

businesses found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, town, school district or special district with a population of less than 50,000; and (3) a small organization that is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The amendments in today's proposed rule would merely defer the deadline for paying permit fees for sources affected by the proposed rule, thereby giving them more flexibility and reducing the burden on these sources. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations.

Dated: May 7, 2003.

Christine Todd Whitman,
Administrator.

[FR Doc. 03-11911 Filed 5-12-03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FR-7497-6]

RIN 2090-AA25

Project XL Site-specific Rulemaking for Anne Arundel County Millersville Landfill, Severn, MD

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is publishing this proposed site-specific rule to implement a project under the Project eXcellence and Leadership (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 site specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), for the Anne Arundel County Millersville Landfill and Resource Recovery Facility, Severn, Maryland (the Landfill). The Landfill is owned and operated by Anne Arundel County (the County).

The County, the State of Maryland, and EPA signed a Final Project Agreement (FPA) for this project, which would allow for the addition of liquids to this landfill. The addition of liquids to landfills accelerates the biodegradation of landfill waste and is allowed for certain prescribed liner designs under current RCRA municipal solid waste landfill (MSWLF) regulations. The principal objective of this XL project to demonstrate that the alternative liner design at the Landfill is as protective as the liner prescribed in current RCRA municipal solid waste landfill regulations over which leachate recirculation is allowed under existing RCRA regulations.

The County Landfill is one of several landfills, located in different geographic and climatic regions across the country, that under Project XL are testing this bioreactor technology over alternative liner designs. In order to carry out this project, the Landfill needs 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 this landfill. If promulgated, today's proposed rule would allow the addition of Landfill leachate and onsite storm water to a designated (approximately 160 by 200 foot) portion of Cell 8.4 at the Landfill. Expected benefits of this project include

accelerated biodegradation of the Landfill waste, decreased time for the waste to reach stabilization and improved management of leachate and storm water.

DATES: *Public Comments:* Comments on this proposal must be received on or before June 12, 2003. All comments should be submitted according to the detailed directions below in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing: Commenters may request a public hearing on or before May 27, 2003, and such requests should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will do so by June 3, 2003, during the last week of the public comment period. Requests for a public hearing should be submitted to the address below.

ADDRESSES: Written comments should be mailed to the RCRA Docket Clerk (5305T), 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 RCRA-2002-0032. A copy should also be sent to Mr. Steven Donohue at the U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029. More detailed instructions for submitting comments in writing, electronically, by facsimile, or through hand delivery/courier are provided below in I.B. of the **SUPPLEMENTARY INFORMATION** section.

Request for a Hearing: Requests for a hearing should be mailed to the Environmental Protection Agency, EPA Docket Center (EPA/DC), RCRA Docket (5305T), 1200 Pennsylvania Ave. NW, Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number RCRA-2002-0032. A copy should also be sent to Mr. Steven Donohue at the U.S. EPA Region 3 office. Mr. Donohue may be contacted at the following address: U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3215. If a public hearing is scheduled, the date, time, and location will be available through a **Federal Register** notice or by contacting Mr. Steven Donohue at the U.S. EPA Region 3 office.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Donohue at the U.S. Environmental Protection Agency, Region 3, (3E100), 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 at (215) 814-3215 (or donohue.steven@epa.gov). Further information on today's action may also

be obtained on the world wide web at <http://www.epa.gov/projectxl/>.

SUPPLEMENTARY INFORMATION:

Outline of Today's Document

The information presented in this preamble is arranged as follows:

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 - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act of 1995
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. RCRA-2002-0032. The official

public docket consists of the documents specifically referenced in this action and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the RCRA Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1742, and the telephone number for the RCRA Docket is (202) 566-0270. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket

materials through the docket facility identified in I.A above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket. Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to EPA's Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see a description of the EPA Dockets System at 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in I.B.2 and I.C. below. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any

cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. It is EPA's policy not to edit comments, and any identifying or contact information provided in the body of a comment will be included as part of the comment that will be placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

A. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA-2002-0032. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

B. E-mail. Comments may be sent by electronic mail (e-mail) to rcra-docket@epa.gov, Attention Docket ID No. RCRA-2002-0032. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

C. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail

Send two (2) copies of your comments to the RCRA Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460, Attention Docket ID No. RCRA-2002-0032.

3. By Hand Delivery or Courier

Deliver your comments to: Environmental Protection Agency, EPA Docket Center, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. RCRA-2002-0032. Such deliveries are only accepted during the Docket's normal hours of operation as identified in A.1 above.

4. By Facsimile

Fax your comments to: 202-566-0272, Attention Docket ID No. RCRA-2002-0032.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), RCRA Docket, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. RCRA-2002-0032. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in Summary section above.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Authority

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).

III. Background

A. What Is Project XL?

Project XL is an EPA initiative developed to encourage regulated entities to achieve better environmental results at less cost. Project XL—"eXcellence and Leadership"—was announced by EPA on March 16, 1995 (see 60 FR 27282, May 23, 1995). Detailed descriptions of Project XL have been published previously in numerous public documents which are generally available electronically via the Internet at <http://www.epa.gov/projectxl/>. Briefly, Project XL gives a limited number of regulated entities the opportunity to develop their own pilot projects and alternative strategies to achieve superior environmental performance compared 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, to assess

whether these alternative approaches provide benefits at the specific facility affected, and determine 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.

