



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-90
Regulation Title:	Solid Waste Management Facility Permit Application Action Fees
Action Title:	Amendment

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Virginia Waste Management Board's Solid Waste Management Facility Permit Action Fee Regulation, 9 VAC 20-90-10 *et seq.*, establishes the fees for new permits and modifications to permits for solid or regulated medical waste management facilities. This regulatory amendment will replace emergency regulations currently in effect and will adjust fees to account for inflation and program changes since original adoption. This includes requiring the applicant or petitioner to arrange for and bear the costs of publishing and broadcasting notices relating to the processing of permit actions. The department will retain the option of issuing the notices and requiring the applicant to remit the costs incurred for providing the notices.

Statement of Final Agency Action

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

The Virginia Waste Management Board adopted regulations entitled Solid Waste Management Permit Action Fees as final regulations on April 17, 2003.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Section 10.1-1402(11) of the Code of Virginia provides the Waste Management Board the authority to promulgate regulations to carry out its powers and duties. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402>)

Section 10.1-1402(16) of the Code of Virginia provides the Waste Management Board the authority to collect permit application fees for non-hazardous solid waste facilities sufficient only to defray the costs of issuing permits. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402>)

Section 10.1-1402.1 of the Code of Virginia provides governing standards for the development of these regulations. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402.1>)

Federal regulations do not address fees for solid waste permit applications. These regulations have been developed under the authority given the Waste Management Board by Virginia statute. The Office of the Attorney General has certified the agency has the statutory authority to promulgate the proposed regulation.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The current permit fee schedule has not been updated since June 8, 1992. The purpose of this action is to replace the emergency regulations currently in effect and update permit fees for inflation. In addition, the proposed regulations transfer the costs of advertising permit actions and variances from the taxpayer to the applicant requesting the permit action. While considering these issues it is appropriate to also consider the clarity of the regulations as a whole, statutory changes, and appropriate improvements wherever possible.

Substance

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

Currently emergency regulations are in effect in response to changes made to § 10.1-1402.1 of the Code of Virginia. These statutory changes are effective for two years and allow the tripling of permit fees. The emergency regulations tripled permit fees in effect on June 30, 2002, and new permit fees became effective July 1, 2002. Since the emergency regulations expire prior to the sunset of the statutory changes, these regulations contain a two-part fee schedule. The fee schedule includes tripling permit fees through June 30, 2004, and then establishes a new fee schedule effective July 1, 2004. The fee schedule effective July 1, 2004, adjusts the fees first established in 1992 for inflation to current dollars. Additional fees have been added for the review of permit related documents and will become effective July 1, 2004. In addition, the regulations also transfer the costs of advertising permit actions and variances from the taxpayer to the applicant receiving the permit action.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

This regulatory amendment adjusts the fee schedule currently in effect and contains a two-part fee schedule. The changes to the regulations include retaining the tripled permit fees until June 30, 2004, and new permit fees will become effective July 1, 2004. The permit fees that will become effective July 1, 2004, will adjust the fees first established in 1992 for inflation to current dollars and will also include fees for additional reviews the department performs. The increased fees are a disadvantage to applicants for permit actions, but these changes benefit general taxpayers since applicants will be bearing a greater portion of the costs associated with permit actions.

Applicants for permit actions will be required to pay for publication and broadcast of public notices required to be advertised. This change transfers the costs of advertising permit actions and variances from the taxpayer to the applicant requesting the permit action. Taxpayers receive the benefit of receiving notification of permit actions without bearing the costs associated with the notices. Applicants for permit actions, however, may see this change as disadvantageous since applicants previously were not required to pay for these advertisements.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The changes that have been made since the proposed stage are primarily editorial. Fee tables have been updated using the February 2003 inflation factor. Composting fees have been reduced for facilities composting Category I through III feedstock to encourage composting. Text has been added to the regulations to clarify when the corrective action module fee is to be submitted. Also the fees for amending permits to include Module X and XI have been clarified.

Public Comment

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

Composting facility permit action fee

One commenter expressed concern over the permit fee for obtaining a composting permit and a permit by rule. The commenter recommended reducing the cost of obtaining a full composting permit to less than \$1000 and recommended the department not charge for permit by rule confirmations.

