussions, you indicated that Virginia intended to identify these two provisions as state-only conditions when this regulation was forwarded to EPA for approval into the SIP. Our experience indicates that this may be insufficient to prevent these conditions becoming a FEAR under the state's operating permit program (Title V). Conditions and requirements from regulations can move into federal operating permits and become federally enforceable with unintended consequences.

The regulations these sections reference, Rules 4-2 and 4-3, already apply to HMIWIs regulated under the proposed rule. The subject sections add nothing but an opportunity for confusion to the regulatory framework. We strongly suggest that these two sections be omitted from this rule.

**RESPONSE:** These provisions are included in the regulation because it is important that sources not overlook these state requirements. While the absence of a cross reference would not render the regulations not applicable, a policy decision has been made to consistently include them in all existing source regulations.

Note that this regulation is being promulgated in fulfillment of requirements of section 111(d) of the Clean Air Act (the section regarding designated pollutants), not section 110 (the section that requires states to develop SIPs for the control of criteria pollutants). Thus, although there is the slight possibility that Virginia may elect to submit this regulation as part of a section 110 SIP, the regulation must be submitted to EPA as part of a section 111(d) plan.

When a section 110 SIP or section 111(d) plan is submitted, provisions that are state regulations and not federally enforceable--including 9 VAC 5-40-130 et seq. and 9 VAC 5-40-160 et seq.--are identified and explicitly excluded from the plan(s). Conditions and requirements from regulations that are not federally enforceable are prohibited by the Title V regulation from being placed in a Title V permit. On the other hand, terms and conditions in certain new source review permits that are derived from state-only requirements such as Rule 5-2 and Rule 5-3 are federally enforceable prior to their inclusion in a Title V permit, and must be included in the Title V permit. Because the Department is going to identify 9 VAC 5-40-130 et seq. and 9 VAC 5-40-160 et seq. as being state-only enforceable when the section 111(d) plan is submitted, there is no possibility that they can be included in a Title V permit as federally enforceable.

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

2. **SUBJECT**: Definition of "owner."

**COMMENTER**: U.S. Environmental Protection Agency

**TEXT**: 40 CFR 60.31e states that "terms used but not defined in this subpart have the meaning given them in the Clean Air Act and in Subparts A, B, and Ec . . . ." 9 VAC 5-40-6010 B contains a similar statement; it states, ". . . all terms not defined here shall have the meaning given them in 9 VAC 5 chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

However, the regulation matrix indicates that 9 VAC 5-40-6010 B is "not applicable." If this is the case, the wording in the proposed regulation must be revised to include a requirement that both the owner and operator of the facility are responsible for meeting all of the requirements of the regulation.

**RESPONSE**: As discussed with EPA both verbally and in writing on several occasions: i) the matrix's sole function is to serve as a table of contents for assisting staff in navigating through the regulation and is not intended to be part of the regulations or the 111(d) plan (the term "not applicable" in the context of the matrix is to act strictly as a place holder); and ii) the definition of "owner" in 9 VAC 5-10-10 includes any operator of an affected facility, even if the owner and operator are separate entities.

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

3. **SUBJECT**: Definition of "existing facility."

**COMMENTER**: U.S. Environmental Protection Agency

**TEXT**: A definition for "existing facility" is missing. This is important when considering that the term "existing HMIWI" is used in the applicability exemption clause of 9 VAC 5-40-6000 E. A definition must be provided for either "existing facility" or "existing HMIWI."

**RESPONSE**: The provisions in the state regulations that define existing facilities are found in 9 VAC 5 Chapter 10. There is no need, therefore, to define "existing facility" in each and every individual source-specific rule. In the sense of an existing facility being an existing HMIWI to which the provisions of the regulation apply, affected existing incinerators are defined in 9 VAC 5-40-6000, applicability. This description of an affected (and therefore existing) source is derived word-for-word from the EPA regulation.

Note that the term used in the emissions guidelines and thence in the this proposal is not "existing facility," it is "existing HMIWI"; no separate definition for either is provided in the emissions guidelines. The only existing EPA definition that might be germane to this particular regulation is the definition of "existing facility" found in 40 CFR 60.2. However, this definition is clearly inappropriate for section 111(d) plans, since it refers to the construction or modification of a facility commencing before the date the applicable standard was proposed, and is clearly tied to the NSPS program as prescribed in section 111(b)(1)(B) of the Clean Air Act. Emissions guidelines are not promulgated as standards of performance.