On September 18, 2000, EPA published a notice in the **Federal Register** requesting comments on the draft Final Project Agreement (FPA) for the Anne Arundel County Millersville Landfill XL project (65 FR 56308). The FPA was signed by EPA on December 7, 2000. A copy of the FPA is available in the docket and on the world wide web at <http://www.epa.gov/projectxl/>. The FPA is a non-binding written agreement between the project sponsor and regulatory agencies which describes the project in detail, discusses criteria to be met, identifies performance goals and indicators, and outlines how the agreement will be managed.

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 generally employ the 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 (VOCs). Landfill gases are produced sooner and faster in a bioreactor than in a conventional landfill. Therefore, bioreactors typically incorporate 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 document 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 (MSWLFs), 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 believe that operating MSWLFs as bioreactors provides 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 are also believed to 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. Based on 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 are believed to shorten the length of time the liner will be exposed to leachate and lower the long term potential for leachate migration into the subsurface environment. Bioreactors may reduce post-closure care costs and risks, due to the accelerated, controlled settlement of the solid waste during landfill operation.

Several additional related XL pilot projects involving operation of landfills with alternative liners as bioreactors are being implemented throughout the country. These additional bioreactor 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** document, EPA is interested in assessing the performance of landfills operated as bioreactors with alternative liners, and these XL projects are expected to produce valuable data.

The Anne Arundel County Millersville Landfill XL Project and the other related XL projects will 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. Additional information on bioreactor landfills is available at EPA's Web site at <http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/bioreactors.htm>.

IV. The Anne Arundel County Millersville Landfill and Resource Recovery Facility

A. Overview

The Landfill is located approximately 15 miles south of Baltimore on 565 acres in Severn, Maryland. The Landfill, which began operations in 1975, is owned and operated by the County and is the only active MSWLF in the County. Since 1975, Cells 1 through 7 at the Landfill were opened, filled and closed. Cells 1 through 7 were constructed before the current solid waste disposal laws and regulations and were not lined. With the exception of Cell 1 West and Cell 3, all of these Cells are now capped. In 1995 and 1997 respectively, Cell 3 and Cell 1 West were "mined" by the County, *i.e.*, all the waste and underlying soil was excavated and either recycled, disposed of or used as cover in Cell 8. The footprint where Cell 1 West was located was graded and seeded and the footprint where Cell 3 was located is now a storm water infiltration basin.

Active landfilling is occurring in portions of Cell 8 at the Landfill. Cell 8 is approximately 1200 feet by 2400 feet in size and is divided into 8 subcells. Subcells 8.1 through 8.6 have been constructed with a geomembrane double-liner system, with primary leachate collection and leak detection (secondary collection) layers. Subcells 8.7 and 8.8 have not been constructed. Subcell 8.4, where the proposed bioreactor test area is located, has not received any waste in approximately two years. Subcell 8.6, where the proposed control area is located, is currently receiving waste.

In 2000 the Landfill accepted approximately 390 tons per day (tpd) of municipal solid waste (MSW), of which 1/3 (approximately 130 tpd) was recovered for reuse and recycling and the remaining amount (approximately 260 tpd) was landfilled. The Landfill serves on average 660 customers (residents and businesses combined) per day, 7 days per week. There are approximately 5,800 residents within a 1-mile radius of the Landfill; approximately 2,750 residents within a 0.5-mile radius; and approximately 900 residents within a 0.25-mile radius.

The Landfill presently generates approximately 8,000 gallons of leachate per day. Leachate is collected and pumped to a 305,000 gallon influent tank. The leachate then flows to a pretreatment plant at the Landfill where it is treated in controlled batches. From there it is discharged into a 305,000 gallon effluent tank and ultimately discharged to the sanitary sewer and

into a publicly operated wastewater treatment works.

The leachate collection system in Subcell 8.4 of the Landfill consists of a two foot thick sand layer, a geonet that covers the entire bottom of the Subcell and a system of perforated high density polyethylene (HDPE) pipes placed in gravel blankets that overlay the geonet. Leachate is conveyed by the geonet and/or pipes to a sump, from which leachate is pumped and conveyed to an on-site leachate pretreatment facility. The leachate collection system in Subcell 8.4 is designed specifically to keep a very shallow depth of liquid on the top liner, and in any event less than the maximum 30 cm allowed under 40 CFR 258.40(a)(2) at all locations within the Subcell. In the sump areas, the liner system is enhanced by the addition of layers of geosynthetic clay liner (GCL) below both top and bottom geomembranes. The GCLs have saturated hydraulic conductivities of less than 1×10^{-9} cm/s. The GCLs together with the other liner components result in a double synthetic liner system beneath the sump. To monitor the integrity of the top liner, the quantity of leachate removed from the subcell sumps above the bottom liner (detection zone) is monitored on a continual basis. (The accumulation of some liquid due to condensation is expected and is considered a normal condition.) The number calculated and established as a "not to exceed guideline" is 100 gallons per acre of subcell floor per day. Daily monitoring of the liquid above the bottom liner will continue throughout the life of Subcell 8.4. To protect the drainage and liner system, the initial eight-foot lift of waste in Subcell 8.4 consisted of soft trash. Soft trash is solid waste that is collected from residential curbside trash pickups. No curbside waste may exceed four feet in length. Curbside household waste in general is softer than waste streams from commercial facilities or sources from homeowners self-hauling materials from their home or yard. This initial eight-foot lift of waste was compacted to six feet in thickness.