Agency Response: Permit fees reflect the review time associated with the type of application. Applications for composting facilities must contain facility design information, an operations manual, an emergency contingency plan and a closure plan, all which must be reviewed. \$1000 is not sufficient to cover the costs associated with the review of these plans. In order to encourage composting, a lower fee has been provided for facilities accepting Category I through III feedstock. However, the fees will remain the same (adjusted for inflation) for facilities composting Category IV feedstock.

Not all composting activities are required to obtain a permit. Some activities are exempt from the permitting requirements, while other activities are allowed under the permit by rule provisions (\$390 fee.) The department will consider additional reductions in composting fees with additional experience with these permits.

Corrective action module fee

One commenter stated the fee for review of a corrective action module, Module XIV, (\$22,560) did not seem consistent with fees for other actions. This amount is higher than the fee for a Part B application (\$18,430). The commenter did not suggest an alternate fee to be changed for the corrective action module, Module XIV.

Another commenter stated the fee for review of a corrective action module, Module XIV, (\$22,560) did not seem consistent with fees for other actions. This amount is higher than the fee combined fee for Part A and Part B applications (\$22,550). The commenter suggested reducing the fee for corrective action permit amendments to a level similar to Part A applications (\$4,120) or groundwater monitoring modules (\$3,200).

Agency Response: The fee for the corrective action module is based on the review of the site conditions and corrective measures that must take place in order to select and implement a remedy. In addition, periodic review of the remedy is required to determine if additional actions are required. A corrective action program can contain multiple systems and multiple designs, which must be reviewed and evaluated by the department to determine if additional action is warranted. The fee is now consistent with the fee for Part A and B applications although the fee has not been reduced to the levels indicated in the comment.

General comments

One commenter requested changing 9 VAC 20-90-60 A 2 to state that fees for a new permit are to be submitted with the associated application for a permit action instead of requiring the fee to be submitted with the notice of intent.

Agency Response: Fees have always been required to be submitted with a notice of intent. The regulations have been modified to allow Part B application fees to be submitted with that portion of the application, delaying submission of that fee. If a fee is not received with the notice of intent, internal policy requires a letter to be sent that indicates that a fee is required when the Part A application is submitted or the application will not be processed.

One commenter suggested adding a reference to Table 3.1-3 to the end of 9 VAC 20-90-90 D.

Agency Response: Minor amendments are addressed in 9 VAC 20-90-100 and should not be referenced in this section. Clarification has been provided in section 90 to state the fees referenced are for major actions or amendments.

One commenter suggested changing Table 3.1-2 from “Groundwater monitoring – Module X or XI” to say “Module X and XI” since both modules are required for all relevant permits.

Agency Response: The regulations have been modified to clarify when fees for Module X and XI apply.

In addition, editorial clarifications were suggested by a commenter and were incorporated into the final regulations.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Changes have been made throughout the regulations to replace the term infectious waste with regulated medical waste. Fees previously listed as permit application fees are now called permit action fees. This change was made since the term application fee may create confusion over the fees assessed for actions other than the original permit issuance.

9 VAC 20-90-10. Definitions.

The definition section is being revised to incorporate statutory and regulatory definitions from the Waste Management Act 10.1-1400 et seq., the Solid Waste Management Regulations, 9 VAC 20-80-10 et seq., and the Regulated Medical Waste Regulations, 9 VAC 20-120-10 et seq. Since these definitions are being incorporated into the regulations, many of the definitions currently included in the regulations are being removed since they are duplicative.

9 VAC 20-90-20. Authority of Regulation (Repealed)

This section is being repealed since the authority for the regulation is not required to be part of the regulatory text.

9 VAC 20-90-30. Purpose of regulation.

The regulations are being amended to establish fees for the review of other permit-related documents required to be reviewed by the department.