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

4. **SUBJECT:** Definition of "federal operating permit."

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** The term "federal operating permit" references two regulations: 9 VAC 5-80-50 et seq., and 9 VAC 5-80-360 et seq. The first refers to Title V permit requirements, and the second relates to Acid Rain permit requirements. Please explain the need to reference acid rain permit requirements.

**RESPONSE:** This is Virginia's generic definition of a "federal operating permit," which covers both major stationary sources and acid rain sources subject to the Title V program. This is the standard definition used whenever a federal operating permit is referenced; see Virginia's previous submittals to EPA concerning landfills and municipal waste combustors, for example. No special tailoring of this definition is needed.

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

5. **SUBJECT:** Standard Metropolitan Statistical Areas.

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** No definition is provided for Standard Metropolitan Statistical Areas as given in 40 CFR 60.31e. The emissions guidelines definition references OMB Bulletin No. 93-17. The 9 VAC 5-20-202 listing of Metropolitan Statistical Areas is not consistent with OMB Bulletin No. 93-17 in that Fauquier County, National Capitol MSA is excluded. This must be corrected to avoid possible confusion with owners of small HMIWIs who may believe that their facility should be classified as "rural" and thus subject to less restrictive emission limitations.

**RESPONSE:** Metropolitan Statistical Areas (note that MSAs are no longer referred to by OMB as "standard") are generally defined in 9 VAC 5-10-20; the full list of MSAs is provided in 9 VAC 5-20-202. This is done rather than incorporate the OMB circular by reference, thus providing sources with more useful information, and eliminating the necessity of revising the technical documents incorporated by reference list whenever any MSA change transpires. Note that Virginia's list of MSAs is based on OMB Bulletin 98-06, which is more current than OMB 93-17.

The exclusion of Fauquier County was an oversight, and the proposal will be revised accordingly.

6. **SUBJECT:** Applicability.

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** 9 VAC 5-40-6000 B states that the provisions of Article 44 apply throughout the Commonwealth. However, the matrix submitted along with the regulation indicates that this provision is "not applicable."

**RESPONSE:** As discussed in the response to comment 2, EPA has been notified repeatedly that the matrix is not part of the regulation.

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

7. **SUBJECT:** Applicability.

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** 9 VAC 5-40-6000 D states, "The provisions of this article do not apply to affected facilities subject to other emission standards in this part, including the standards in 9 VAC 5 Chapter 40, Article 46 (9 VAC 5-40-7950 et seq.)." The matrix states that this provision is "not applicable." Nevertheless, 9 VAC 5-40-6000 D appears to negate the applicability of the regulation as a whole for those HMIWIs with an existing VAC emission standard. For example, if an affected large HMIWI is now subject to a less stringent VAC mass emission limitation, the provisions of 9 VAC 5-40-6000 D appear to negate the requirements of Article 44 and therefore the emissions guidelines.

The 111(d) plan must make it clear that the emissions guidelines requirements as implemented by Article 44 supersede any other related VAC requirement, unless EPA has determined that the other VAC requirement is "at least as protective" as the emissions guidelines. This is a statutory requirement under section 129(b)(2) of the Clean Air Act.

**RESPONSE:** As discussed in the response to comment 2, EPA has been notified repeatedly that the matrix is not part of the regulation. No changes will be made to the proposal as a result of comments related to non-regulatory documents.

However, it is agreed that the current proposed regulatory language is confusing. It was originally intended to exempt incinerators subject to section 111(d) regulations/emissions guidelines such as municipal waste combustors (hence the reference to 9 VAC 5-40-7950 et seq., the municipal waste combustor regulation). EPA's regulations allow certain types of incinerators to burn, depending on certain limitations, other types of waste; for example, MWCs may burn certain amounts of medical waste without being subject to the medical waste incinerator regulations. The way the regulation is written, however, one could interpret it to mean that no chapter 40 regulations applied. The regulation has been rewritten to clarify that the only facilities exempted from the regulation are those subject to 9 VAC 5 Chapter 40, Article 46 (9 VAC 5-40-7950 et seq.).

8. **SUBJECT:** Operator training schedule.

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** 9 VAC 5-40-6150 K requires that the initial operator training be performed within one year after the effective date of the regulation. This is acceptable provided the date is within one year of EPA approval of the state plan, and is consistent with the Federal Plan (FP) compliance schedule (see 64 FR 36435).