Forty-three groundwater and 29 Landfill Gas (LFG) monitoring wells are installed at the Landfill. The groundwater monitoring wells are installed within each water-bearing zone in the subsurface beneath the Landfill. The groundwater wells are sampled semi-annually, and the LFG monitoring wells are monitored quarterly. The County submits ground water sampling data to the Maryland Department of the Environment (MDE) for their review. Starting in 1995, the County has replaced a total of 14 private

home wells to address the detection of landfill leachate contaminants in the upper aquifer or water bearing zone. The County replaced these wells with deeper double cased wells into a deeper aquifer when they had confirmed the detection of landfill contaminants in two consecutive sampling rounds. The County also samples 8 other private home wells in the area twice a year to check for possible contamination. The groundwater contamination is believed to have originated from the older unlined cells at the Landfill that are now either capped or have been mined by the County. The County has proposed to MDE that monitoring well TW-20, that is directly down gradient from Cell 8, be designated as the groundwater point of compliance well for the XL Project. Landfill leachate contaminants have not been detected in TW-20 (acetone, which is a common laboratory reagent, and carbon disulfide have been detected three times and one time respectively but neither has been detected since April of 1999).

This XL project is part of Anne Arundel County's larger efforts to further improve the management of its solid waste. In 1995, the County adopted a comprehensive Solid Waste Management Strategy (Strategy), the main objective of which is to extend the life of the Landfill. The Strategy comprises an integrated system involving waste reduction, recycling, reuse and innovative technologies that provides for a multi-faceted approach for meeting the County's future solid waste management needs. Thus far, this Strategy has reduced the waste entering the Landfill from 800 tons/day in 1994 to 260 tons/day in 2000. The County has an approximately 30% recycling rate. The County operates three "convenience centers", including one at the Landfill, where residents can bring in and drop off, at no cost, a wide variety of materials for recycling including: Oil, anti-freeze, lead-acid batteries, appliances, metal, wood, cardboard, paper, plastic and yard waste. The County manages a total of approximately 320,600 tons of waste per year. Approximately 75% of this total is either exported for disposal outside the County or recycled. The remaining 25% is disposed of at the Landfill. When the Landfill opened in 1975 it had a projected life of 25 years, or until the year 2000. As a result of the County's Solid Waste Management Strategy, the Landfill is now projected to be able to accept waste until 2063.

B. Description of the XL Project

The County's bioreactor pilot project will involve injecting a controlled

amount of liquids through injection devices into a 160 foot by 200 foot (approximately 3/4 of an acre) test area located within the southwestern portion of Subcell 8.4. The XL project will last for up to a seven-year period (depending on effectiveness), and will involve the monitoring of settlement, production of LFG and improvement of leachate quality. The objectives of the project are as follows: To design and construct a bioreactor test area in Subcell 8.4 of the Landfill; perform liquid injection in a controlled manner using different injection methods; monitor surface settlement, injection rates and related parameters over a period of time; evaluate results and ultimately identify the method that will most effectively increase the Landfill's waste capacity; and evaluate cost effectiveness of bioreactor techniques as a method of capacity creation.

The following discussion provides information on the proposed pilot design. The drawings of the test area location, proposed system layout, and details of the supplemental LFG collection system (if required) were provided in the FPA Attachments IV, V, and VIII.

1. Proposed Test Area

The proposed test area measures 160 feet by 200 feet and is located within the southwestern portion of Subcell 8.4. The test area is centered in a trapezoidal shaped plateau that gradually slopes to the northwest at an approximately 2 percent slope. Subcell 8.4 is bounded on three sides by other existing subcells. The fourth side is adjacent to the side slope of the cell. The distance from the test area to the side slope varies from approximately 50 to 100 feet. The side slopes in Cell 8 are constructed at a 3:1 slope. The test area is adjacent to an existing haul road which makes it accessible to tank trucks for easier liquid injection. The waste volume in this area is approximately 95,500 cubic yards (waste depth from surface to liner is approximately 80 to 85 feet).

Subcell 8.4 began accepting MSW in October 1992. Subcell 8.4 has accepted only small quantities of curbside MSW since 1997; it last accepted primarily construction debris about two years ago. Thus, the lowermost portion of the waste in Subcell 8.4 contains typical MSW, while the uppermost portion contains waste that is proportionately higher in construction debris and lower in decomposable organic materials. Several lifts of typical MSW in the lowermost portion of the Subcell 8.4 were involved in a County "mauler" project. The mauler was used to grind the waste into a relatively homogeneous

and small particle size that has an increased surface area. In 1999, the County completed a waste composition study to provide more detailed information about recent waste placement in the area of the proposed test. Additional information is in a March 1995 County waste sort report.

The County used soil as a daily cover at the site until March 1993. Since then, the County has primarily used removable and reusable tarpaulins (tarps) throughout Cell 8 as the cover (approximately 97 percent of the time, depending on weather conditions). Previous use of tarps (rather than soil cover, for example) presents good conditions for a bioreactor study, as there is less potential for the creation of barriers (e.g., compacted soil cover) to limit vertical penetration of liquid into the waste mass. Subcell 8.4 currently has an interim soil cover and an approximately 12 inch thick layer of shredded wood mulch generated from tree and yard waste.

