



Virginia
Regulatory
Town Hall

Final 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

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

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 adopt 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 is 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 will 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 is clarified. Procedures and terms for extending permits inadvertently left out in Amendment 15 A has been reinstated.

In addition, this action replaces emergency regulations authorized by the 2002 General Assembly

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On April 17, 2003, the Virginia Waste Management Board approved the promulgation and adoption of final regulations, Hazardous Waste Management Regulations, (9 VAC 20-60) pursuant to Chapter 14 of Title 10.1 and in particular §§ 10.1-1402(11) of the Code of Virginia.

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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final 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>
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402.1>

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final 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 of the regulatory action's detail.

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, this 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 final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 amendment 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 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.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

Text was proposed in sections 9 VAC 20-60-264.B.11 and 20 to establish that the Virginia Administrative Process Act would govern the process of rendering a “final administrative determination” and not equivalent federal procedures. The language proposed lacked clarity and completeness. New text in the final focuses on the substitution of the process and otherwise retains the incorporated federal language.

Sections 9 VAC 20-60-264.B.16 and 9 VAC 20-60-265.B.8 address similar provisions in 40 CFR 264 and 40 CFR 265 respectively. The proposed language of the two sections was different and not parallel. The final regulations correct an error in 9 VAC 20-60-264.B.16 and use this same text in 9 VAC 20-60-265.B.8, with the exception that appropriate and differing citations are contained therein.

In the proposed regulations, the permit fees (9 VAC 20-60-1285) were adjusted using the latest monthly inflation factor figures available at that time (August 2002). In the final regulations, the inflation factor for February 2003 are used to make the fee schedule as current as possible.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

The only comments received were from the USEPA. Those comments addressed the financial assurance requirements in 9 VAC 20-60-264 and 265. They pointed out some text that was inconsistent with other parts of the regulation or with federal requirements. In all cases, the text was rewritten to eliminate the problems and make the requirements clear. Details are attached.

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

In the proposed regulations.

In 9 VAC 20-60-70, the requirement that all permits shall be the subject of a public hearing was 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

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 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).

General corrections and clarifications included the substitution of “department” for “director” where the intent of the text is to indicate where a submittal should be sent.

In addition to the change in the proposed regulations, new changes were included.

Text was proposed in section 9 VAC 20-60-264.B.11 to establish that the Virginia Administrative Process Act would govern the process of rendering a “final administrative determination” and not equivalent federal procedures. The proposed language was removed and new text substituted to focus on the substitution of the process and to otherwise retains the incorporated federal language.

In section 9 VAC 20-60-264.B.16, “or post-closure” was added after “closure” in second sentence. This missing phrase, which appears also in the last sentence, was inadvertently left out of the proposed text.

In section 9 VAC 20-60-264.B.18, two citations that reference all or part of 40 CFR 265 were correct to refer the appropriate citations in 40 CFR 264.

Text was proposed in section 9 VAC 20-60-264.B.20 to establish that the Virginia Administrative Process Act would govern the process of rendering a “final administrative

determination” and not equivalent federal procedures. The proposed language was removed and new text substituted to focus on the substitution of the process and to otherwise retains the incorporated federal language.

Section 9 VAC 20-60-265.B.8 was removed and replaced with text identical to 9 VAC 20-60-264.B.16 except for appropriate citations changes. This provides for clearer and consistent regulations.

In 9 VAC 20-60-1285, changes were made to the fees schedule to account for inflation through February 2003.