**RESPONSE:** While it is hoped that EPA's review and approval of section 111(d) plans will be expeditious, it cannot be assumed that EPA will approve any of Virginia's section 111(d) plans any time in the near future. It is important, therefore, that the training schedule be tied to a relatively reliable date. The regulation is proceeding according to schedule, and, barring any unforeseen difficulties, will be effective prior to submittal to EPA. It is impossible to forecast when EPA will review and finalize the plan of which the regulation is part.

Regardless of the final provisions of the state plan or the FP, the more stringent provisions take precedence.

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

9. **SUBJECT:** Inspection schedule.

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** The time frame in 9 VAC 5-40-6170 A for completing the initial inspection is acceptable, provided the date is within one year of EPA approval of the state plan and is consistent with the FP compliance schedule.

**RESPONSE:** See response to comment 8.

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

10. **SUBJECT:** Performance testing.

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** 9 VAC 5-40-6180 B fails to include or reference applicable requirements of 40 CFR 60.8(b) through (f). These provisions (referenced at 40 CFR 60.37a(a) and 40 CFR 60.56c(b)) stipulate important test protocol requirements that are applicable to both new and existing sources.

**RESPONSE:** The provisions of 40 CFR 60.8 cover two aspects of the performance test: (i) timing (40 CFR 60.8(a)) and (ii) procedural issues (40 CFR 60.8(b) through (f)). 40 CFR 60.56c(b) references 40 CFR 60.8, not 40 CFR 60.8(a) or any other subsections. One could assume, therefore, that the state regulation should include 40 CFR 60.8(a) through (f) inclusively. However, it would seem reasonable to assume that the timing elements of 40 CFR 60.8(a) do not belong in the state regulation because they obviously apply to new sources and cannot be implemented by existing sources. The procedural elements of 40 CFR 60.8(b) through (f), however, could reasonably be applied to existing sources.

The provisions of 40 CFR 60.8 that can be applied to existing sources are being included elsewhere in Virginia's regulations: a proposal (regulation revision D97) is currently underway to add language from 40 CFR 60.8(b) through (f) in Chapter 40's Special Provisions (specifically, at 9 VAC 5-40-30); it is anticipated that this proposal will be finalized by the board at about the same time as the HMIWI proposal. Inclusion of these generic provisions in a stand-alone, general rule will obviate the necessity of including them in each and every section 111(d)-related regulation. The proposal has been revised to specifically reference these emissions testing provisions; 9 VAC 5-40-30 is now referenced in the proposal at 9 VAC 5-40-6180 A 2.

11. **SUBJECT:** Performance testing.

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** 9 VAC 5-40-6180 C does not include or reference applicable requirements of 40 CFR 60.8.

**RESPONSE:** 9 VAC 5-40-6180 C relates to the timing of the test--annually; 40 CFR 60.8(a) relates to the timing for tests performed after the facility commences initial startup--clearly not possible with existing sources. As discussed in the response to comment 10, 40 CFR 60.8(a) clearly cannot be used to apply to the timing aspect of performance testing with regard to existing sources.

Also keep in mind that 9 VAC 5-40-6180 C was derived from 40 CFR 60.56c(c) of the NSPS regulation, which was written to apply only to new sources. If EPA wishes to apply the testing--not timing--requirements of 40 CFR 60.8 to both new and existing sources, it would be far less confusing for these requirements to be included as existing source requirements separate from new source requirements.

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

12. **SUBJECT:** Performance testing.

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** 9 VAC 5-40-6180 D 2 does not include or reference applicable requirements of 40 CFR 60.8.

**RESPONSE:** See response to comment 10.

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

13. **SUBJECT:** Performance testing.

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** In 9 VAC 5-40-6180 I, replace "board" with "EPA Administrator." EPA retains its authority to review and approve alternate operating parameters.

**RESPONSE:** The Commonwealth disagrees with EPA's position that a section 111(d) program should be operated similar to a delegated program. This position is not supported by the Clean Air Act, by EPA regulation, or by any written EPA policy. Should EPA officially institute this approach, then it will need to formally delegate back to Virginia the authority to implement this regulation. In the absence of such delegated authority, if Virginia were to implement this comment and substitute "administrator" for "board," Virginia would not have the power to enforce

the regulation until such time as EPA delegated the authority back to Virginia and Virginia then changed its regulation by substituting "board" for "administrator." This process would take several years. In the meantime, unless this scenario transpires, Virginia cannot assert that it has the legal authority to enforce the regulation as required by 40 CFR 60.26(a)(2).