2. Liquid Injection

To improve the evaluation of different infiltration systems, the proposed test area will include two vertical injection wells and two horizontal injection trenches. The two trenches are proposed to be constructed parallel to the nearest side slope and excavated so that they slope back toward the middle of the Cell 8.4 (southeast) at a 1 percent grade in order to minimize excavation depths, promote gravity drainage, and eliminate possible (landfill) side-slope seepage. The horizontal trenches would consist of 6-inch diameter perforated or slotted pipe centered in a 2 x 1.5-foot trench, backfilled with high permeability stone or gravel. Proprietary leachate pipe products that are relatively new to the waste industry may also be considered.

Plans for the two vertical wells consist of slotted or perforated 6-inch diameter pipe centered in a 3-foot diameter borehole and backfilled with high permeability stone. The well depths would be selected to penetrate between one-third and one-half the overall waste depth.

Design spacing for the wells and trenches minimizes overlapping areas of influence and will reduce uncertainties that may be introduced by overlapping influences. The injection devices are designed to maximize the amount of liquid that can be injected; however, actual injection rates will be varied in response to information learned from the degree of infiltration and resulting settlement. Design details of the proposed vertical wells and horizontal trenches are shown in Attachment V of the FPA and were submitted by the

County to MDE and EPA in an April 17, 2001 letter with enclosed drawings.

3. Settlement Plates

Prior to system startup, the County will install monuments (settlement plates) to monitor settlement caused by the degradation of the waste. These settlement plates will be strategically located around wells and trenches to measure surface movements during the study. The top elevation of each plate will be surveyed prior to liquid injection. The County plans to monitor these settlement plates at least monthly, but will do so more frequently if information suggests that settlement is occurring at a rapid rate. At least one plate will be located in a control area that is adjacent to the test area and outside the zone of influence for the liquid injection system. This control area will measure normal settlement rates as a comparison. Additionally, a stable elevation benchmark will be established to ensure that all readings are based on the same baseline elevation. Annual aerial topographic surveys will also be performed to aid in the evaluation of settlement and the effectiveness of the leachate recirculation.

4. Landfill Gas

The design capacity of the entire Landfill exceeds the New Source Performance Standard (NSPS) thresholds, and thus the Landfill must comply with 40 CFR part 60, subpart WWW. Cell 8 currently operates under an Alternate Operating Scenario (AOS) approved by the State of Maryland under its NSPS Program, and the County has included the AOS in its application for a Part 70 Permit (also known as a Title V permit) under the Clean Air Act (CAA). The Title V Permit for the Landfill was signed on August 29, 2001. The AOS provides that at Cell 8 LFG is collected via existing leachate collection system components, rather than from separate LFG extraction wells and/or trenches. The AOS also postpones the requirement for quarterly measurement of surface methane emissions under 40 CFR part 60, subpart WWW. The AOS applies to Cell 8 only. Each of the other Cells is part of an active LFG collection system comprising separate extraction wells and/or trenches, and are monitored quarterly for LFG.

Recognizing that the addition of liquids enhances the generation of LFG, the County has agreed to take all necessary steps to control and monitor LFG in the area of the bioreactor experiment. To accomplish these steps, and as further detailed below, the

County has: (1) Requested an amendment to its AOS under which it will be required to conduct quarterly surface methane emissions monitoring, beginning with a baseline measurement taken prior to the first introduction of liquids, and (2) in accord with the requested amendment, as the project progresses, evaluate the need to install supplemental LFG control devices, in the area of the bioreactor project in accordance with the NSPS for municipal landfills, 40 CFR part 60, subpart WWW. A copy of the County's proposed requested amendment was included in the FPA as Attachment IV. The County will undertake supplemental LFG response measures in accord with 40 CFR part 60, subpart WWW if methane surface emissions exceed 500 ppm or if significant odors from the test area are observed. The potential for surface emissions is likely to be greatest in the immediate area of liquids injection.

In addition, the County believes that there would be a reduced potential for LFG emissions at the landfill side slope because the slope is covered with an intermediate cap that consists of a vegetative layer over a two foot soil layer that has a permeability ranging from 10^{-4} to 10^{-5} centimeters per second. The existing LFG collection system for Cell 8 is designed to apply a continuous vacuum to the leachate collection pipe network under the waste in order to induce a pressure gradient to draw the LFG toward the collection network. Collected LFG is piped to an enclosed flare for destruction. If necessary, supplemental LFG collection and control may be implemented in the test area, based on results of quarterly methane surface emissions monitoring and observations of odors.

A. LFG Monitoring. Monitoring, record keeping and reporting requirements for LFG agreed to in the FPA signed by the County, EPA and MDE are contained in the Title V permit for the Landfill issued on August 29, 2001 pursuant to the CAA, 42 U.S.C. 7401 *et seq.* The Title V permit specifies that the LFG monitoring and reporting in the test area will be done according to the requirements of 40 CFR part 60, subpart WWW. The County will perform quarterly monitoring for surface emissions over the entire plateau area that includes the test area of Subcell 8.4. The plateau area measures approximately 180 feet by 300 feet and the test area is essentially centered on the plateau. Based on the results of the quarterly monitoring for surface emissions supplemental LFG monitoring and control may be required by the County's Title V permit,

including semi-annual testing for non-methane organic compounds and weekly testing at the well heads for methane, carbon dioxide, carbon monoxide, oxygen and nitrogen. Also, if the County undertakes such supplemental LFG collection measures, the County will continuously collect the LFG flow rate from Cell 8 and on a weekly basis determine the LFG flow rate in the plateau area of Subcell 8.4.

