Economic Impact Analysis
Virginia Department of Planning and Budget

9 VAC 20-60 – Hazardous Waste Regulations

Virginia Waste Management Board

December 18, 2002

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The General Assembly mandates in §10.1-1402 and of the Code of Virginia that the Virginia Waste Management Board promulgate regulations establishing a fee assessment and collection system to recover a portion of the Virginia Waste Management Board's costs associated with the processing of an application to issue, reissue, amend, or modify any permit which the Virginia Waste Management Board has authority to issue.. §10.1-1402.1 of the Code of Virginia requires that fees reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions.

The regulation proposes the following changes: (1) Chapter 822 of the Acts of Assembly for 2002 allowed the maximum individual permit fees to be raised by 300% for all applications received between July 1, 2002 and June 30, 2004, subject to the condition that the fee schedule cover no more than 20% of the direct cost of the hazardous waste management programs (based on allocations made to these programs in the 2002 Appropriation Act). While the Act of

Assembly allows fees to be increased by 300% or quadrupled, the Department of Environmental Quality (DEQ) chose raise fees by 200%, tripling them from their pre-2002 level. The proposed regulation is intended to replace the emergency regulation to this effect passed earlier this year and to reflect the new fee schedule in effect between July 1, 2002 and June 30, 2004. (2) Following the expiration of the provisions of the Act of Assembly on June 30, 2004, the regulation proposes to introduce a new fee schedule that will adjust all pre-2002 fees for inflation since 1984, when fees were last updated. (3) The costs of advertising permit actions and variances, part of public notification requirements related to the processing of permits and variances, will be transferred from DEQ to the applicant. (4) Financial assurance requirements are made more restrictive for hazardous waste management facilities applying for a permit. According to DEQ, this was done in order to better protect the state and localities from financial losses incurred in implementing closure and post-closure plans in the event that a site needs to be closed and the owner is unavailable or insolvent. (5) The requirement that all hazardous waste permits be subject to public hearings is removed, making the regulation more consistent with federal regulations. The proposed change allows public hearings to be held in cases when there is significant public interest or in cases when the permit is being opposed.

The regulation reinstates provisions inadvertently removed by Amendment 15 A that dealt with temporary extensions to state hazardous waste permits. It also adds clarifying language and additional language that makes the regulation more consistent with federal requirements.

Estimated Economic Impact

(1) In Chapter 822 of the Acts of Assembly for 2002, the general assembly increased the maximum allowable fees for new permits and for modifications to existing permits issued by the Virginia Waste Management Board to hazardous waste management facilities. The Act of Assembly allowed individual permit fees to be raised up to 300%, subject to the condition that the fees cover no more than 20% of the direct costs of running the program. The Virginia Hazardous Waste Management regulations establish permitting requirements for the transportation, treatment, storage, and disposal of hazardous waste in Virginia. The new maximum fee schedule is to apply to all applications for new permits and for modifications to existing permits received between July 1, 2002 and June 30, 2004. Even though the Act of

Assembly allowed for a 300% increase in fees, DEQ chose to raise existing fees by 200%. The proposed regulation reflects this change. It triples fees for all permits and modifications to existing permits over the next two years. Despite a tripling of the fees, projected permit fee revenues remain well below the 20% limit.

According to DEQ, the direct costs associated with running the permitting program averaged a little over $2.2 million in fiscal 200, 2001, and 2002 and permit fee revenues ranged from $34,680 in fiscal 1999 to $216,620 in fiscal 2002 (the 2002 figure was boosted by the rush to get permits and permit amendments before the new tripled fee schedule came in to affect on July 1, 2002). Permit fee revenues covered 1.6% of direct costs in 1999 and 8.6% of direct costs in 2002. Apart from the shortfall in revenues, DEQ's budget for the next two years has been cut by approximately $3 million per year. The higher permit fees are intended to make up for the budget cut and cover some of the costs of running the permitting program.

The fee increases will affect all localities, businesses, and individuals seeking to obtain or modify a hazardous waste permit issued by the Virginia Waste Management Board. Hazardous waste permits are issued for period of 10 years, after which time the permittee has to apply for a new permit. DEQ estimates that tripling the fees will impose a $130,000 additional cost. Permit fee revenues are likely to be in the vicinity of $195,000 per year, approximately 7.7% of direct costs.

