



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-60
Regulation Title:	Hazardous Waste Management Regulations, Amendment 16
Action Title:	Amendment
Date:	October 25, 2002

This information is required pursuant 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*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary*

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.*, establish requirements for the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. The purpose of this action is to propose appropriate changes in the regulations to modernize the permit application fee system and the financial assurance requirements.

Other improvements in the regulation are also proposed.

A requirement that all permits be the subject of a hearing would be removed because it is more stringent than federal requirements and not required for air or water pollution control permits. Hearings would be held upon request representing significant degree of public interest or if the permit is contested. This is as required by incorporated federal rules (40 CFR 124.12).

The responsibility and cost of publishing and broadcasting notices related to the processing of draft permits and petitions for variances would be transferred to the applicant or petitioner. The department will provide the content of text and acceptable publication/broadcast venues. The department may issue the notice and require the applicant to remit the costs incurred.

The non-applicability of transporter requirements to universal wastes would be clarified. Procedures and terms for extending permits inadvertently left out in Amendment 15 A has been reinstated.

In addition, this action will replace emergency regulations authorized by the 2002 General Assembly.

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 must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Section 10.1-1402(11) of the Virginia Waste Management Act contained in Chapter 14, Title 10.1, Code of Virginia, authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Act and consistent with the federal statutes and regulations. The changes in this amendment regarding permit fees and responsibility for publishing and broadcasting of notices are not a part of the federal rules and are more restrictive than the federal requirements. The changes to financial assurance requirements include additional and more specific documentation of the financial assurance provided by the facility owner/operator, which is more restrictive than the federal requirements.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

See: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402>

Purpose*

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed 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 Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.*, establish requirements for the permitting of transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. The changes in this amendment regarding permit fees are designed to adjust the existing permit fee schedule to account for inflation and program changes since the

original adoption. Other changes in this amendment reassign the responsibility for publishing and broadcasting of notices. These changes are designed to transfer these costs from the general taxpayer to the applicant or petitioner who will receive the permit or variance.

The changes to financial assurance requirements include additional and more specific documentation of the financial assurance provided by the facility's owner/operator. These changes are believed necessary to properly protect the Commonwealth and local government from financial loss in the event the site must be closed and the owner is unavailable or insolvent.

This action will replace emergency regulations required by the 2002 General Assembly.

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 providing detail of the regulatory action's changes.

This action adjusts the permit fee system in order to insure that regulations continue to be appropriate in structure and fee amounts. Fees were last adjusted in 1984. The 2002 General Assembly provided for tripling of the fees by emergency regulations in 2002-2003 and by permanent regulations in 2003-2004. The legislation expires in 2004; therefore, the proposed amendment returns the fee structure at that time to the original level (as it was before 2002, adjusting it only for inflation). The schedules are shown in a table with one column for the fees appropriate in 2003-2004 and a second column for the fees appropriate after 2004.

The changes in this amendment regarding responsibility for publishing and broadcasting of notices are intended to transfer the cost of such notices from the general taxpayer to the applicant or petitioner, who receives the permit or variance. The department will provide the content of text and acceptable publication/broadcast venues. The department may issue the notice and require the applicant to remit the costs incurred (the department expects this to occur rarely and does not expect to use this procedure unless necessary to prevent scheduling failures or a similar problem).

The changes to financial assurance requirements include additional and more specific documentation of the financial assurance provided by the owner/operator. These changes are believed necessary to properly protect the Commonwealth and local host community from financial loss in the event the site must be closed and the owner is unavailable or insolvent.

Other changes proposed are to clarify the language of the regulations, to reinstate provisions inadvertently removed by Amendment 15 A, or to better align the regulations with federal requirements.

Issues*

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

This action adjusts the fee system in order to insure that regulations continue to be appropriate in structure and fee amounts. Fees were last adjusted in 1984. The 2002 General Assembly provided for tripling of the fees by emergency regulations in 2002-2003 and by permanent regulations in 2003-2004. The legislation expires in 2004; therefore, the proposed amendment returns the fee structure then to the original level (as it was before 2002, adjusting it only for inflation). The schedule reflects an increase of fees in both cases. This is a disadvantage to the permit applicant; however, it is in keeping with the statutes, insures that the applicant, who receives the permit, bears a portion of the cost of the permit effort and relieves the general taxpayer of that burden.

The changes in this amendment regarding responsibility for publishing and broadcasting of notices are designed to transfer the cost of such notices from the general taxpayer to the applicant or petitioner who will receive the permit or variance. This is a disadvantage to the applicants and petitioners since they will have responsibility and cost previously borne by the general taxpayer via the department. This is an advantage to the general public since they receive notice of events but do not bear the costs of publishing or broadcast.

The changes to financial assurance requirements include additional and more specific documentation of the financial assurance provided by the owner/operator. These changes are believed necessary to properly protect the Commonwealth and local government from financial loss in the event the site must be closed and the owner is unavailable or insolvent. The additional requirements are mostly in the form of documentation rather than changes to financial requirements themselves; nevertheless, they will require some minor additional effort and expense by the permit holder. The financial interests of the Commonwealth, local governments, and their respective citizens are better protected by the improved documentation. The safeguarding of these entities from potentially massive financial loss in the event of the failure of a permittee to adequately close a facility is an advantage.