B. LFG Control. If any quarterly surface monitoring shows a surface methane concentration that exceeds 500 ppm over the test area plateau or if significant odors are found to be emanating from the test area, the County will take corrective actions (which may include installation and operation of supplemental LFG collection and control technology) as provided in 40 CFR 60.755. Such supplemental LFG collection and control technology may include either passive LFG collection technology (*i.e.* using candlestick flares independent of the existing active LFG collection system) or active LFG collection technology (*i.e.* connected to the existing active LFG collection system). In any event, the LFG collection and control measures (including any supplemental measures undertaken in the area of the Test Area) will be run continuously if sufficient gas is present to sustain combustion, and shall otherwise be operated in accordance with 40 CFR part 60, subpart WWW. If and when the County undertakes such supplemental LFG collection measures, the County will continuously collect the LFG flow rate from Cell 8 and on a weekly basis determine the LFG flow rate in the plateau area of Subcell 8.4.

5. Liquids Monitoring

Each injection device will be fed from a centrally located 6,500 gallon tank truck through a single hose connection. A flow meter will be installed to allow measurement of liquid flow to each injection device. Four control valves will be installed to allow independent flow regulation to each of the injection ports. A central feed location will be used to ease system operations and reduce truck traffic that may affect settlement rates. Finally, precipitation will be recorded via a rain gauge to allow for adjustments to the injection rate. As noted above, at no time will more than 30 centimeters (cm) of leachate be permitted to collect over the liner. The quantity of leachate, and supplemental storm water (if required), added back to the landfill will be measured throughout the life of the project. The County expects to measure recirculation quantities using flow

meters installed on the leachate receptacle just prior to the distribution system piping and valves.

The leachate collection/drainage layer constructed in each subcell consists of two feet of high permeability sand over a geonet drainage layer. Due to the internal subcell slopes and high permeability of the drainage layer, the County expects that there will be very little pressure or "head" buildup on the liner notwithstanding the increased levels of liquids. As noted above, the leachate collection system is designed to maintain a depth of leachate over the liner at all locations within a subcell, significantly less than the prescribed maximum 30 cm depth in a MSWLF constructed with a composite liner under 40 CFR 258.28(a)(2)). Leachate recirculation will be suspended if there appears to be head build-up, and in any event the head would not be allowed to exceed 30 cm under today's proposed rule.

The primary liner system of the Landfill is underlain by a secondary liner and leachate collection system. Sumps are located at the low point of each subcell and are monitored for the depth of liquid on a continual basis. There are double risers extending about 200 feet from the sump in the primary leachate collection layer up to the toe of the side slopes of the Landfill. The double risers provide redundant access to the leachate collection layer. 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.

Since leachate is pumped from each subcell individually, during the proposed project the County intends to sample the leachate from Subcells 8.4 (test cell) and 8.6 (control cell) semi-annually for parameters that will help establish whether or not leachate quality is improving in Subcell 8.4.

6. Protection Against Landfill Fires

Fires in landfills are usually caused by poorly designed or operated active LFG collection systems that allow ambient air into the waste. For this

project, the LFG collection system will be carefully operated to handle excess gas generated while minimizing the potential for landfill fires. The potential for landfill fires will also be minimized for this project since it is based on the anaerobic bioreactor concept. If quarterly monitoring for surface methane emissions triggers supplemental LFG controls, the County will test any Landfill gas extraction wells installed in the test area on a weekly basis for gases including: methane, carbon dioxide, carbon monoxide, oxygen and nitrogen. The County will carefully monitor for and manage the oxygen concentration in the LFG to reduce the potential occurrence of a landfill fire. The County, MDE and EPA acknowledge that a portion of the closed and capped Cell 5-6-7 has had a landfill fire in the past and have agreed to monitor and control the anaerobic bioreactor testing to ensure this does not occur as a result of this project.

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

Currently, the EPA's regulations outline two methods for complying with liner requirements for municipal solid waste landfills. The first method is a performance standard set forth at 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 40 CFR 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 forth at 40 CFR 258.40(a)(2) and (b). 40 CFR 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 Were the Liners at the Landfill Constructed?

The liner in the test area at the Landfill was constructed to meet or exceed the performance standard set forth in 40 CFR 258.40(a)(1). The base liner system for each constructed Subcell in Cell 8 is a double synthetic system consisting of the following, from top to bottom:

1. 2-foot protective sand cover over geotextile filter;

2. Leachate collection geonet drainage layer;

3. 60-mil high density polyethylene (HDPE) geomembrane top liner;

4. Leakage detection geonet drainage layer;

5. 60-mil HDPE geomembrane bottom liner; and

6. 1.5-foot low permeability (1×10^{-7} , cm/s, demonstrated by construction QA/QC) soil subbase.