The improper operation of facilities that deal with the transportation, treatment, storage, and disposal of hazardous waste could create serious public health and environmental hazards. The aim of the permitting mechanism is to ensure that these activities are conducted in a manner that is protective of both public health and the environment. The cost of a permit can be viewed as the cost of ensuring the safe use of an environmental resource. In this case, the cost of the permit is the cost to DEQ of ensuring that the management and disposal of hazardous wastes is done in a manner that is protective of the air, water, and soil quality and of public health in Virginia. As mentioned above, current permit fees fall well short of the cost incurred by DEQ in ensuring adequate protection to the environment and mitigating some of the risk posed by hazardous waste management activities. Increasing the fees will transfer some or all of this cost to facilities that are engaged in these activities.

Transferring the cost will have a positive economic impact and result in the more efficient use of resources. With some of the cost being subsidized by taxpayers, localities, businesses, and individuals operating these facilities are not paying costs commensurate with the risk posed to the environment from their activities. This could potentially result in the overuse of environmental resources. For example, the lower costs may result in a larger number of such facilities operating in the state than if permit costs were higher and reflected the actual cost to DEQ in ensuring that some of the risk to the environment from these activities is mitigated. Permit fees that better reflect costs will reduce the potential for overuse, leading to the more efficient use of Virginia's resources. On the other hand, raising permit fees could have a negative economic impact by causing some localities, businesses, or individuals to postpone or abandon voluntary new projects and modifications to existing projects that could be beneficial to the Commonwealth. For example, the higher permit costs could discourage some facilities from undertaking modifications (such as upgrading to a safer and more reliable technology) that would benefit the state as a whole.

(2) The proposed regulation also establishes a new fee schedule following the expiration of the provisions of the 2002 Act of Assembly. Fees have not been updated since they were introduced in October 1984. The fee schedule being proposed adjusts the fees established in 1984 to account for inflation in the intervening years. The consumer price index for all urban consumers (CPI-U), issued monthly by the U.S. Bureau of Labor Statistics, is used to update the fees. The CPI-U was 105.3 in October 1984 and 180.1 in July 2002, reflecting inflation in the intervening 18 years. The old fees are adjusted for inflation using the following formula:

$$^{180.1}/_{105.3} * \text{old fee}$$

The value so calculated is then rounded up or down to the nearest $10.

The new fee schedule being proposed is significantly lower than the fee schedule due to expire on June 30, 2004. Under the inflation-adjusted fee schedule and assuming no significant change in direct costs, DEQ projects that the new permit fees will generate revenues of $117,000 per year and cover less than 5% of the direct costs of running the program. Without the inflation adjusted fees, DEQ had projected that permit fee revenues would average $65,000 per year and cover 2.6% of direct costs. The new fee schedule will affect all applications for new permits and for modifications (major and minor) to existing permits received after June 30, 2004. Between fiscal 1999 and fiscal 2001, an average 40 permits were issued each year, mostly in the form of re-issuances and modifications

In order to induce the most efficient use of resources, permit fees should reflect the actual cost to DEQ of ensuring that a resource is used in a safe manner. The higher fees are simply transferring part of the cost of safely operating hazardous waste management facilities from DEQ and hence the taxpayer to the facilities themselves. To the extent the higher fees better reflect the cost of ensuring that these activities are conducted in a safe manner, the proposed change will have a positive economic impact and result in the more efficient use of resources. On the other hand, the proposed change could have a negative economic impact by discouraging certain new waste management projects and upgrades to existing projects that might have been beneficial to the state.

(3) The proposed regulation transfers the costs of advertising permit actions and variances to the applicant receiving the permit action or making the variance request. Under current policy, DEQ incurs the cost of giving public notice through newspapers advertisements and radio broadcasts when a draft permit has been prepared, when a public hearing will be held on the draft permit, or when action has been taken on a request for variance. Under the proposed regulation, DEQ will send notification to the applicant when publication and broadcast are required. The notification will include the text of the notice, acceptable newspapers and radio stations, and the dates of publication and broadcast. DEQ could also arrange for the publication and broadcast of the notice, but the cost of doing so would be charged to the applicant.

