DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. 01N–0284]

Import Tolerances; Extension of Comment Period; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting an extension of comment period for an advance notice of proposed rulemaking (ANPRM) that appeared in the **Federal Register** of December 7, 2001 (66 FR 63519). The document gave notice that FDA is extending the comment period for the ANPRM that appeared in the **Federal Register** of August 10, 2001 (66 FR 42167), concerning regulation for establishing import drug residue tolerances for imported food products of animal origin for drugs that are used in other countries, but that are unapproved new animal drugs in the United States. The document was published with an inadvertent error. This document corrects that error.

DATES: The extension of the comment period to March 11, 2002, and this correction were effective on December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Doris B. Tucker, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–30331, appearing on page 63519 in the **Federal Register** of December 7, 2001, the following correction is made:

1. On page 63519, in the second column under the heading **ADDRESSES**, the mail code for the Dockets Management Branch is corrected to read ''HFA–305.''

Dated: December 19, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–31877 Filed 12–27–01; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AZ,CA,HI,NV–066–MSWb; FRL–7123–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Negative Declarations; Municipal Waste Combustion; Arizona; California; Hawaii; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the small Municipal Waste Combustion (MWC) units section 111(d) plan negative declarations submitted by the States of Arizona, California, Hawaii, and Nevada. These negative declarations certify that small MWC units subject to the requirements of sections 111(d) and 129 of the Clean Air Act do not exist in these States.

In the Rules section of this **Federal Register**, EPA is approving each State's negative declaration as a direct final rule without prior proposal because the Agency views this as noncontroversial and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rulemaking based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 28, 2002.

ADDRESSES: Written comments should be addressed to Andrew Steckel, U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the documents relevant to this proposed rule are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mae Wang, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street (AIR–4), San Francisco, CA 94105–3901, Telephone: (415) 947–4124.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 et seq.

Dated: December 6, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 01–31944 Filed 12–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRN–7122–4]

RIN 2090–AA30

Project XL Site-Specific Rulemaking for Implementing Waste Treatment Systems at Two Virginia Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a site-specific rule to implement a project under the Project XL program, an EPA initiative which encourages regulated entities to achieve better environmental results at decreased costs at their facilities. Today's proposal would provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, at two Virginia landfills: The Maplewood Recycling and Waste Disposal Facility, located in Amelia County, Virginia (Maplewood Landfill); and the King George County Landfill and Recycling Facility, located in King George County, Virginia (King George Landfill). The Maplewood Landfill is owned and operated by USA Waste of Virginia, Inc., and the King George Landfill is owned by King George County and operated by King George Landfills, Inc. USA Waste of Virginia, Inc. and King George Landfills, Inc. are both subsidiaries of Waste Management, Inc., and will be referred to collectively as ''Waste Management.'' Maplewood Landfill and King George Landfill, both of which are municipal solid waste landfills (MSWLFs), will be referred to collectively as the ''Virginia Project XL Landfills''.

On September 29, 2000, EPA, USA Waste of Virginia, Inc., and King George Landfills, Inc., signed the Final Project Agreement (FPA) for this project, which would allow the addition of liquids to the landfills. This addition of liquids is expected to accelerate the biodegradation of landfill waste, decrease the time it takes for the waste to reach stabilization in the landfill, facilitate the management of leachate and other liquid wastes, and promote

recovery of landfill gas. The principal objectives of this XL project are to demonstrate that the alternative liners installed at the Virginia Project XL Landfills are as protective as the liner prescribed in EPA MSWLF regulations over which leachate recirculation is allowed under existing RCRA regulations, and to assess the effects of applying differing amounts of liquids to landfills. In order to carry out this project, Waste Management will need relief from certain requirements in EPA regulations which set forth design and operating criteria for MSWLFs, requirements which would otherwise preclude the addition of liquids at these landfills. Today's proposed rule would allow the Virginia Landfills to apply collected, non-containerized non-hazardous bulk liquids (including landfill leachate, as further described as follows) to the landfills.

This proposed rule would require compliance with each of the design, monitoring, record keeping, reporting, and operational requirements contained in this proposed rule, as well as MSWLF regulations not affected by this rule. Upon completion of the rulemaking, these requirements and conditions would be enforceable in the same way that current RCRA standards for solid waste landfills are enforceable to ensure that management of non-hazardous solid waste is performed in a manner that is protective of human health and the environment. Today's proposed rulemaking would not affect the provisions or applicability of any other existing or future regulations.

The Virginia XL Project Landfills comprise two of several landfills, located in different geographic and climactic regions across the country, that are testing bioreactor technology under Project XL. The bioreactor approach planned for the King George County Landfill involves application of about twice the quantity of liquid that is applied at the Maplewood Landfill. Other XL projects which are testing bioreactor techniques included the Yolo County, California XL Project (final rule published in the **Federal Register** at 66 FR 42441, August 13, 2001), and the Buncombe County, North Carolina XL Project (final rule published in the **Federal Register** at 66 FR 44061, August 22, 2001).

DATES: Public Comments: Comments on this proposed rule must be received on or before January 28, 2002.

Public Hearing: Commentors may request a public hearing by January 14, 2002 during the public comment period. Commentors must state the basis for requesting the public hearing. If EPA determines there is sufficient reason to hold a public hearing, it will do so no later than January 18, 2002, during the last week of the public comment period. If a public hearing is scheduled, the date, time, and location will be made available through a **Federal Register** notice or may be obtained by contacting Mr. Steven J. Donohue at the EPA Region 3 Office. If a public hearing is held, it will take place in Virginia.

ADDRESSES: Comments: Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please submit an original and two copies of all comments and refer to Docket Number F–2001–WVLP–FFFFF. A copy should also be sent to Ms. Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (1807) Washington DC 20460.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: *walker.sherri@epa.gov.* Electronic comments must be submitted as an ASCII, WordPerfect 5.1/6.1/7/8/9 format file and avoid the use of special characters or any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

Request to Speak at Hearing: Requests to speak at a hearing should be mailed to the RCRA Information Center Docket Clerk (5303G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please send an original and three copies of all comments and refer to Docket Number F–2001–WVLP–FFFFF. A copy should also be sent to Ms. Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (1807) Washington DC 20460.

Viewing Projects Materials: A docket containing the proposed rule, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC) located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA Docket Number F–2001–WVLP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15 per page. Project materials are also available for review on the world wide web at: http://www.epa.gov/projectxl/virginialandfills/index.htm.