Attachment VI in the FPA contains a detailed drawing of the base liner system currently constructed in the subcells in Cell 8. This liner system exceeds the performance requirements of MDE and EPA for MSW landfills, and incorporates two geomembranes providing for leak detection, features typically associated with stricter hazardous waste landfill designs.

E. What Are the Environmental Benefits Expected Through This XL Project?

The expected environmental benefits of this XL project include: (1) Accelerated biodegradation of waste, resulting in increased space for new waste in the Landfill (air space) and therefore longer Landfill life; (2) decreased concentration of most leachate constituents; (3) reduced amount of leachate requiring pretreatment; (4) reduced amount of leachate that the Landfill discharges to the local wastewater treatment plant, with subsequent discharge of effluent to the Patuxent River, and (5) reduced post-closure care, maintenance and risk (since the controlled settlement of the solid waste will occur during Landfill operation, there will be lower potential for leachate migration into the subsurface environment, and more LFG will be produced during operation). Additional information on the potential environmental benefits of bioreactor landfills is discussed in Section III.B. and is available on EPA's Web site at <http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/bioreactors.htm> and at <http://www.epa.gov/ProjectXL/>.

To adequately measure the environmental and other benefits of the proposed bioreactor pilot project, the County will establish a baseline that records the environmental impacts of the Landfill without the proposed bioreactor project. Without the project, Subcell 8.4 would be filled until it reaches its capacity, and then covered. The remainder of the subcells in Cell 8 would also be filled until they reach capacity and Cell 8 will be closed and the County would develop Cell 9.

Without this project, it is assumed, Cell 8 would also continue to generate the same levels of leachate for disposal to the local Publicly Owned Treatment

Works (POTW). Treatment of leachate outside the Landfill necessitates the use of equipment, chemicals and ultimately results in the discharge of effluent to surface water. If all the leachate is managed inside the Landfill there will be no discharge to surface water and it is expected to result in cost savings to the County.

The superior environmental performance for this XL Project would be measured using the baseline against the actual results of the project for the following areas: The amount of landfill settlement, the additional air space created in the Cell 8.4 and the amount and concentration of leachate disposed at the local POTW. Specific monitoring parameters are listed in the proposed rule following this preamble.

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

The County has a history of involving stakeholders in projects at its solid waste acceptance or disposal facilities. This philosophy has proved to be beneficial to all involved parties. The County has divided the stakeholders into three groups. The groups are identified as primary stakeholders, potential interested parties, and members of the general public.

The primary stakeholders are the regulatory agencies involved with solid waste disposal facilities or other activities at the Landfill. The primary stakeholders include:

- U.S. Environmental Protection Agency (EPA)
- Maryland Department of the Environment, Solid Waste Program
- Anne Arundel County Health Department, Environmental Health Bureau
- Anne Arundel County, Planning and Code Enforcement
- Anne Arundel County, Soil Conservation District

Other potentially interested stakeholders have expressed an interest in the project and have had some involvement in the project. It is not anticipated that all stakeholders would play an active and ongoing role in the project. If they do not actively participate in the project, they will be kept informed of the project's progress at appropriate milestones. Their input will be welcomed in verbal or written form.

In May of 2001, after the FPA was signed, the County sent newsletters to approximately 130 nearby residents and concerned citizens with information on the bioreactor testing under project XL.

During implementation of this XL project, the stakeholder involvement

program agreed to in the FPA would ensure that: (1) Stakeholders are apprised of the status of project implementation; and (2) stakeholders have access to information sufficient to judge the success of this XL project. Anticipated stakeholder involvement during the term of the project may include other general public meetings to present periodic status reports, availability of data and other information generated. Anne Arundel County plans to convene periodic meetings for interested stakeholders to brief them on progress during the duration of the XL project. In addition to the reporting requirements of today's proposed rule, the FPA includes provisions whereby the County will make copies of project reports available to all interested parties.

A public file on this XL project has been maintained at the Web site throughout project development, and the EPA will continue to update it as the project is implemented. Additional information is available at EPA's Web site at URL <http://www.epa.gov/projectxl>.

G. 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 seven (7) years. In the event that EPA determines that this project should be terminated before the end of the seven year period and that the site-specific rule should be rescinded, the Agency may withdraw this rule through a subsequent rulemaking. This will 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 will establish an interim compliance period, not to exceed six months, such that the County will be returned to full compliance with the existing requirements of 40 CFR part 258.

The FPA allows any party to the agreement to withdraw from the agreement at any time before the end of the seven 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.

For example, an early conclusion will be warranted if the project's environmental benefits do not meet the Project XL goal 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.

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

EPA did not prepare an economic estimate of the cost of today's proposed rule or an estimate of any paperwork reduction. EPA notes, however, that the County volunteered for this pilot project which will affect only one facility and is expected to result in an overall cost savings by: Accelerating the decomposition of waste placed in Cell 8.4 of the Landfill, which is expected to extend the life of this cell and improving the quality and management of leachate generated at the landfill, both of which are expected to decrease leachate treatment and disposal costs.

V. What Regulatory Changes Are Being Proposed To Implement This Project?

A. Existing Liquids Restriction for MSWLFs (40 CFR 258.28)

This proposed site specific rule would grant regulatory relief from certain requirements of RCRA that restrict application of liquids in MSWLFs, because, as previously described, Subcell 8.4 of the Landfill was constructed with an alternative liner 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 non-containerized 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 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 40 CFR 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 40 CFR 258.41” (66 FR 42441–42449, August 13, 2001). Therefore, the regulatory relief needed for the Anne Arundel County XL Project is a site-specific amendment to 40 CFR 258.41.

