



## Exempt Action Final Regulation Agency Background Document

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| <b>Agency name</b>                                 | Virginia Waste Management Board   |
| <b>Virginia Administrative Code (VAC) citation</b> | 9VAC20-90   |
| <b>Regulation title</b>                            | Solid Waste Management Permit Action Fees and Annual Fees   |
| <b>Action title</b>                                | Revisions to the Solid Waste Permit Action Fee and Annual Fee schedule to be consistent with fee amounts established in statute by the 2011 Virginia General Assembly |
| <b>Final agency action date</b>                    | May 27, 2011  |
| <b>Document preparation date</b>                   | May 9, 2011   |

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This final exempt regulatory action is being taken to implement Chapter 420 of the 2011 Acts of Assembly. Annual fees for sanitary landfills, noncaptive industrial landfills, and construction and demolition debris landfills are specified in law and these facilities will be assessed a fee of \$0.115 per ton of waste deposited in their facility. Incinerators and energy recovery facilities will be assessed an annual fee of \$0.055 per ton of waste incinerated. The annual fees for other types of solid waste management facilities such as composting, regulated medical waste, and transfer stations are also specified in law. The annual fees will be adjusted annually for inflation based on the Consumer Price Index.

The regulations are also being revised to update citations that have changed as a result of Amendment 7 to the Solid Waste Management Regulations (9VAC20-81).

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On May 27, 2011, the Virginia Waste Management Board took final action to adopt amendments to the regulation entitled "Solid Waste Management Permit Action Fees and Annual Fees," specifically amending sections 10, 50, 65, 70, 80, 90, 100, 110, 114, 115, and 130, and adding a new section- 9VAC20-90-113. The regulatory action is to be effective on July 1, 2011 or as soon thereafter as possible, consistent with the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act because they are necessary to conform to Virginia statutory law.

The regulation amendments also contain changes which are exempt from the state administrative procedures as allowed by § 2.2-4006 A 3 of the Administrative Process Act. These changes are necessary to update citations as a result of recodification of the Solid Waste Management Regulations under 9VAC20-81.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

| <b>Current section number</b> | <b>Proposed new section number, if applicable</b> | <b>Current requirement</b>   | <b>Proposed change and rationale</b>   |
|-------------------------------|---|--|--|
| 10                            |   | Definitions  | Citations updated to reference current effective regulations.  |
| 50                            |   | Applicability of regulations   | Citations updated to reference current effective regulations.  |
| 65                            |   | Payment of annual fees   | Section amended to include a reference to a new section of the regulation- section 113.  |
| 70                            |   | General  | Citations updated to reference current effective regulations.  |
| 80                            |   | New facility permit issuance or action                                 | Citations updated to reference current effective regulations.  |
| 90                            |   | Applications for permit action, amendment or modification              | Citations updated to reference current effective regulations.  |
| 100                           |   | Minor actions, amendment, and modifications                            | Citations updated to reference current effective regulations.  |
| 110                           |   | Review of variance requests  | Citations updated to reference current effective regulations.  |
|                               | 113   | Annual fee calculation for incinerators and energy recovery facilities | New section added to describe the annual fee calculation for incinerators and energy recovery facilities. Section states the fee per |

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|     |  |  | ton, reporting requirements, and that the fees are adjusted annually for inflation based on the Consumer Price Index (CPI). This section is being added as a result of changes made to § 10.1-1402.1:1 of the Code of Virginia.   |
| 114 |  | Annual fee calculation for sanitary landfills, noncaptive industrial landfills and construction and demolition debris landfills. | Section revised to include sanitary landfills. Sanitary landfills, noncaptive industrial landfills and construction demolition debris landfills are all subject to the same fee structure. Fees are based on a flat per ton rate and are no longer subject to a tiered fee schedule. Fees are adjusted annually for inflation based on the Consumer Price Index (CPI). The applicability of fees for facilities transitioning to post-closure care has been revised to clarify when post-closure care fees become applicable. These changes are needed as a result of changes made to § 10.1-1402.1:1 of the Code of Virginia.  |
| 115 |  | Section addresses annual fee calculation for sanitary landfills, incinerators, and other types of facilities.                    | This section is being revised to remove references to sanitary landfills and incinerators since these fees are described in other sections. This section now describes fees for only those facilities that are subject to a flat fee, not a per ton fee. The direct cost adjustment factor has been removed from the regulation since the fee structure has been revised. Fees are adjusted annually for inflation based on the Consumer Price Index (CPI). The applicability of fees for facilities transitioning to post-closure care has been revised to clarify when post-closure care fees become applicable. Active captive landfills will be required to indicate if they are a small or large landfill based on the volume of waste landfilled in the previous year in order for the agency to assess the correct annual fee for the facility. These changes are needed as a result of changes made to § 10.1-1402.1:1 of the Code of Virginia. |
| 130 |  | Table of base fee rates for annual waste management facility fees  | Table has been revised to remove the tiered fee structure from the regulation. Facilities are subject to either a per ton fee or a flat fee. Fees for captive industrial landfills have been added to the table since these facilities are now subject to annual fees. These changes are needed as a result of changes made to § 10.1-1402.1:1 of the Code of Virginia.   |

In general, there are three different annual fee structures described in statute, a per ton fee for incinerators and energy recovery facilities, a per ton fee for a sanitary landfills, construction demolition debris landfills and noncaptive landfills, and a flat fee for captive industrial landfills and other types of solid waste management facilities. The regulations have been structured to provide each fee structure an

individual section of the regulation in which the fee structure is detailed. These changes are needed as a result of changes made to § 10.1-1402.1:1 of the Code of Virginia.

### Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

State law specifies the annual fee amounts that are to be paid by solid waste management facilities for activities they conduct; therefore, the board has no discretion concerning the fees that are assessed on businesses, large or small. The board also is not authorized to exempt small businesses from annual fees.

In order to minimize the impact on all regulated entities, including small businesses, solid waste management facilities are only required to report the tonnage of waste managed on an annual basis, not monthly or quarterly. If the Board was to delay the reporting of annual tonnage amounts or delay the billing of annual fees, that would delay the submission of annual fees resulting in a budgetary shortfall and would compromise the administration, compliance and enforcement of the solid waste permit programs and public health, safety, environmental and economic welfare.

The regulations do provide quarter payment options for those solid waste management facilities that owe fees exceeding \$8,000, which provides some payment flexibility to the regulated community. This flexibility likely benefits small business with their cash flow management.

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

It is not anticipated that these regulation amendments will have a direct impact on families. However, fee increases will probably be passed along to families in the form of small increases in garbage collection bills, landfill fees, or other product and service costs. There will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's nonhazardous solid waste permit programs will be funded as intended by the General Assembly and will function as effectively as possible, thus contributing to reductions in related public health and welfare problems.