A duplicate copy of the docket is available for inspection and copying at the EPA Region 3 Library located at 1650 Arch Street, Philadelphia, PA 19103. Appointments can be scheduled by phoning the Library at (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Donohue at the U.S. Environmental Protection Agency, Region 3, (3EI00), 1650 Arch Street, Philadelphia, Pennsylvania 19103 or Ms. Sherri Walker at the U.S. Environmental Protection Agency, Office of Environmental Policy Innovation, 1200 Pennsylvania Ave. NW. (1807), Washington DC 20460. Mr. Donohue may be contacted at (215) 814–3215. Further information on today's action may also be obtained on the world wide web at *http://www.epa.gov/projectxl/.* Questions to EPA regarding today's action can be directed to Mr. Donohue at (215) 814–3215 *donohue.steven@epa.gov* or Ms. Walker at (202) 260–4295, *walker.sherri@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline of Today's Document

The information presented in this preamble is arranged as follows:

I. What Is EPA's Legal Authority To Promulgate Today's Proposed Rule?

This rule is proposed under the authority of Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6907, 6912, 6945, and 6949a).

II. Background

A. What Is Project XL?

Project XL is an EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—''eXcellence and Leadership''—was announced on March 16, 1995 as a central part of the National Performance Review and EPA's efforts to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Specifically, Project XL gives a limited number of regulated entities the opportunity to develop their own pilot projects and alternative strategies to achieve environmental performance that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other XL projects to determine which specific elements of the projects, if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Project XL is intended to allow EPA to experiment with new or pilot projects that provide alternative approaches to regulatory requirements, both to assess whether they provide benefits at the specific facility affected, and whether these projects should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site-or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project is not an indication that EPA plans to adopt that interpretation as a general matter or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are potentially viable in practice and successful for the particular projects that embody them. These pilot projects are not intended to be a means for piecemeal revision of entire programs.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site-or state-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress recognizes that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, e.g., § 8001 of RCRA, (42 U.S.C. 6981).

Under Project XL, participants in four categories (facilities, industry sectors, governmental agencies, and communities) are offered the opportunity to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: (1) Superior environmental performance; (2) cost savings and paperwork reduction; (3) stakeholder involvement and support; (4) test of an innovative strategy; (5) transferability; (6) feasibility; (7) identification of monitoring, reporting, and evaluation methods; and (8) avoidance of shifting risk burden. The project must have full support of affected federal, state, and tribal agencies (where applicable) to be selected, approved and implemented. For more information about the XL criteria, readers should refer to two descriptive documents published in the **Federal Register** (60 FR 27282, published May 23, 1995 and 62 FR 19872, published April 23, 1997) and the document entitled ''Principles for Development of Project XL Final Project Agreements,'' dated December 1, 1995.

Development of an XL Project has four basic phases: The initial pre-proposal phase where the project sponsor comes up with an innovative concept that it would like EPA to consider for the XL program; the second phase where the project sponsor works with EPA and interested stakeholders in developing its XL proposal; the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing the Final Project Agreements (FPA) and legal mechanisms. After the designated participants sign the FPA and after promulgation of the required federal, state and local legal mechanisms, the XL project is implemented and the results are evaluated.

The FPA is a non-binding written agreement between the project sponsor and regulatory agencies. The FPA contains a detailed description of the proposed project. It addresses the eight Project XL criteria and discusses how EPA expects the project criteria to be met. The FPA identifies performance goals and indicators which will enable the project sponsor to demonstrate superior environmental benefits. The FPA also discusses administration of the agreement, including dispute resolution and conditions for termination of the agreement. On September 29, 2000, EPA Region 3 and Office of Solid Waste, joined by Virginia Department of Environmental Quality, and USA Waste of Virginia, Inc. signed the FPA for the project. The Final Project Agreement is available to the public at the EPA RCRA Docket in Washington, DC and at the EPA Region 3 Library in Philadelphia.

B. What Are Bioreactor Landfills?

A bioreactor landfill is generally defined as a landfill operated to transform and stabilize the readily and moderately decomposable organic constituents of the waste stream by purposeful control to enhance microbiological processes. Bioreactor landfills often employ addition of liquids such as leachate. A byproduct of the waste decomposition process is

landfill gas, which includes methane, carbon dioxide, hazardous air pollutants and volatile organic compounds (VOC). Landfill gases are produced sooner in a bioreactor than in a conventional landfill. Therefore, bioreactors typically incorporate state-of-the-art landfill gas collection systems to collect and control landfill gas upon start up of the liquid addition process.

On April 6, 2000, EPA published a notice in the **Federal Register** requesting information on bioreactor landfills, because the Agency is considering whether and to what extent the Criteria for Municipal Solid Waste Landfills, 40 CFR part 258, should be revised to allow for leachate recirculation over alternative liners in MSWLFs (65 FR 18015). EPA is seeking information about liquid additions and leachate recirculation in MSWLFs to the extent currently allowed, i.e., in MSWLFs designed and constructed with a composite liner as specified in 40 CFR 258.40(a)(2).

Proponents of bioreactor technology note that operation of MSWLFs as bioreactors provide a number of environmental benefits, including an increased rate of waste decomposition, which in turn would extend the operating life of the landfill and lessen the need for additional landfill space or other disposal options. Bioreactors also decrease, or at times eliminate, the quantity of leachate requiring treatment and offsite disposal. Several studies have shown that leachate quality improves over time when leachate is recirculated on a regular basis. For all of these reasons bioreactors are expected to decrease potential environmental risks and costs associated with leachate management, treatment and offsite disposal. Additionally, use of bioreactor techniques is expected to shorten the length of time the liner will be exposed to leachate and this should lower the long term potential for leachate migration into the subsurface environment. Bioreactors are also expected to reduce post-closure care costs and risks, due to the accelerated, controlled settlement of the solid waste during landfill operation. Finally, bioreactors provide for greater opportunity for recovery of methane gas for energy production since methane is produced earlier and in a larger quantity than a normal MSWLF.

EPA is implementing several additional related XL pilot projects involving operation of landfills as bioreactors throughout the country. These additional landfill projects will enable EPA to evaluate benefits of different alternative liners and leachate recirculation systems under various climatic and operating conditions. As expressed in the above-referenced April 2000 **Federal Register** notice, EPA is interested in assessing the performance of landfills operated as bioreactors, and these XL projects could contribute valuable data.