Locality 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.

All communities that are hosts or may become hosts to hazardous waste facilities are affected in a similar manner by this action, and no locality is particularly affected by the proposed regulations.

Public Participation*

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the impacts of the regulations on farm or forest lands. The Board intends to adjust fees listed in 9 VAC 20-60-1285 using the most recently available inflation factor using the consumer price index for urban consumers (CPI-U) prior to finalizing the regulations and is seeking comments on these fees.

Anyone wishing to submit written comments for the public comment file may do at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; e) the projected cost of the regulation for affected individuals, businesses, or other entities; and f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

Since hazardous waste permit fee regulations have been in place since 1984, the department has had experience with the collection of permit fees and does not anticipate any new costs associated with the implementation or enforcement of the proposed changes to regulations. Since facilities will be paying for the cost of advertisements, the department will not be expending as much revenue on the advertising costs associated with permit actions.

Localities and corporations that choose to operate a permitted hazardous waste facility will be subject to higher fees, however these fees have not previously increased since 1984. The fee schedule included in the regulations retains the tripled fees through June 30, 2004. On July 1, 2004, the permit fees are adjusted to current dollars using the consumer price index for urban consumers. The fees effective July 1, 2004 (the fee schedule in effect before 2002 with adjustment for inflation to 2002) will be lesser than the tripled fees in effect July 1, 2002 through June 30, 2004. Some facilities seeking permit actions may delay submitting requests for permit actions to the department until the tripled fee schedule expires. Former projections were a total of \$65,000 for all permit fees to be collected per year; however, the total fees projected under the proposal could be \$195,000 in 2003-2004 and approximately \$117,000 per year after 2004.

The regulations now contain requirements for the facility to arrange for and bear the cost for the newspaper advertisement and the radio announcement related to permits and variances. The fees associated with the newspaper advertisements and radio broadcasts will vary, depending on the location of the facility requesting the permit action. In the past the department has expended from \$75 to \$680 per newspaper advertisement and the fees associated with radio broadcasts have ranged from no charge (as a public service announcement) to \$350. These fees would now be paid by the facility requesting the permit action, and the fees for these advertisements would be dependent upon the location of the facility. In the fiscal year 2003, there were five such publications/broadcasts.

Additional time and copying costs related to proposed improvements in the financial assurance documentation are not expected to be extensive. If twenty facilities experience additional costs of \$100, the total effect of the proposed changes would be only \$2,000; however, reliable estimates are not available.

The department does not believe small businesses would be adversely affected by these regulatory changes.

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 cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

In 9 VAC 20-60-70, the requirement that all permits shall be the subject of a public hearing will be removed. This section is currently more restrictive than federal rules, which require a hearing only when requests represent significant interest in holding a hearing or the permit is opposed.

In 9 VAC 20-60-124, new requirements provide that publication and broadcasting of the public notice of draft permit or variance petition actions will be the responsibility of the applicant, who must also bear the costs. The department will provide the content of text and acceptable publication/broadcast venues. The department may issue the notice and require the applicant to remit the costs incurred (the department expects this to occur rarely and does not expect to use this procedure unless necessary to prevent scheduling failures or a similar problem).

In 9 VAC 20-60-264, one requirement regarding financial assurance is removed and fifteen new requirements are added. The new items address documentation of financial assurance provisions and the operation of those provisions. The provisions are more restrictive than federal requirements; however, they are believed to be needed in order to adequately protect the Commonwealth and host localities from the financial burden of closing hazardous waste facilities that are insolvent but continue to pose a threat to health and the environment.

In 9 VAC 20-60-270, provisions for temporarily extending a state permit that were inadvertently removed by Amendment 15 A are reinstated.

In 9 VAC 20-60-420, a new sentence makes it clear that universal waste transporters are not subject to permit requirements applicable to other hazardous waste transporters.

In 9 VAC 20-60-1285, the fee schedule in effect prior to the 2002-2003 fiscal year is removed and replaced with a fee table. The table continues for 2003-2004 the tripling of the former fee schedule that was effected by emergency regulations for 2002-2003. Further, the table establishes fees for years after July 1, 2004. These later fees reflect a return to the fees in effect prior to July 1, 2002; however, they are increased in accordance with inflation since 1984 (based on the CPI-U, Consumer Price Index for All Urban Consumers by the U. S. Department of Labor, Bureau of Labor Statistics).

Alternatives

Please describe the specific 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.

The department considered conducting a study to establish the current permitting related costs and adjust the fees after July 1, 2004, based on the study results. The expiration of emergency regulations for permit fees is July 1, 2003, and permanent regulations must be in effect by that date in order to continue the program without interruption. Insufficient time was available for such a study; therefore, the department decided to allow the fee schedule to revert to the original levels adjusted only for inflation.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

With the assistance of a technical advisory committee, the department has examined the regulations to determine if the proposed regulations are clearly written and easily understandable. During the technical committee meeting, committee members pointed out areas of the regulations that were confusing or unclear and these were corrected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

In accordance with the Governor’s Executive Order 21 (2002), a periodic review will be performed on these regulations no later than four years after the effective date of the regulations. It is anticipated the next periodic review will take place in 2007.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential 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.