



Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9VAC20-90
Regulation title	Solid Waste Permit Action Fees and Annual Fees
Action title	Amendment of Permit Action Fee for Corrective Action
Date this document prepared	December 11, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

This regulatory action will amend the Financial Solid Waste Permit Action Fees and Annual Fees under 9VAC20-90. Currently the fee for corrective action at solid waste landfills is \$22,860. This fee has been evaluated and deemed to be burdensome with the streamlining that is being proposed for the corrective action program. The new fee for this permit action will be \$3,000 which is more in line with other fees for permit amendment actions.

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.

At their meeting on January 7, 2013, the Virginia Waste Management Board approved the following:

- The Board authorized the Department to promulgate the proposed amendment of 9VAC20-90 for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial.
- The Board's authorization also constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more members of the public, or any member of the applicable standing committee of either house of the General Assembly or the Joint Commission on Administrative Rules, and (ii) the

Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

- The Board authorized the Department to set an effective date 15 days after close of the public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. The identification should include a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary

Section 10.1-1402 of the Virginia Waste Management Act, Chapter 14 (Section 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia, authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law. Section 10.1-1402.16 specifically authorizes the collection of permit fees and requires the establishment of a fee schedule by regulation and Section 10.1-1402.1 provides requirements for such regulation.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The rationale for this regulatory action is to provide relief from a burdensome permit amendment fee for solid waste landfills that are undergoing corrective action. The work required while in corrective action is costly and, with a lower fee, it is hoped that more monies will be available for actual remediation of any contamination. The new fee will be sufficient and more in line with other permit action fees as the Department continues to work on streamlining the groundwater corrective permitting program.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If either an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the Department shall (i) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The proposed amendment is expected to be non-controversial, and therefore using the fast-track process is justified.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. Note, more detail about all provisions or changes is provided in the "Detail of changes" section.

The corrective action fee in Table 3.1-2 of 9VAC20-90-120 has been changed to \$3,000.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary 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 indicate.

The public will benefit as this regulatory action will lessen the cost burden for the corrective action permit amendment and may provide more monies to be available for the corrective remedial action. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of this amendment to 9VAC20-90.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The amendment does not include any requirements more restrictive than applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The impact of this regulation is to solid waste landfill owner/operators. Therefore, only localities with a solid waste landfill may be affected if their facility enters corrective action; however, the effect is a lessened effect as the new permit action fee is substantially lower than the current fee.

Public Participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Debra Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218; phone (804)698-4209; FAX (804) 698-4234; email to Debra.Harris@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: (a) fund source / fund detail; and (b) a delineation of one-time versus on-going expenditures	No net increase in the costs associated with implementing and enforcing. The corrective action program is an established program and most of the funding is through annual fees collected.
Projected cost of the new regulations or changes to existing regulations on localities.	No net increase in costs to localities is anticipated. The cost is lower as the fee has been changed for those solid waste management facilities entering into corrective action.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	The impact of this regulation is to owners of solid waste landfills that enter into corrective action; however, this action will lessen the effect as the new permit action fee for corrective action is substantially lower than the current fee.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The DEQ reports indicate that there are approximately [redacted] solid waste management facilities in Virginia. Of these facilities, currently there are [redacted] that are undergoing corrective action. (Any small business info??)

<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There is no projected cost increase for implementation of this amendment. This amendment will result in a cost reduction.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>This regulatory action will provide substantial relief from a burdensome corrective action permit fee. This fee has been evaluated and deemed to be burdensome with the streamlining of the corrective action program.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation

There are no viable alternatives to this proposal. The rationale for this regulatory action is to update the permit action fee for corrective action and to provide relief from the cost for this fee. If no action is taken, the fee will remain at \$22,860 in lieu of the new \$3,000 fee that will be implemented through this regulatory action.

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.

No flexibility analysis is necessary as this action establishes a less burdensome permit action fee for corrective action.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

The Department does not anticipate that the proposed changes to the regulations will erode the authority and rights of parents in the education, nurturing and supervision of their children; 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; strengthen or erode the marital commitment; or increase/decrease disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
120		Permit application fee schedules.	Corrective action fee of Table 3.1-2 has been changed from \$22,860 to \$3,000. This fee will lessen the cost burden for the corrective action at solid waste landfills.