The Virginia Project XL Landfills and other XL projects would provide additional information on the performance of MSWLFs when liquids are added to the landfill. The Agency is also interested in assessing how different types of alternative liners perform when liquids are added to the landfill, including maintaining a hydraulic head at acceptable levels.

III. The Virginia Project XL Landfills

A. Overview

The Virginia Project XL Landfills consists of the Maplewood Landfill and the King George Landfill. The Maplewood Landfill is located in Amelia County, Virginia, approximately 30 miles southwest of Richmond, Virginia. The Maplewood Landfill will cover a total area of about 404 acres upon completion. Construction of the first phases started in 1992. Construction of the most recent phase was completed in 1997. The King George County Landfill is located in King George County, Virginia, approximately 50 miles north-northeast of Richmond, Virginia. The King George Landfill will cover a total area of about 290 acres upon completion. The first phase of liner system construction began in 1996. Construction of additional liner system areas has been performed every year since 1996.

The Maplewood Landfill is owned and operated by USA Waste of Virginia, Inc., and the King George Landfill is owned by King George County and operated by King George Landfills, Inc. USA Waste of Virginia, Inc. and King George Landfills, Inc. are both subsidiaries of Waste Management, Inc., and will be referred to collectively hereinafter as ''Waste Management.'' Maplewood Landfill and King George Landfill, both of which are municipal solid waste landfills (MSWLFs), will hereinafter be referred to collectively as the ''Virginia Project XL Landfills.''

B. Description of the Project

This proposed rule would provide for the addition of liquid wastes to certain areas of the Maplewood Landfill and the King George Landfill.

The goal for the Maplewood Landfill is to recirculate as much leachate as is generated at the facility. Based on facility records, the facility generated approximately 3,000,000 gallons of leachate in 1999 (a relatively dry year). Under this XL project, between 3,000,000 and 4,000,000 gallons of liquid would be applied at the landfill per year. The liquid application rate would be an average of 10,960 gallons per day, based on an application rate of 4,000,000 gallons per year. In order to comply with the requirements of the proposed rule and provide the appropriate test conditions for biodegradation of the waste, the exact liquid application rate will be determined by Waste Management during implementation of the project. The proposed project area in the Maplewood Landfill will be in ''Phase Development Areas'' 1 and 2 (leachate recirculation areas) and 3, 4, and 11 (monitored control areas without leachate recirculation). The total size of the Phase 1, 2, 3, 4 and 11 Phase Development Areas is approximately 48 acres.

During dry periods of lower or no leachate generation, liquids other than leachate could also be added, including non-hazardous liquids such as storm water and truck wash water. The liquids would be applied in trenches, excavated into the surface of the landfill in the Phases 1 and 2 areas (approximately 10 acres in size). Phases 3, 4, and 11 will be used as control cells—no liquid will be applied to these areas, only rainwater that naturally falls and percolates beneath the landfill surface will enter the waste in these areas or phases.

The goal for the King George County Landfill is to recirculate as much leachate as is generated at the facility and to add sufficient additional liquid to make a total liquids application of between 7,000,000 and 8,000,000 gallons per year. Based on facility records for the past three years, the facility generates approximately 3,500,000 gallons of leachate per year. Based on estimates of storm water runoff quantities and the storage capacity of the storm water management ponds at the site, approximately 8,000,000 gallons or more of storm water is expected to be made available for application to the landfill waste. The liquid application rate would be, on average, about 22,000 gallons per day based on an estimated application rate of 8,000,000 gallons per year. In order to comply with the requirements of the proposed rule and provide the appropriate test conditions for biodegradation of the waste, the exact liquid application rate will be determined by Waste Management during implementation of the project.

The overall study area in the King George Landfill will be established within the Municipal Solid Waste Cells

2, 3, and 4. The total size of Cells 2, 3, and 4 is approximately 59 acres. Liquid will be applied only in Cell 3, approximately 10 acres in size. Cells 2 and 4 will be control cells in which no liquids will be applied. Cell 1 was being filled with waste in July 2001.

As stated earlier, the bioreactor program that would be implemented at the King George County Landfill involves application to the waste of about twice the quantity of liquid that is applied at the Maplewood Landfill. In the bioreactor at this landfill, conditions will be established that are intended to significantly increase the rate of degradation of waste during the operating life of the landfill to achieve the benefits identified in the FPA. Although the process of recirculating leachate provides much of the moisture needed to enhance biological degradation of waste, research reported in ''Active Municipal Waste Landfill Operations: A Biochemical Reactor'' Reinhart, 1995 (Reinhart 1995) found that the quantity of liquid needed to reach water holding or field capacity of the waste to potentially maximize the rate of biodegradation is typically much greater than the quantity of leachate generated at a MSWLF. The Reinhart 1995 report is available for review in the docket for this proposed rule. As part of the comparison of different rates of liquid addition inherent in this project, sources of liquid other than leachate will be used to supply the additional quantity of liquid needed at the King George Landfill. These sources could include storm water, truck wash water and other non-hazardous liquid waste. For this project, these liquids may be discharged into the landfill leachate storage tanks to supplement the leachate and the resulting mixture would then be distributed over the bioreactor test area.

The liquids application system at both Virginia XL landfills will be constructed using typical trench construction methods and may include other methods developed during the implementation of the program. The construction methods are described in detail in the Application for Project XL Landfill Bioreactor Systems King George County Landfill and Maplewood Recycling and Waste Disposal Facility, submitted to U.S. EPA, prepared by GeoSyntec Consultants, May 30, 2000 (May 2000, GeoSyntec Report). The May 2000, GeoSyntec Report can be found in the docket for this proposed rule.

The liquids infiltration or ''application capacity'' of each landfill is the amount of liquid that can be expected to flow by gravity from all of the trenches. This quantity has been estimated using the methodology described in ''Analysis Procedures for Design of Leachate Recirculation Systems,'' T.B. Maier in June, 1998. The T.B. Maier report can be found in the docket for this proposed rule. This method involves estimating the moisture content of the waste (typically 15 to 25 percent without liquid application), the hydraulic properties of the waste, the moisture retention capacity (field capacity) of the waste (typically 40 percent), and the head of liquid on the trench. Using this information, the infiltration rate of liquid into the waste from one 400 foot long trench is calculated; the total application capacity equals the combined infiltration rate of all six trenches. As shown in the May 2000, GeoSyntec Report, the total application capacity of the group of six trenches is calculated to be about 110,000 gallons per day, which is much greater than the proposed average application rate of either 10,960 gallons per day or the 22,000 gallons per day for Maplewood and King George Landfills, respectively. The exact number and length of the trenches will be determined during the implementation of the project but at a minimum will be adequate to provide for the proposed average application rates. The May 2000, GeoSyntec Report can be found in the docket for this proposed rule.

