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Final Regulation Agency Background Document

Approving authority name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC 20-80-10 et seq.
Regulation title	Virginia Solid Waste Management Regulations
Action title	Amendment 4, Waste Pile Permit by Rule
Document preparation date	May 23, 2005

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also alert the reader to changes made to the regulation since publication of the proposed. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The Virginia Solid Waste Management Regulations include provisions for the management of a variety of wastes at a number of different treatment, storage and disposal units. The regulations have been modified in several areas regarding the storage of wastes in piles. Current regulations require applicants to obtain a full permit from the department for the storage of waste materials in piles. Processing a full permit can be time consuming and costly. This modification will allow for excluded activities as well as expedited procedures for obtaining a permit for the management of waste materials in piles that are protective of human health and the environment.

Expedited permitting procedures (a permit by rule, or PBR) have been provided for waste piles in sections 9 VAC 20-80-480, 485, and 400. PBR provides an expedited permitting process for waste piles which results in fewer burdens on the regulated community while still providing protection for human health and the environment.

Conditional exemptions for some types of waste piles have been provided in section 60 E. Procedures have been included to store waste materials that are not readily putrescible in piles as long as waste

materials are stored in the manner prescribed and no open dump, hazard or nuisance is created. No permit is required for the exempt activity.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On May 12, 2005 the Waste Management Board approved Amendment 4 of the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

If the final text differs from the text at the proposed stage, please indicate whether 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.

40 CFR Part 258 provides the federal authority for the criteria for municipal solid waste landfills. The web site address for Part 258 is:

<http://www.epa.gov/epahome/rules.html#codified>

The presently proposed amendment deals with the portions of the regulations that are not affected by the federal requirements and that are not subject to the federal program approval. Therefore, the state regulations are no more restrictive than the federal regulations.

The Virginia Waste Management Act authorizes the Waste Management Board to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties. Article 2 of the Act prohibits the ownership or operation of an open dump, which is defined in §10.1-1400 to be any:

...site on which solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to create a nuisance or present a threat of a release of harmful substances into environment or present a hazard to human health.

The Act further prohibits any person from operating a facility for the disposal, treatment, or storage of non-hazardous solid waste without a permit from the director of the Department of Environmental Quality (§10.1-1408.1 A). The Act requires the permit to contain such conditions or requirements that would prevent a substantial present or potential danger to human health and the environment (§10.1-1408.1 E). Virginia code §10.1-1402(1), and (11) state:

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. *Supervise and control waste management activities in the Commonwealth...*

... 11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

The Virginia Waste Management Act is codified as chapter 14 sections 10.1-1400 through 10.1-1457 of the 1950 Code of Virginia, as amended. The web site address for the full text is:
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC1001000001400000000000>

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Currently, applicants wishing to store waste in piles must obtain a full permit from the department. Processing a full permit can be time consuming and costly. The requirements for storing waste in piles are not technically challenging. Expedited permitting procedures would benefit the regulated community. Sections 9 VAC 20-80-480, 485, and 400 were modified to provide a permit by rule for waste piles. Permit by rule provides an expedited process for permitting waste piles to place the least possible burden on the regulated community while still protecting human health and the environment. Exclusions have been provided for storage of waste materials in a prescribed manner.

The regulation is needed in order to regulate the storage of waste materials in order to minimize the threat from fires, leachate and contaminated storm water discharge, and abandonment of the waste materials. Modifications have been provided to make the regulation of waste piles less burdensome.

The goal of the amended regulation is to modify the regulation to: accommodate a permit by rule for waste piles and review the applicable sections of the regulation to assure provisions to protect human health and the environment and eliminate any unnecessary provisions that do not accomplish this goal.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Conditional exemptions under section 9 VAC 20-80-60 E were provided allowing the storage of waste material in piles as long as they meet the provisions of the exclusion and they do not create an open dump hazard or public nuisance.

Section 9 VAC 20-80-400 was modified to recognize the provisions for permit by rule in Section 485, and provide reasonable provisions to protect human health and the environment, including provisions to protect surface water and ground water, and minimize the potential for fire.

Section 9 VAC 20-80-480, and 485 were modified to provide for a permit by rule for waste piles. The permit by rule provisions are similar to those used for transfer stations, materials recovery facilities, incinerators, and composting facilities.

