

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 15 B
Action Title:	Amendment (15b)
Date:	December 18, 2000

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), 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provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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 purpose of the planned amendment is to delete and repeal 9 VAC 20-60-261 B 8 which states, "All radioactive wastes classified as low-level radioactive material by the United States Nuclear Regulatory Commission shall be a hazardous waste. NOTE: A waste may be a hazardous waste as defined by 40 CFR Part 261 and a low-level radioactive waste. These "mixed wastes" are required to comply with the requirements of these regulations and all regulations of the United States Nuclear Regulatory Commission that apply."

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 web site addresses, if available, 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 (1950) as amended, (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402>) 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 proposed change will repeal a Virginia requirement that exceeds the federal minimum 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.*

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 Waste Management Board maintains the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-10 *et seq.*, to continue the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. By regulating these activities the Commonwealth protects public health, natural resources and the environment. The text of section 9 VAC 20-60-261 B 8 of those regulations is unclear. It is also unnecessary because it is the Board's intention to have the same regulation requirements for the management of low-level radioactive wastes and mixed wastes as the federal regulations contained in Title 40 of the Code of Federal Regulations, which are incorporated by reference. The purpose of the planned amendment is to delete and repeal 9 VAC 20-60-261 B 8.

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.

The text of section 9 VAC 20-60-261 B 8 of the regulations is unclear. It is also unnecessary because it is the Board's intent to have the same regulation of low-level radioactive wastes and mixed wastes as the federal regulations contain in Title 40 of the Code of Federal Regulations, which are incorporated by reference. The amendment deletes and repeals 9 VAC 20-60-261 B 8. No other section of the broader regulation set 9 VAC 20-6-10 et seq. is modified by this action.

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 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.

There are no disadvantages to the public or the Commonwealth. The action at issue is the repeal of an unnecessary and confusing provision. The action will improve clarity of the regulations and is an advantage to the public and the agency.

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; and (d) the agency's best estimate of the number of such entities that will be affected.

There is no known fiscal impact of the repeal of 9 VAC 20-60-261 B 8. To the extent that the confusing text may prevent erroneous actions in response to the existing provision, the repeal may have the indirect effect of reducing costs to the public.

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 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 effect of the proposed changes.

The amendment repeals 9 VAC 20-60-261 B 8 and does not affect any other provision of the regulations.

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 alternatives are to not repeal 9 VAC 20-60-261 B 8 and to retain the same text or adopt modified text relating to the issue. Both options would be at least as burdensome and intrusive as the proposed action.

Public Comment

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

Only one letter of comment was received during the comment period following the Notice of Intended Regulatory Action. The commenter fully supported the proposed repeal of 9 VAC 20-60-261 B 8. The commenter pointed out that the section can be construed in a manner contrary to its intent and may be in conflict with regulations of the U. S. Nuclear Regulatory Commission. Finally, the commenter recommended repeal rather than amendment of the section.

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.

Clarity of the regulations is improved since the action is the repeal of a single section of the regulations and is intended to remove that confusing element.

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.

This item is not applicable to this action. The periodic review will be established by another amendment of the same regulations, and that amendment is in process at this time.