EPA's RCRA MSWLF operating criteria require that MSWLFs be designed and constructed with a leachate collection system that can ensure a hydraulic head (leachate layer) above the liner of 30 centimeters (cm) or less, *i.e.,* approximately 12 inches. The operator must monitor the depth of liquid (or thickness of ''head'') and ensure no more than 30 cm of head is on the liner. The impact of the proposed liquid application activities on the thickness of head on the liner systems was evaluated using the Hydrologic Evaluation of Landfill Performance (HELP) model. This model is in the May 2000, GeoSyntec Report and is available in the docket for this proposed rule. First, the hydrologic evaluation was performed assuming that no liquid is applied; then, the evaluation was performed for the liquid application condition under the assumptions that 4,000,000 and 8,000,000 gallons per year would be recirculated at the Maplewood and King George Landfills, respectively. These calculations show that a head of 30 cm or less is expected on both the Maplewood and the King George liner. The King George Landfill is expected to maintain a lower head than the Maplewood Landfill because the drainage layer material at the King George landfill is approximately 100 times more permeable than the drainage layer material at the Maplewood landfill. This is why King George was selected for an application rate of twice the volume of liquids that will be applied to the Maplewood Landfill.

The primary liner system of both landfills is underlain by a secondary liner and leachate collection system. Sumps are located at the low point of each cell in each system and will be monitored for the depth of liquid on a monthly basis. As needed and required, liquid in the sumps is collected and controlled as leachate. Samples are collected to evaluate the characteristics of the liquids. If the test results from the sampled liquid or the monitoring of the leachate level indicate that there is a potential leak in the primary liner system, then the need for a larger pump will be evaluated and the liquid level in the primary system will be further evaluated and monitored to minimize the liquid depth above the primary liner. The liner leakage rate will be evaluated and the leachate injection rate may be reduced, if necessary, to control the rate of flow into the secondary leachate collection system. Waste Management will monitor the depth of liquid on the liners of both landfills throughout the XL Project period, and will ensure that less than the 30 cm maximum head is maintained, in accordance with regulations. This proposed rule would not alter Waste Management's obligation to maintain less than 30 cm of head on the liners at both Virginia XL landfills.

It is necessary that the on-site leachate storage structures at both the Virginia Project XL Landfills have enough capacity to store the leachate needed for later application to the test areas in the landfills. Liquid will be collected and stored for application when conditions are relatively dry. The storage capacity of the leachate tanks at the Maplewood Landfill is approximately 500,000 gallons, this represents approximately a two months supply of leachate at a application rate of 4 million gallons per year.

During operation of the bioreactor system, leachate storage structures will also be used to temporarily store leachate at times when it is not or cannot be recirculated. As a minimum, the tanks will need to store the quantity of leachate generated over a period of several days. The May 2000, GeoSyntec Report states that the Maplewood Landfill generated approximately 3 million gallons of leachate in 1999. The 500,000 gallon storage at Maplewood Landfill represents over a two month storage capacity of leachate at a

generation rate of 3 million gallons per year. Therefore, the facility has adequate leachate storage capacity for operation of the bioreactor system. As a contingency, during times when leachate generation exceeds the rate of recirculation in and storage capacity, leachate could be hauled off-site as is currently being done.

In the May 2000, GeoSyntec Report, Waste Management's consultant evaluated the physical stability of the waste at the Virginia Project XL Landfills under bioreactor operating conditions. GeoSyntec Consultants submitted this engineering evaluation to the Virginia Department of Environmental Quality (VADEQ) as a part of their application for a permit modification for the bioreactor testing at the Virginia Project XL Landfills. A static stability analysis conducted for the slopes of the Virginia XL Landfills shows a factor of safety (FOS) of greater than the minimum value of 1.5 was maintained even with the addition of the liquid application trenches and a phreatic or subsurface leachate/water table surface in the landfill cell associated with the addition of liquids in the trench. The calculated FOS for the existing conditions and under the leachate recirculation scenarios remained unchanged in both the Virginia Project XL Landfills since the critical failure surface is located outside the areas that will be wetted by liquid addition during the bioreactor testing or the added liquid does not change the location of the critical surface. The GeoSyntec stability evaluation can be found in the docket for this proposed rule.

EPA and Waste Management expect that the addition of liquids to the landfills will accelerate the production of landfill gases; indeed, one of the benefits of bioreactor landfills is that the time interval during which landfill gas is generated should be compressed, thereby facilitating its collection and potential conversion to a useful energy source. Landfill gas generation will start sooner and end sooner in landfills where liquids are recirculated. EPA's Standards of Performance for Municipal Solid Waste Landfills, 40 CFR part 60, subpart WWW, requires large landfills that meet the emissions threshold to perform landfill gas monitoring and install a collection and control system as specified in the regulation in areas where wastes are over a certain age. Effective November 1999, Waste Management installed, and is operating, an active (*i.e.* vacuum induced) landfill gas collection system in Phases 1, 2 and 3 at the Maplewood Landfill. An active gas collection system became operational at the King George Landfill on December 10, 2000. In addition, on September 1, 2001 Waste Management signed an agreement with a private energy development company to construct a 9MW power plant fueled by landfill gas at the Maplewood Landfill. Waste Management is currently negotiating a similar gas/energy recovery agreement for the King George Landfill.