<u>B. New TSD facility fees.</u>	
<u>Elements of applications</u>	<u>July 1, 2004 and Thereafter</u>
<u>Base fee for all facilities, including corrective action for solid waste management units.</u>	[\$16,620 \$16,900]
<u>Supplementary fee for one or more land-based TSD units, including corrective action for solid waste management units.</u>	[\$38,640 \$39,280]
<u>Supplementary fee for one or more incineration, boiler, or industrial furnace units (BIF).</u>	[\$24,780 \$25,200]
<u>C. Major (Class 3) Permit modification fees.</u>	
<u>Elements of Applications for Major Permit Modifications</u>	<u>July 1, 2004 and Thereafter</u>
<u>Addition of new wastes.</u>	[\$2,270 \$2,310]
<u>Addition of or major (Class 3) change to one or more land-based TSD units, including major change related to corrective action for land-based solid waste management units.</u>	[\$44,330 \$45,070]
<u>Addition of or major (Class 3) change to one or more incineration, boiler, Or industrial furnace units.</u>	[\$33,230 \$33,790]
<u>Addition of or major (Class 3) change to other treatment, storage or disposal units, processes or areas and major change related to corrective action for solid waste management units that are not land based.</u>	[\$13,820 \$14,050]
<u>Substantive changes (Class 2).</u>	[\$2,270 \$2,310]
<u>E. Emergency Permit fee</u>	
<u>Type of application</u>	<u>July 1, 2004 and Thereafter</u>
<u>Emergency Permit fee</u>	[\$2,270 \$2,310]

Family Impact Statement

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

Response to Public Comment (Draft for Board Consideration)

Hazardous Waste Management Regulations

9 VAC 20-60

Comments by USEPA submitted by

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Section 9 VAC 20-60-264.B.11.

The substitute provision omits several requirements found in the EPA regulation:

- a. The state regulation makes the surety liable only after a final administrative determination that the owner/operator has failed to comply with certain obligations. The EPA regulations contains a similar requirement, but in addition make the surety liable when the owner/operator fails to perform as guaranteed by the bond. The state regulation omits the second liability trigger in the EPA regulations, thus making the surety liable in fewer situations under the state regulations than under the EPA regulations.
- b. The state regulation also drops the provision in the EPA regulation that requires the terms of the bond to say that the surety becomes liable on the bond obligation when the owner/operator fails to perform as guaranteed by the bond. This could lead to bonds that impose fewer requirements on sureties than under the EPA regulations.
- c. The proposed regulations would change the requirements in 40 CFR 264.143(c)(5), but do not change the language that appears in 40 CFR 264.151(c). This would mean the language in the performance bond that the surety has agreed to could be inconsistent with the language in 264.143(c) that regulates the owner/operator.

Response:

The comment is correct. The text is changed to reflect adoption of the federal rule except for a substitution of a Virginia Administrative Process Act citation to replace the federal process citation.

Section 9 VAC 20-60-264.B.16. and 9 VAC 20-6-.265.B.8.

The language here is inconsistent with the language on page 13, item 8.

Response:

The comment is correct. A typographic correction is made in 9 VAC 20-60-264.B.16, then text similar to that of 9 VAC 20-60-264.B.16 is substituted for the text of 9 VAC 20-60-265.B.8., with appropriate citations inserted.

Section 9 VAC 20-60-264.B.20.

The substitute provision omits several requirements found in the EPA regulation:

- a. The state regulation makes the surety liable only after a "final administrative determination" that the owner/operator has failed to comply with certain obligations. The EPA regulations contains a similar requirement, but in addition make the surety liable when the owner/operator fails to perform as guaranteed by the bond. The state regulation omits the second liability trigger in the EPA regulations, thus making the surety liable in fewer situations under the state regulations than under the EPA regulations.
- b. The state regulation also drops the provision in the EPA regulation that requires the terms of the bond to say that the surety becomes liable on the bond obligation when the owner/operator fails to perform as guaranteed by the bond. This could lead to bonds that impose fewer requirements on sureties than under the EPA regulations.
- c. The proposed regulations would change the requirements in 40 CFR 264.143(c)(5), but do not change the language that appears in 40 CFR 264.151(c). This would mean the language in the performance bond that the surety has agreed to could be inconsistent with the language in 264.143(c) that regulates the owner/operator.

Response:

The comment is correct. The text is changed to reflect adoption of the federal rule except for a substitution of a Virginia Administrative Process Act citation to replace the federal process citation.

Section 9 VAC 20-60.264.B.18.

In item 18 on page 11, it is not clear whether Virginia intended to cite 264.145 in lieu of 265.145 in two places.

Response:

The comment is correct. The text is changed in both places to cite 40 CFR 264.145 or subelement thereof.