With the exception of those specific provisions modified by this proposed rule, all other applicable existing and future regulatory requirements in part 258 and elsewhere continue to apply to the Anne Arundel County Millersville Landfill.

B. Proposed Site-Specific Rule

This proposed rule would allow the operator of the Landfill to add liquids, primarily consisting of leachate from the Landfill and possibly supplemental storm water (“liquids”) to a portion of Subcell 8.4 of the Landfill, as long as the maintenance, operational, monitoring and other requirements set forth in 40 CFR 258.41(d) are met. This proposed rule would add a new subsection to the rules in 40 CFR 258.41. New 40 CFR 258.41(d) would specifically apply to the Anne Arundel County Millersville Landfill, in Severn, Anne Arundel County, Maryland, and would allow liquids to be applied to a portion of Subcell 8.4 in this Landfill. This proposed rule would impose certain minimum monitoring, reporting, and control requirements on the County, which, among other things, would ensure that the project is protective of human health and the environment and facilitate EPA's evaluation of the project.

The CAA Title V Permit for the Landfill was signed by MDE on August 29, 2001. Monitoring, record keeping and reporting requirements for LFG previously agreed to in the FPA (Sections II. B. and III. G. and Tables 4 and 5) which was signed by the County, EPA and MDE are contained in the Title V permit for the Landfill. The Title V permit specifies that the LFG monitoring and reporting in the test area will be performed according to the requirements of 40 CFR part 60, subpart WWW. The County will perform quarterly monitoring for surface emissions over the entire plateau area that includes the test area of Subcell 8.4. The plateau area measures 180 feet by 300 feet and the test area is essentially centered on the plateau. Based on the results of the quarterly monitoring supplemental LFG monitoring and control may be required by the County's Title V permit, including semi-annual testing for non-methane organic compounds and weekly testing at the well heads for methane, carbon dioxide, carbon monoxide, oxygen and nitrogen. Also, if the County undertakes such supplemental LFG collection measures, the County will continuously collect the LFG flow rate from Cell 8 and on a weekly basis determine the LFG flow rate in the plateau area of Subcell 8.4.

Existing regulation allowing leachate recirculation over a composite liner (40 CFR 258.28(a)(2)) requires a leachate collection system as specified in 40 CFR 258.40(a)(2) to ensure that contaminant migration to the aquifer is controlled. (56 FR 50978–51056, Oct. 9, 1991). This proposed rule would also require that a leachate collection system (as described in 40 CFR 258.40(a)(2)) be in place in order for leachate to be recirculated in the Subcell 8.4, and the County would be required to ensure that the leachate collection systems maintains the leachate head over the liner at a depth of less than 30 cm in Subcell 8.4.

Today's proposed rule would not provide any regulatory flexibility with respect to monitoring requirements; rather it adds monitoring to that which would be required for this Landfill if it continued operating as a conventional MSWLF. In addition to the monitoring required in part 258, for example, the County would be required to monitor and report whether surface seeps are occurring and determine whether they are attributable to operation of the liquid application system; perform a semi-annual analysis of leachate quality in both test and control areas; and at least monthly, monitor the gas temperature at well heads. EPA believes this additional information will provide the necessary indicators of any increased risk to human health or the environment in a timely manner and will enable the County, MDE and/or EPA to take whatever steps are necessary, including suspension or termination of the project to reduce or eliminate any such risk. EPA also believes that this additional information will be valuable in assessing the benefits of bioreactor operation.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is “significant” and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of this regulatory action. The Order defines “significant regulatory” action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because this proposed rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review under Executive Order 12866. In addition, after consultation OMB has determined that review of proposed site-specific rules under Project XL is not necessary.

B. 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.*, since it applies to only one facility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), whenever an Agency is required to publish a notice for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However,

no regulatory flexibility analysis is required if the head of an agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not have a significant impact on a substantial number of small entities because it affects only one facility, the Anne Arundel County Millersville Landfill, and it is not a small entity.

Based on the foregoing discussion, I hereby certify that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities. Consequently, the Agency has determined that preparation of a formal Regulatory Flexibility Analysis is unnecessary.

D. 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 a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating a 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 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 potentially affected small governments, enable officials of affected small governments to have meaningful and

timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this proposed rule is applicable only to one facility in Maryland. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this proposed rule does not contain a federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountability process that would ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" are 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."

Today's proposal does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, nor on the distribution of powers and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposal will only affect one facility, providing regulatory flexibility applicable to this specific site. Thus, Executive Order 13132 does not apply to this proposed rule.

F. 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 accountability process that would 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.” Today’s proposal 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, nor on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. EPA is currently unaware of any Indian tribes located in the vicinity of the facility. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

“Protection of Children From Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) “economically significant” as defined under Executive Order 12866, 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 other potential effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It will not result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (“NTTAA,” Pub. L. 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today’s proposal does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (February 11, 1994) is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency’s goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA’s policies, programs, and activities. In response to Executive Order 12898, EPA’s Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Potential environmental justice impacts are identified consistent with the EPA’s Environmental Justice Strategy and the OSWER Environmental Justice Action Agenda.