This XL Project will comply with the subpart WWW performance standards for MSWLFs under the federal Clean Air Act. Waste Management will continue to provide subpart WWW-compliant landfill gas monitoring, collection and control during and following the application of liquids at the landfills. Waste Management's obligations with respect to landfill gas will be set forth in a Federally Enforceable State Operating Permit (FESOP). The VADEQ is the regulatory agency which, under the federal Clean Air Act, has air permitting authority for both landfills. The VADEQ has issued a New Source Review Permit 9 VAC 5–80–10 (NSR) for the King George Landfill which contains the enforceable parameters and requirements reflecting the New Source Performance Standards (NSPS)—compliant gas collection, control and monitoring. In addition, on July 31, 2001, VADEQ issued a Title V Operating Permit 9 VAC 5–80–50 et. seq. (Title V), for the King George Landfill. Both the Title V permit and the underlying NSR permit issued by VADEQ are considered Federally enforceable. An NSR Permit for the Maplewood Landfill is under development. An NSR Permit will be in place for each landfill prior to the addition of liquids, and will include at least the following provisions:

1. Waste Management will enhance the gas collection and control systems at the landfills (e.g. using additional extraction wells or trenches or by enhancing the cover over affected areas.) This will be done at the discretion of Waste Management, or as directed by VADEQ, if it is determined that there is a potential to exceed the applicable air quality permit requirements or New Source Performance Standards during evaluation of routine monitoring data or if odor problems or air quality problems occur. The system will be expanded as needed (e.g., using additional extraction wells or trenches or by placing additional cover or tarps over affected areas) to ensure compliance with the applicable air quality permit requirements.

2. The performance of the landfill gas extraction systems at the Virginia Project XL Landfills will be documented and assessed by obtaining monitoring data from the gas extraction wells and the landfill surface for parameters such as methane, carbon dioxide, oxygen, non-methane organic compounds (NMOCs) and other constituent concentrations, in accord with 40 CFR part 60, subpart WWW. The gas temperature at the well heads will also be monitored as required by subpart WWW.

3. A baseline round of air monitoring at each landfill will be completed prior to the introduction of liquids, and the monitoring will continue for the duration of the project.

4. Collected landfill gas will be controlled through the use of an active gas control system at both sites.

The site stakeholders, listed in Section F of today's proposed rule, recognize that the increased production of landfill gas may result in an increase in the flow rate of NO_X emissions from any flares or other gas processing equipment installed as part of the project. Air quality permits for these emissions may need to be amended to allow the implementation of the XL Project.

In the FPA Waste Management committed to exploring alternative uses for the collected gas other than flaring. On September 1, 2001 Waste Management signed an agreement with a private energy development company to construct a 9MW power plant fueled by landfill gas at the Maplewood Landfill. Waste Management is currently negotiating a similar agreement for the King George Landfill.

C. What Kind of Liner Is Required by Current Federal Regulations?

Currently, the federal regulations outline two methods for complying with liner requirements for municipal solid waste landfills. The first method is a performance standard set out under 40 CFR 258.40(a)(1). This standard allows installation of any liner configuration provided the liner design is approved by the director of an approved state (defined in § 258.2) and the design ensures that certain constituent concentrations are not exceeded in the uppermost aquifer underlying the landfill facility at the point of compliance.

The second method is set out in 40 CFR 258.40(a)(2) and (b). § 258.40(b) specifies a liner design which consists of two components: (1) An upper component comprising a minimum of 30 mil flexible membrane liner (60 mil if High Density Polyethylene (HDPE) is used); and (2) a lower component comprising at least two feet of compacted soil with a hydraulic

conductivity no greater than 1×10^{-7} cm/sec.

D. How Are the Liners at the Virginia XL Landfills Constructed?

Both the Maplewood Landfill and the King George County Landfill were constructed to meet or exceed the performance standard set forth in 40 CFR 258.40(a)(1). The liner under each landfill was built with a geomembrane double synthetic liner systems, with primary leachate collection and leak detection (secondary collection) layers. The King George County liner and leachate collection system consists, from top to bottom, 1.5 feet of protective cover, leachate drainage material, 16 oz./square yard nonwoven geotextile, 60 mil textured HDPE primary geomembrane liner, a geosynthetic clay liner, geocomposite drainage layer, 60 mil textured HDPE secondary geomembrane liner, geosynthetic clay liner, 40 mil textured HDPE tertiary geomembrane liner and 1 foot of geologic buffer material with a permeability (k) of $<1\times10^{-5}$ cm/sec. The Maplewood Landfill liner and leachate collection system consists of, from top to bottom, 1.5 feet of primary granular drainage layer, 60 mil HDPE geomembrane, geonet layer, 60 mil HDPE geomembrane, bentonite geocomposite, underlain by 1.5 feet of a clayey soil liner with a permeability (k) of $<1\times10^{-5}$ cm/sec. The liner systems for the two landfills are illustrated in Figure 2 of the Final Project Agreement.

The 60 mil HDPE upper liner component of both landfills' liners meets the specified upper membrane liner component under RCRA (40 CFR 258.40(b). However, instead of a lower liner component comprised of at least two feet of compacted soil with a hydraulic conductivity no greater than 1×10^{-7} cm/sec, the Virginia XL Landfills were built with a second geosynthetic 60 mil HDPE layer. Additionally, beneath the double liner system at the King George County is a third 40 mil HDPE liner, underlain by one foot of soil compacted to a permeability (k) of $<1\times10^{-5}$ cm/sec., and the double liner system at the Maplewood Landfill is underlain by 18 inches of soil compacted to a permeability (k) of $<1\times10^{-5}$ cm/sec.

While the landfills do not have a composite liner as specified in the Design Criteria § 258.40 (b), the alternative liner systems meet or exceed the performance requirements for municipal solid waste landfills. Indeed, these landfills' double-liner systems provide a high level of protection to the environment against potential impacts caused by leakage of leachate.

E. What Environmental Benefits Would Result From the Proposed Bioreactor Landfill Project Proposal?

The expected superior environmental benefits from the Virginia Landfills XL Project include: (1) Landfill life extension; (2) minimizing the potential for long-term leachate-associated groundwater and offsite surface water concerns; and (3) increasing landfill gas control, minimizing fugitive methane and VOC emissions and minimizing the duration of gas generation.

1. Landfill Life Extension

The life of a landfill, when operated as a bioreactor, should be extended due to the biodegradation of the waste. This more rapid biodegradation increases the apparent density and decreases the volume of the in place waste remaining in the landfill. Reducing the volume of waste translates into either longer landfill life and/or less need for additional landfill space. Thus, this bioreactor landfill will be able to accept more waste over its working lifetime (subject to applicable State regulatory requirements). Additionally, less landfill space may be needed to accommodate the same amount of waste.

