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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC20-90
VAC Chapter title(s)	Solid Waste Management Permit Action Fees and Annual Fees
Date this document prepared	January 11, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

No acronyms are used in this document.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

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 §§ 10.1-1402.1, 10.1-1402.1:1, and 10.1-1402.2 of the Code of Virginia provide requirements for such regulation.

The Solid Waste Management Facility Permit Fees regulation is a state regulation and there is no equivalent corresponding federal regulation. This regulation partially funds the oversight of permitted solid waste management facilities. Section 10.1-1402.2 of the Code of Virginia establishes how the funds collected are to be used.

The Virginia Waste Management Board previously amended this regulation in 2003, 2004, 2010, 2011, 2012, 2013 and 2019.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no known alternatives that would achieve the stated purpose of the program. State law establishes the amount of annual fees (§10.1-1402.1:1) and authorizes regulations for the collection of permit fees to recover costs for processing a permit.

A Nonhazardous Solid Waste Fee Study Working Group was established by DEQ pursuant to § 1 of Chapter 275 of the 2021 Special Session 1 Acts of Assembly (SB 1210). The work group recommended increasing the solid waste permit and annual fees to cover the total cost incurred by DEQ for operating the solid waste program. While the department considered amending this regulation to increase permit fees as recommended by the work group, this alternative was rejected since the regulation, as currently written, is effective in achieving the purpose of the regulation and is consistent with current state law.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comments were received during the public comment period. An informal advisory group was not formed to assist with this periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

This regulation satisfies the provisions of state law and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The current regulation continues to be needed. This regulation is consistent with the requirements of state law and partially funds the oversight of permitted solid waste management facilities. There is no corresponding federal regulation concerning the assessment of a solid waste permit application or the assessment of solid waste permit oversight fees.

No public comments were received during the periodic review comment period.

The regulation details the fees for permit actions as well as annual permit fees. The regulation may be viewed as complex by some readers since it details the adjustment by the consumer price index (inflation); however, the agency calculates the adjusted fees and amount due from the permit holder as part of the annual billing process.

This regulation was last amended in 2019. That amendment corrected the reference to the Virginia Waste Management Act found in 9VAC20-90-40 from §§ 10.1-1400 through 10.1-1457 to §§ 10.1-1400 through 10.1-1458 of the Code of Virginia.

Businesses that undertake activities requiring a solid waste management permit are subject to this regulation. Some fees are based on the amount of time to issue a permit action. Other fees are based on the amount of waste material managed. Small businesses generally manage less waste than businesses that are not small businesses and therefore would be subject to smaller annual fees than larger businesses.

The regulation's level of complexity is appropriate to ensure that the regulated entities are aware of the fees associated with the type of permit and operation of a solid waste facility.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

The Department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on families or family stability.