Finally, note that in true delegated programs (NSPS, NESHAP, and MACT), the Commonwealth has been replacing "administrator" with "board" without adverse comment from EPA. If this was not done, then the board would not have the legal authority to enforce the regulations it adopts to implement the delegated program.

Virginia recognizes that EPA must have a cooperative role in approving alternative operating parameters; the updated Special Provisions of Chapter 40 (see 9 VAC 5-40-20 A 2 of proposed regulation revision D97) states, "Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator."

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

14. **SUBJECT**: Performance testing.

**COMMENTER**: U.S. Environmental Protection Agency

**TEXT**: 9 VAC 5-40-6180 K 3 does not include or reference applicable requirements of 40 CFR 60.8.

**RESPONSE**: See response to comment 10.

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

15. **SUBJECT**: Data measurement and recording.

**COMMENTER**: U.S. Environmental Protection Agency

**TEXT**: Table 4-44B indicates, as required by the emissions guidelines, that data measurement should be done "continuously," and data recording should be "once per hour" for monitoring of maximum charge rate. This is incorrect; the proposed FP corrects the data measuring and recording to be done "once per charge of waste." You may wish to revise the table to reflect this correction.

**RESPONSE**: This comment is acceptable, and the proposal has been revised accordingly. However, it is done on the assumption that EPA will not change this requirement in the final FP.

16. **SUBJECT**: Method modification.

**COMMENTER**: U.S. Environmental Protection Agency

**TEXT**: EPA has not delegated to states the authority to modify source test and compliance methods. This determination is consistent with 40 CFR 60.24(a)(2), which requires a demonstration satisfactory to the EPA Administrator for use of alternative and equivalent methods (defined at 40 CFR 60.2) for determining compliance. Accordingly, the proposal must be consistent with the fact that the authority for test and monitoring methods is retained by the Administrator and not transferred to the board. This is explained in detail in our March 19, 1999 to your office on this issue.

**RESPONSE**: See response to comment 13. Note that EPA's letter on this issue references written policy regarding section 111 New Source Performance Standards and section 112 MACT standards; no written EPA policy regarding section 111(d) sources exists.

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

17. **SUBJECT**: Title V program.

**COMMENTER**: U.S. Environmental Protection Agency

**TEXT**: Does the reference to 9 VAC 5-40-6000 F in 9 VAC 5-40-6190 C and 9 VAC 5-40-6190 F 2 relate to the EPA interim approved Title V program?

**RESPONSE**: Yes, as discussed in the response to comment 4, 9 VAC 5-40-6000 F states that affected facilities must operate pursuant to a federal operating permit. "Federal operating permit" is later defined as a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80--that is, a permit issued under Virginia's Title V permit program. The only Title V permit program that the Commonwealth can administer or require compliance with is that established by the Commonwealth's regulations.

Yes, Virginia's Title V permit program is still under interim EPA approval. However, the relative approval status of the Title V permit program is irrelevant in the context of this proposal.

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

18. **SUBJECT**: Compliance times.

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** 40 CFR 60.39e(d) allows sources to petition the state for extensions beyond the compliance times in the EPA-approved state plan. It is important to note that the purpose of this provision is to allow states a means of temporary relief after EPA approval of the section 111(d) plan to those unique facilities which are planning to shut down and have no waste disposal options other than on-site incineration.

**RESPONSE:** As discussed in the response to comment 8, the regulation should not contain any dates tied to the eventual EPA approval of the section 111(d) of which this regulation is a component. The Commonwealth does recognize the need for accommodating sources in the position of requiring additional compliance time; in this event, a variance can be issued. Regardless of when the plan is approved, sources must still comply with whatever requirements of the state plan and the FP are the most stringent.

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

19. **SUBJECT:** Federal Implementation Plan

**COMMENTER:** U.S. Environmental Protection Agency

**TEXT:** On July 6, 1999, EPA published a proposed FP (64 FR 36426) to implement the emissions guidelines requirements. The FP, when promulgated, will apply to any existing HMIWI which is not covered by an approved and effective state plan. When EPA approves the Virginia plan, the FP will be rescinded and no longer apply to those HMIWIs covered by the Virginia plan. However, should the Virginia plan contain a less stringent compliance schedule than the FP, the FP compliance schedule will most likely apply.

**RESPONSE:** It is understood that the state plan must be at least as stringent as the federal in all respects, not just the compliance schedule. The plan, like the regulation, will follow all federal requirements as closely as possible.

No change was made to the proposal as a result of this comment.