2. Minimizing Leachate/Groundwater-Associated Concerns

Research reported in Reinhart 1995, has shown that bioreactor processes tend to reduce the concentration of many pollutants in leachate, including organic acids and other soluble organic pollutants. Bioreactor operations brings pH to near-neutral conditions and generally, metals are much less mobile under these condition. Reinhart 1995 found that metals were largely precipitated and immobilized in the waste of bioreactor landfills. This report can be found in the docket for this proposed rule. Discussions between Waste Management, the VADEQ, and the host communities for the Maplewood Landfill and the King George County Landfills, indicated that groundwater-related issues are of primary concern to the stakeholders, including minimizing the long-term threat to groundwater quality. This project should provide for accelerated biodegradation of the waste in the landfills and, thereby, minimizing the potential for the waste to present a long-term threat to groundwater quality. Routine groundwater monitoring is, and will continue to be, performed to verify containment. Cleaner leachate also translates into decreased load on the offsite publicly owned treatment works (POTWs) where the leachate from these landfills is now being treated. As described in Section 1.2 of the FPA, both the Maplewood and King George County Landfills were constructed with double-liner systems, which are highly efficient at preventing leakage of leachate from landfills.

3. Maximizing Landfill Gas Control and Minimizing Fugitive Methane and VOC Emissions

Landfill gas contains roughly 50% methane, a potent greenhouse gas. In terms of climate effects, methane is second in importance only to carbon dioxide as a greenhouse gas. Landfill gas also contains volatile organic compounds (VOC's) that are air pollutants of local concern. While the rate of gas generation will be increased by adding liquids to the landfills, the period of post closure landfill gas generation will be compressed. The existing, active gas collection systems in operation at both landfills is expected to efficiently collect and control landfill gas. The system will be maintained and monitored in accordance with the terms of 40 CFR part 60, subpart WWW and all applicable permits. In addition, on September 1, 2001 Waste Management signed an agreement with a private energy development company to construct a 9MW power plant fueled by landfill gas at the Maplewood Landfill. Waste Management is currently negotiating a similar gas/energy recovery agreement for the King George Landfill.

It is also anticipated that the information obtained from this XL Project will provide the EPA and the waste disposal industry with data concerning the use of bioreactor techniques at MSWLF sites throughout the United States, in accord with the Agency' April 6, 2000 Request for Information and Data regarding Alternative Liner Performance, Leachate Recirculation, and Bioreactor Landfills, 65 FR 18014 (April 6, 2000).

F. How Have Various Stakeholders Been Involved in This Project?

Initial public meetings were held on August 1, 2000 (King George County) and August 2, 2000 (Amelia County) to solicit comments from the public on the intent of the sponsors to participate in Project XL. Additional public meetings were also held during the week of September 4, 2000 in King George and Amelia County to discuss the draft FPA with the citizens from these localities. Since both landfills have valid state operating permits, the VADEQ intends to amend the permits to allow the construction and operation of the bioreactor systems as an experimental

process. Before VADEQ issues a permit amendment, a public hearing will be held in the locality to solicit comments on the draft permit amendments from concerned citizens. The details of the permit amendments for each landfill are outlined in advertisements along with contact information and document viewing locations. The public hearing is also advertised in a local paper. The VADEQ has a standardized mailing list of state agencies to whom a draft permit or notice of permit amendment can be sent to solicit comments. Conditions may be imposed due to additional state requirements or as a result of public comment.

In accord with VADEQ regulatory requirements, Virginia will hold public meetings and hearings on the proposed amendments to the solid waste construction and operating permits for the Virginia Project XL Landfills. If requested, these public hearings will be supplemented with additional stakeholder meetings. A stakeholder mailing list maintained by Waste Management will be updated as necessary to include private citizens and other interested parties. Periodically, progress reports and other relevant information will be distributed. If requested, Waste Management has also agreed to provide site tours and briefings to better educate any interested citizens or stakeholders. Transcripts and video tape recordings of all public meetings and hearings will be maintained at the repositories. A repository for the project will be maintained by VADEQ at 629 East Main Street, Richmond, VA, 23219 c/o Paul Farrell, (804) 698–4214. Additional copies of the repository records will be maintained in the James Hamner Memorial Library, 16351 Dunn Street Amelia, Virginia 23002 and in the L.F. Smoot Lewis Memorial Library, 9533 Kings Highway, King George, Virginia 22485. A public file on this XL project has been maintained at the website at: *http://www.epa.gov/ProjectXL/virginialandfills/index.htm* Throughout project development, EPA will continue to update the website as the project is implemented. A detailed description of the XL Project and the stakeholder support for this project is included in the Final Project Agreement, which is available through the docket or through EPA's Project XL website on the Internet.

Waste Management will periodically meet with a representative from each local landfill advisory committee or the entire stakeholder group to discuss issues of concern and to disseminate information. To solicit additional stakeholder involvement, Waste Management may do outreach including contacting nationwide professional and citizen groups that may have an interest in bioreactor technology and will attempt to disseminate information to its members, as well as, attend national workshops or seminars.

The following have been identified as VA Project XL Bioreactor Landfill stakeholders:

Direct Participants:

- U.S. Environmental Protection Agency
- Virginia Department of Environmental Quality
- Waste Management, Inc.
- King George County Landfill
- Maplewood Landfill
- Maplewood Recycling Waste Disposal Facility

Commentors:

- Members of Local Landfill Advisory Committees

G. How Will This Project Result in Cost Savings and Paperwork Reduction?

As stated earlier, this project is expected to result in cost savings by virtue of assisting in an increased rate of decomposition of the waste placed in certain areas of the two Virginia Project XL Landfills, and to improve the quality of leachate generated in those areas. The increased decomposition rate is, in turn, expected to extend the life of the landfill, and, potentially, result in direct cost savings to Waste Management from its landfills more efficient use and decreased leachate treatment and disposal costs. In addition, the methane generation and recovery operations are expected to yield increased methane recovery over a shorter time period, thereby facilitating the further evaluation and possible use of the methane for energy generation. No appreciable direct reduction in paperwork is anticipated at the Virginia landfills.

H. How Long Will This Project Last and When Will It Be Complete?

As with all XL projects testing alternative environmental protection strategies, the term of this XL Project is limited. Today's proposed rule would be in effect for 10 years. In the event that EPA determines that this project should be terminated before the end of the 10 year period and that the site-specific rule should be rescinded, the Agency may withdraw this rule through a subsequent rulemaking. This would allow all interested persons and entities the opportunity to comment on the proposed termination and withdrawal of regulatory authority. In the event of an early termination of the project term , EPA or the state would establish an interim compliance period, not to exceed six months, such that Waste Management will be returned to full compliance with the existing requirements of 40 CFR part 258. In accordance with 9 VAC 20–80–480.G, VADEQ expects to utilize an experimental permit to provide for operation of the VA Project XL Landfills as bioreactors. If the XL Project proves to be feasible, VADEQ expects to modify the permit for the facility to provide for the ten year XL Project term.