9 VAC 20-90-50. Applicability of regulations.

The regulations have been clarified concerning the submittal of fees to be paid when the director determines to amend, modify, or revoke and re-issue a permit in accordance with §10.1-1408.1 or §10.1-1409 of the Code of Virginia. The exemption section has also been removed since the facilities previously listed as exempt from permit fees will be required to submit permit fees. The regulations now include the Vegetative Waste Management and Yard Waste Composting Regulations, since permit by rules are issued for these facilities and appropriate fees are to be submitted to the department with the request for the permit by rule. In addition, the regulations now state requests for variances from the Regulation Governing Management of Coal Combustion By-Products (9 VAC 20-85-10 et seq.) will be subject to these regulations.

9 VAC 20-90-60. Payment, deposit, and use of fees.

This section clarifies when fees are to be submitted for Part A, Part B, corrective action, and emergency permit applications. This section also clarifies processing of a permit action (excluding emergency permits) will not take place until fees have been paid. Text addressing applications submitted prior to the effective date of the original fee regulations is no longer applicable and is being removed.

The section has also been revised to eliminate confusion concerning the termination of permits. If the director is amending, or revoking and re-issuing a permit for cause, nonpayment of fees may lead to termination of the permit.

9 VAC 20-90-70. General.

The regulations explain the adjustment of fees in Column 3 of tables included in the regulations. The fees have been adjusted to current dollar values using the Consumer Price Index for All Urban Consumers (CPI-U, 1982-84 = 100) and have been rounded to the nearest \$10 increment. The requirement for an annual review of the fees has been removed and fees will be reviewed in accordance with Section 10.1-1402.1.

This section now requires the applicant to arrange for and bear the cost of any newspaper publication and radio broadcast for permit actions and variances requiring public notification. The department will provide to the applicant the text of the notice and a list of acceptable newspapers and radio stations for the advertisement. The department retains the option of arranging for the publication and broadcast and requiring the applicant to reimburse the department for the costs associated with the publication and broadcast.

9 VAC 20-90-80. New facility ~~permits~~ permit issuance or action.

In the case of an emergency permit, the director has the option of determining a fee lesser than the fee listed in table 3.1-1 would be more appropriate at the time the permit is issued.

9 VAC 20-90-90. Applications for permit actions, amendment or modification.

Gas management plans, closure plans, and post-closure plans will be assessed a fee for review. The regulations clarify when the schedule for compliance for corrective action (Module XIV) is required. The regulated medical waste storage module (Module XVI) and regulated medical waste treatment module (Module XVII) have been developed for facilities storing and/or treating regulated medical waste, so these modules are now listed in this section. Specific fees for these modules have been added to the regulations. The regulations have also been modified to clarify when fees for Module X and XI apply.

9 VAC 20-90-100. Minor action, amendments or modifications.

The section has been revised to clarify minor permit action fees are included in table 3.1-3.

9 VAC 20-90-110. Review of Variance requests

The regulations now include a fee for the processing of variance requests. Applicants requesting variances from the Virginia Solid Waste Management Regulations, the Regulated Medical Waste Management Regulations, or the Regulation Governing Management of Coal Combustion By-Products will be assessed a fee as shown in Table 3.1-4. All variance requests will be subject to base fees. Additional fees will be assessed for reviews of specific types of variance requests and are to be submitted in addition to base fees. Variance requests will not be assessed the public participation fees listed in Table 3.1-2.

9 VAC 20-90-120 Permit Application Fee Schedules (Table 3.1-1, Table 3.1-2, and Table 3.1-3)

These tables have been revised to include a two-part fee schedule. The table continues for 2003-2004 the tripling of the former permit fee schedule that was effected by emergency regulations

for 2002-2003. Effective July 1, 2004, permit fees established in 1992 will be adjusted to current dollars using the consumer price index for urban consumers (CPI-U). Additional fees will also become effective July 1, 2004. These fees include fees for: permit by rule reviews; emergency permits; landfill gas management plan reviews; landfill equipment reviews; and compost facility equipment reviews. Fees have been reduced for facilities composting Category I through III feedstock.

Table 3.1-4

This table lists fees to be paid for the processing of variance requests.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no direct impact on the institution of the family and family stability. However, owners or operators of facilities may attempt to recoup their increased costs by increasing the costs of their goods and services, and disposable family income may be decreased for those families affected by such increases.