According to DEQ, the department published and broadcast five public notices related to hazardous waste permit actions in fiscal 2002. Newspaper advertisements cost between $75 and $680 and radio broadcasts cost between $0 and $350. Assuming the same number of public notices, the proposed the regulation could save DEQ between $375 and $5,150.

As discussed in (1) and (2), transferring more of the permitting cost (i.e., cost incurred in managing the permitting program) to hazardous waste management facilities would result in efficiency gains in the use of resources, but could also result in some beneficial projects being abandoned or postponed. However, given that the proposed change imposes a relatively small additional cost on these facilities, the net economic impact of this change is not likely to be significant.

(4) The proposed regulation imposes additional financial assurance requirements that make the regulation more restrictive than federal requirements. The proposed regulation requires the owners and operators of hazardous waste management facilities to submit more detailed documentation of financial assurance than required under current policy. All hazardous waste management facilities are currently required to provide financial assurance in the form of a surety bond or certificate of insurance in order to meet closure and/or post-closure costs in the event of insolvency and closure. The proposed change lays down additional and more specific documentation that has to be provided along with currently required documents. The recommendations are based on DEQ's experience in dealing with and evaluating these documents. While the proposed change is expected to improve efficiency by reducing the time expended in evaluating the soundness of financial assurance being provided by hazardous waste management facilities, DEQ believes that the additional time and copying costs related to the changes are not likely to be extensive.

The regulation incorporates a statutory change requiring that any surety issuing surety bonds to guarantee payment or performance must be licensed under the relevant chapter of the Code of Virginia. The regulation also requires hazardous waste management facilities to update post-closure cost estimates on a regular basis – within 30 to 60 days of establishment of the financial instrument or the end of the firm's fiscal year for existing post-closure plans and within 30 days when post-closure plans are modified. The change is being made in order to make the regulation more consistent with current practice.

As most of the additional requirements are in the form of documentation aimed at improving the operation of the permitting process, the net economic impact of the proposed change will depend on whether the extent of efficiency improvement in the permitting process is greater than or less than the additional cost of compliance.

(5) The proposed regulation removes the requirement that all hazardous waste permits be subject to public hearings. Public hearing will continue to be held in cases when there is significant public interest or in cases when the permit is being opposed by DEQ. The change makes current policy more consistent with federal regulations.

The proposed change is likely to have a small positive net economic impact. While still allowing public hearings to be held under certain circumstances, the change eliminates the requirement that public hearing be held for every permit action regardless of how big or small its potential impact might be. The change is likely to save DEQ the cost of travel and time spent by its staff in organizing and conducting public hearings in cases when there is no significant public interest or when the permit is not being opposed. The cost saving is achieved at no significant additional cost to the public as the regulation will continue to require that public hearings be held when there is public interest or when the permit is being opposed by DEQ.

Businesses and Entities Affected

The proposed regulation will increase costs for all individuals and businesses seeking to get permits or modify existing permits issued by the Virginia Waste Management Board to facilities that transport, treat, store, and dispose hazardous waste in Virginia. Fees have tripled for all permits issued between July 1, 2002 and June 30, 2004. The fee schedule effective July 1, 2004, adjusts the pre-2002 fees, established in 1984, for inflation. Applicants, rather than DEQ, are now required to bear the costs of publication and broadcast of public notices related to permit applications and requests for variance. The regulation also requires more specific, additional documentation to be submitted as part of the financial assurance requirements.

Localities Particularly Affected

The proposed regulation will affect all localities in the Commonwealth. Localities that have a large number of projects requiring permits from the Virginia Waste Management Board are likely to be especially affected.

Projected Impact on Employment

The proposed regulation is not expected to have a significant impact on employment.

Effects on the Use and Value of Private Property

The proposed regulation triples the cost of obtaining a hazardous waste permit between July 1, 2002 and June 30, 2004 from the Virginia Waste Management Board. Effective July 1, 2004, the regulation proposes a fee schedule that adjusts pre-2002 fees for inflation since the time they were established in 1984. The regulation also proposes to transfer the cost of meeting public notification requirements to businesses applying for the permit or requesting the variance. The proposed changes are likely to increase the cost of operation for individuals and businesses required to obtain a new or modify an existing permit.