The FPA allows any party to the agreement to withdraw from the agreement at any time before the end of the 10 year period. It also sets forth several conditions that could trigger an early termination of the project, as well as procedures to follow in the event that EPA, the State or local agency seeks to terminate the project (see FPA section 11).

For example, an early conclusion would be warranted if the project's environmental benefits do not meet the Project XL requirement for the achievement of superior environmental results. In addition, new laws or regulations may become applicable during the project term which might render the project impractical, or might contain regulatory requirements that supersede the superior environmental benefits that are being achieved under this XL Project. Or, during the project duration, EPA may decide to change the federal rule allowing recirculation over alternative liners and the addition of outside bulk liquids for all Subtitle D landfills. In that event, the FPA and site-specific rule for this project would no longer be needed.

IV. What Regulatory Changes Will Be Necessary To Implement This Project?

A. Existing Liquid Restrictions for MSWLFs (40 CFR 258.28)

This proposed site specific regulation would grant regulatory relief from certain requirements of RCRA that restrict application of liquids in these MSWLFs, because as previously described, both the Maplewood and King George landfills were constructed with alternative liners pursuant to 40 CFR 258.40(a)(1). When the FPA for this project was signed, RCRA regulations, 40 CFR 258.28(a) allowed bulk or noncontainerized liquid waste to be added to a MSWLF only if the following two conditions were met:

—The liquids comprise household waste (other than septic waste), or leachate from the landfill itself, or gas condensate derived from the landfill, and

—The MSWLF has been built with a liner designed as prescribed in the design standard set forth in 40 CFR 258.40 (a)(2) (i.e. not the performance standard set forth in 40 CFR 258.40(a)(1)).

Since then, EPA promulgated a site-specific rule for the Yolo County, CA bioreactor landfill project under Project XL, which amended § 258.28(a). The amendment allows bulk liquid wastes to be added to a MSWLF if ''the MSWLF unit is a Project XL MSWLF and meets the applicable requirements of § 258.41'' 66 FR 42441, 42449 (August 13, 2001). Therefore, the regulatory relief needed for the VA Project XL landfills is a site-specific amendment to 40 CFR 258.41.

B. Proposed Site-Specific Rule

The Maplewood landfill project would provide for addition of liquids primarily consisting of leachate from the landfill, while the King George bioreactor would involve the addition of leachate generated at this facility plus other liquids, including non-containerized liquids such as storm water, truck wash water and other non-hazardous liquid waste. Further information on the liquids proposed for addition to the Maplewood and King George Landfills can be found in the FPA in Section 2.2.2.1 and 2.2.2.2, respectively. Today's proposal would add a new subsection of the rules in § 258.41. New § 258.41(c) would specifically apply to the Maplewood Landfill, in Amelia County, Virginia and the King George Landfill, in King George County, Virginia, and would allow leachate to be applied to these two landfills.

The proposed rule would impose certain minimum monitoring, reporting, and control requirements on Waste Management, which, among other things, will ensure that the project is protective of human health and the environment, and to facilitate EPA's evaluation of the project. The project monitoring and reporting requirements are listed in Sections 2.2.1.4, 2.2.1.5, 2.2.2.4, and 2.2.2.5, Table 6 and 6A of the FPA and would require that Waste Management provide semi-annual reporting of the monitoring data to stakeholders and regulators in order to facilitate project evaluation.

Existing regulation also requires a leachate collection system as specified in § 258.40(a)(2) to ensure that contaminant migration to the aquifer is controlled. (56 FR 50978, 51056 (Oct. 9, 1991)). The proposed rule would not change the requirement in § 258.28(a)(2) that a leachate collection system (as described in § 258.40(a)(2)) be in place in order for leachate to be recirculated in the landfill unit, and Waste Management would still be required to ensure that leachate collection systems at the landfills maintain the leachate head over the liner at a depth of less than 30 cm.

V. Additional Information

A. How To Request a Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding this proposed rulemaking, in accordance with 40 CFR part 25. Persons wishing to make an oral presentation on the proposed site specific rule for the Virginia Project XL Landfills should contact Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (1807) Washington DC 20460. Any member of the public may file a written statement before the hearing or after the hearing to be received by EPA no later than fourteen days after publication of this proposed rulemaking. Written statements should be sent to EPA at the addresses given in the Addresses section in the preamble of this document. If a public hearing is held, a verbatim transcript of the hearing and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the Addresses section of this preamble.

B. How Does This Rule Comply With Executive Order 12866: Regulatory Planning and Review ?

Because this rule affects only two facilities, it is not a rule of general applicability and therefore not subject to OMB review under Executive Order 12866. In addition, OMB has agreed that review of site specific rules under Project XL is not necessary.

C. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and public comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The project sponsor, Waste Management Inc., is the regulated entity for this pilot project. They are not a small business. This rule does not apply to small businesses, small not-for-profit enterprises, nor small governmental jurisdictions. Further, it is a site-specific rule with limited applicability to only two landfills in the nation. Therefore, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act ?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It is exempt from OMB review under the Paperwork Reduction Act because it is a site specific rule, directed to fewer than ten persons. 44 U.S.C. 3502(3), (10); 5 CFR 1320.3(c), 1320.4 and 1320.5.

E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act ?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments in the aggregate or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the

development of the EPA regulatory proposal with significant Federal mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. As used here, ''small government'' has the same meaning as that contained under 5 U.S.C. 601(5), that is, governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.

As discussed above, this proposed rule would have limited application. It applies only to the Maplewood and King George County Landfills. If adopted, this proposed rule would result in a cost savings for Waste Management when compared with the costs it would have had to incur if required to adhere to the requirements contained in the current rule. EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, or tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant,'' as defined in Executive Order 12886; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to potentially effective and feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed rule would allow for the addition of bulk or non-containerized liquid amendments over a liner that does not meet the design requirements in 40 CFR. 258.40(b), however, the liner systems meet or exceed the performance requirements for municipal solid waste landfills. Indeed, these landfills' double-liner systems provide a high level of protection to the environment against potential impacts caused by leakage of leachate. Therefore, no additional risk to public health, including children's health, is expected to result from this proposed rule.