Today’s proposal applies to one facility in Maryland. Overall, no disproportional impacts to minority or low income communities are expected.

List of Subjects in 40 CFR Part 258

Environmental protection, Landfill, Solid waste.

Dated: May 7, 2003.

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

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

3. Amend § 258.41 to add a new paragraph (d) to read as follows:

§ 258.41 Project XL Bioreactor Landfill Projects.

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(d) *Anne Arundel County, Millersville Landfill Requirements.* Paragraph (d) of this section applies solely to the Anne Arundel County, Millersville Landfill, owned and operated by the Anne Arundel County Department of Public Works, or its successors, located in Severn, Anne Arundel County, Maryland (“Landfill”). The Landfill is allowed to Landfill leachate and onsite storm water, hereinafter, “liquid or liquids”, to a test area contained in portion of Subcell 8.4 of the Landfill under the following conditions:

(1) The operator of the Landfill shall maintain the liner underlying Subcell 8.4, which was designed and constructed with an alternative liner in accordance with § 258.40(a)(1), and a leachate collection system, in order to maintain the integrity of the liner system and keep it and the leachate collection system in good operating order. From top to bottom the base liner underlying the waste in Cell 8 consists of: 2-feet of sand cover, a geotextile filter, a leachate collection layer, a 60-mil high density polyethylene (HDPE) top liner, a leakage detection layer; a 60-mil HDPE bottom liner and 1.5-feet of a low permeability soil subbase. 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 or waste slippage, or otherwise compromise the integrity of the Landfill and its liner system, as determined by the Director of the Maryland Department of the Environment (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 Cell 8 of the Landfill, as specified by the State Director, under section § 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 the Maryland Department of the Environment (MDE) shall be notified in the semi-annual report of the occurrence of any seeps.

(4) The operator of the Landfill shall determine on a semi-annual basis the leachate quality by analyzing samples of the Landfill leachate, from the sumps in Subcell 8.4 (where the test area is located) and 8.6 (where the control area is located), for the following parameters: dissolved oxygen, dissolved solids, biochemical oxygen demand, chemical oxygen demand, organic carbon, nutrients (ammonia, nitrogen, total nitrogen, and total phosphorus), nitrate, nitrite, total alkalinity, ortho phosphate, total suspended solids, cyanide, chloride, total dissolved solids, RCRA hazardous metals, volatile organic compounds and semi-volatile organic compounds by Method SW-846. The operator of the Landfill shall collect weekly samples of Landfill leachate, from the sumps in Subcell 8.4 and Subcell 8.6, and analyze them for the following parameters: pH and conductivity. The depth of liquid in the sumps shall be monitored on a continual basis and the leachate flow rate shall be calculated on a monthly basis.

(5) The operator of the Landfill shall determine on a semi-annual basis: The total quantity of leachate collected in Subcell 8.4 and Subcell 8.6; the total quantity of liquids applied in the test areas; any changes in the application rate or quantity 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 MDE of the liquid proposed to be added. The parameters for the initial characterization of liquids shall be the same as the semi-annual parameters for the Landfill leachate specified in paragraph (d)(4) of this section. The operator shall annually test all liquids, other than leachate, added to the Landfill for the semi-annual parameters specified in paragraph (d)(4) of this section and compare these results to the initial characterization.

(7) The operator of the Landfill shall ensure that Subcell 8.4 is operated in such a manner so as to prevent any landfill fires from occurring. If quarterly monitoring for surface methane emissions triggers supplemental LFG controls, the County will test any Landfill gas extraction wells installed in the test area on a weekly basis for LFG flow rate and gases including: methane, carbon dioxide, carbon monoxide, oxygen and nitrogen. The County will carefully monitor for and manage the oxygen concentration in the LFG to reduce the potential occurrence of a landfill fire.

(8) The operator of the Landfill shall determine on a semi-annual basis the settlement of the test area based on measurements of the elevation of monuments installed for this purpose. The operator of the Landfill shall determine on an annual basis the settlement of the test and control areas based on topographic surveys.

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

(10) The operator of the Landfill shall report to the EPA Regional Administrator and the State Director on the information described in paragraphs (d)(1) through (9) of this section on a semi-annual basis. The first report is due within 6 months after [THE EFFECTIVE DATE OF THE FINAL RULE]. These reporting provisions shall

remain in effect for the duration of the project term.

(11) Application of this site-specific rule to the Landfill is conditioned upon the Landfill being subject to an approved Title V permit issued pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.* (CAA) that provides for compliance with the requirements of 40 CFR Part 60, Subpart WWW in the plateau area of Subcell 8.4 that is impacted by the recirculation activities.

(12) This section will remain in effect until [DATE SEVEN YEARS FROM EFFECTIVE DATE OF FINAL RULE]. By [DATE SEVEN YEARS FROM EFFECTIVE DATE OF FINAL RULE], the Landfill 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 State of Maryland and Anne Arundel County agree to an amendment of the project term, the parties must enter into an amended or new Final Project Agreement for any such amendment.

(13) The authority provided by this section may be terminated before the end of the 7 year period in the event of noncompliance with the requirements of paragraph (d) 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 apply instead of this section may also result in termination of the authority provided by this section. In the event of early termination EPA, in consultation with the State of Maryland, will determine an interim compliance period to provide sufficient time for the owner or 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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