G. How Does This Rule Comply With Executive Order 13132: Federalism?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The phrase, ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal would only affect two local governmental entities and a state, and would provide regulatory flexibility for the state and local governmental entity concerned. Thus, Executive Order 13132 does not apply to this rule.

H. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Governments?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

I. How Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless such practice is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, material specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking however, does not involve any voluntary consensus standards.

J. Does This Rule Comply With Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use?

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 258

Environmental protection, Landfill, Solid waste.

Dated: December 19, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth, part 258 of Chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS—[AMENDED]

1. The authority citation for Part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c), and 6949a(c).

Subpart D—Design Criteria

2. Amend ''258.41 to add a new paragraph (c) to read as follows:

§ 258.41 Project XL Bioreactor Landfill Projects.

* * * * *

(c) *Virginia Landfills XL Project Requirements.* Paragraph (c) of this section applies solely to two Virginia landfills operated by the Waste Management, Inc. or its successors: The Maplewood Recycling and Waste Disposal Facility, located in Amelia County, Virginia (''Maplewood Landfill''); and the King George County Landfill and Recycling Facility, located in King George County, Virginia (''King George Landfill'') collectively hereinafter, ''the VA Project XL Landfills or landfill.'' The VA Project XL Landfills are allowed to add non-hazardous bulk or non-containerized liquids including, leachate, storm water and truck wash water, hereinafter, ''liquid or liquids'', to Cell 3 of the King George Landfill (hereinafter ''Cell 3'') and Phases 1 and 2 of the Maplewood Landfill (hereinafter ''Phases 1 and 2'') under the following conditions:

(1) The operator of the landfill shall maintain the liners underlying Cell 3 and Phases 1 and 2, which were designed and constructed with an alternative liner as defined in § 258.40(a)(1) in accord with their current installed design in order to maintain the integrity of the liner system and keep it and the leachate collection system in good operating order. The operator of the landfill shall ensure that the addition of any liquids does not result in an increased leakage rate, and does not result in liner slippage, or otherwise compromise the integrity of the landfill and its liner system, as determined by the State Director. In addition, the leachate collection system shall be operated, monitored and maintained to ensure that less than 30 cm depth of leachate is maintained over the liner.

(2) The operator of the landfill shall ensure that the concentration values listed in Table 1 of § 258.40 are not exceeded in the uppermost aquifer at the relevant point of compliance for the landfill, as specified by the State Director, under § 258.40(d).

(3) The operator of the landfill shall monitor and report whether surface seeps are occurring and determine whether they are attributable to operation of the liquid application system. EPA and VADEQ shall be notified in the semi-annual report of the occurrence of any seeps.

(4) The operator of the landfill shall determine on a monthly basis the leachate quality in test and control areas with and without liquid addition. The operator of the landfill shall collect monthly samples of the landfill leachate and analyze them for the following parameters: pH, Conductivity, Dissolved Oxygen, Dissolved Solids, Biochemical Oxygen Demand, Chemical Oxygen Demand, Organic Carbon, Nutrients (ammonia, total kjeldahl nitrogen, total phosphorus), Common Ions, Heavy Metals and Organic Priority Pollutants.

(5) The operator of the landfill shall determine on a semi-annual basis the total quantity of leachate collected in test and control areas; the total quantity of liquids applied in the test areas and determination of any changes in this quantity over time; the total quantity of leachate in on-site storage structures and any leachate taken for offsite disposal.

(6) Prior to the addition of any liquid to the landfill, the operator of the landfill shall perform an initial characterization of the liquid and notify EPA and VADEQ of the liquid proposed to be added. The parameters for the initial characterization of liquids shall be the same as the monthly parameters for the landfill leachate specified in paragraph (c)(4) of this section. The operator shall annually test all liquids added to the landfill and compare these results to the initial characterization.

(7) The operator of the landfill shall ensure that Cell 3 and Phases 1 and 2 are operated in such a manner so as to prevent any landfill fires from occurring. The operator of the landfill shall monitor the gas temperature at well heads, at a minimum, on a monthly basis.

(8) The operator of the landfill shall perform an annual surface topographic survey to determine the rate of the settlement of the waste in the test and control areas.

(9) The operator of the landfill shall monitor and record the frequency of odor complaints during and after liquid application events. EPA and VADEQ shall be notified of the occurrence of any odor complaints in the semi-annual report.

(10) The operator of the landfill shall collect representative samples of the landfill waste in the test areas on an annual basis and analyze the samples for the following solid waste stabilization and decomposition parameters: Moisture Content, Biochemical Methane Potential, Cellulose, Lignin, Hemi-cellulose, Volatile Solids and pH.

(11) The operator of the landfill shall report to the EPA Regional Administrator and the State Director on the information described in paragraphs (c)(1) through (10) of this section on a semi-annual basis. The first report is due within 6 months after the effective date of this section. These reporting provisions shall remain in effect for the duration of the project term.

(12) Additional monitoring, record keeping and reporting requirements related to landfill gas will be contained in a Federally Enforceable State Operating Permit (''FESOP'') for the VA Project XL Landfills issued pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.* Application of this site-specific rule to the VA Project XL Landfills is conditioned upon the issuance of such a FESOP.

(13) This section will remain in effect until [10 years after the effective date of the final rule]. By [date 10 years after the effective date of the final rule], the VA Project XL Landfills must return to compliance with the regulatory requirements which would have been in effect absent the flexibility provided through this section. If EPA Region 3's Regional Administrator, the Commonwealth of Virginia and Waste Management agree to an amendment of the project term, the parties must enter into an amended or new Final Project Agreement for any such amendment.

(14) The authority provided by this section may be terminated before the end of the 10 year period in the event of noncompliance with the requirements of paragraph (c) of this section, the determination by the EPA Region 3's Regional Administrator that the project has failed to achieve the expected level of environmental performance, or the promulgation of generally applicable requirements that would apply to all landfill that meet or exceed the performance standard set forth in 40 § 258.40(a)(1). In the event of early termination EPA in consultation with the Commonwealth of Virginia will determine an interim compliance period to provide sufficient time for the operator to return the landfills to compliance with the regulatory requirements which would have been in effect absent the authority provided by this section. The interim compliance period shall not exceed six months.

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