Section 485 provides a list of documentation including plans, certifications and financial assurance that must be submitted by the applicant to the department in order to fulfill the requirements for permit by rule for a waste pile.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 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 indicate.*

1. Advantages to the public include eliminating requirements for mandatory full permits by providing exempt waste storage activities under certain circumstances as well as expedited permit procedures for the storage of waste materials in piles. The requirements for the conditional exemption and the permit by rule (PBR) maintain the protection of human health and the environment. PBR is a less burdensome process than that required under the current regulations.
2. The advantages to the Commonwealth include quicker permit processing procedures, quicker turn around of permits and less staff time spent on processing permit applications.
3. No foreseeable disadvantages exist. The regulations are easier and cheaper to comply with than the current regulations while still maintaining protection of human health and the environment.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9 VAC 20-80-60 E 12	Section states the type of wastes that may be managed including “unadulterated” wood wastes.	The term “clean” has been substituted for “unadulterated”.	The term “clean” wood is defined in the regulations. “Unadulterated” is not currently defined.
60 E 12	Section states that materials must be “stored as prescribed below”	Section states that storage must meet the following conditions at a minimum.	Editorial change
60 E 12 a	Section states that wastes must be managed to reduce the potential for fires.	States that wastes must be managed to prevent fires.	Provides a clearer expectation consistent with the other management requirements in the

			section. This change was requested by DPB.
60 E 12 e	Section requires disposal of wastes for 90 days after industrial operation cease at a site.	Allows for an extension of the 90 day timeframe by the director with appropriate justification.	Provides more flexibility for requests with reasonable justifications for replacing equipment or retooling or reorganizing an industrial facility.
400 A 3	Section states that the regulations apply to the management of wastes that are not readily putrescible.	Provides a specific list of wastes and states that these and similar organic wastes that do not readily decompose can be managed under the provision of this section.	Provides clarity to the regulation by providing a list of specific wastes as examples of the types of waste that can be managed. This change was requested by DPB.
400 C 2 a (2c)	Section states that leachate must be stored in lined impoundments and tanks meeting good engineering practice.	Eliminated the proposed requirement.	Existing language was adequate to enforce these provisions in the design of the unit.
400 D 2 e	No provision provided.	Requires a fire suppression program when storing organic waste materials.	This requirement will allow the storage of larger piles consistent with National Fire Code.

Public comment

Please summarize all public comment received during the 60-day period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

Commenter	Comment	Agency response
VFPA	Opposes the waste pile size that was provided in the proposed regulation. States that change to the pile size may be difficult in the future without additional justification. States that the research done on the potential for fire in piles only deals with one type of waste and may not be applicable to other types. National Fire Code allows larger piles.	The existing regulation does not allow the exempt storage of moderately purecible waste materials. The existing regulation does not allow permitted storage activities for moderately putrescible wastes under the provisions for waste piles. The regulation has been modified under this amendment to allow both exempt and permitted storage activities for moderately putrescible wastes. DEQ can consider an expansion of the exempt pile size in future regulatory amendments. The proposed pile size for exempt activities is reasonable and is based on research for similar organic waste materials. The new regulation provides for a permit by rule (a quicker permit) for the storage of larger piles of waste material consistent with National Fire

		Code. The National Fire Code, aside from pile size, recommends other measures including storage on hard surfaced areas, regular wetting of the pile and other measures which are required and can be overseen at a permitted site and not at an exempt activity.
VFPA	Proposes more flexibility with respect to the 90 day period of inactivity when industrial activities cease. Provides justification of some circumstances which would require a longer period of inactivity.	Provided case-by-case determination by the director to allow for longer timeframes.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

For changes to existing regulations, use this chart:

Current section number 9 VAC 20-80-	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
60E	N/A	None	Waste piles that store waste materials in the manner prescribed in this section are exempt from the solid waste regulations and do not need to obtain permits. The wastes must be managed in a prescribed manner to prevent pollution and are limited in size (1/3 acre x 15' high). The regulation contains siting provisions similar to a permitted facility and provides setbacks from sensitive environmental receptors such as streams and wetlands and other setbacks to prevent nuisance associated with operation. The section indicates that if any provisions cannot be met that the facility must obtain a permit or be considered an unpermitted facility.
400 A	N/A	The current requirements do not allow for the storage of waste materials in piles if they are putrescible. The section requires putrescible waste materials to be stored in containers at the end of the day.	The requirements were modified to allow the storage of organic materials that are not readily putrescible. The section provides a specific listing of organic wastes as examples of the types of wastes that are suitable for storage. The intent is <u>not</u> to allow highly putrescible materials such as meat or dairy products to be stored in piles, but to allow the storage of materials such as woody wastes that decompose over longer timeframes.

			<p>The types of materials allowed under this section include sawdust, cotton gin trash, peanut hulls, log-yard wastes and similar woody materials.</p> <p>This subdivision also clarifies that materials that are products are not wastes and are not subject to these storage requirements. The section also indicates that logging operations are regulated under by the Department of Forestry and are not subject to these provisions.</p>
400 B	N/A	<p>Current requirements are non specific with reference to the types of roads that are required for access to the facility. Current requirements specify siting restrictions adjacent to surface streams only. Current regulations restrict development of sites in areas that are heavily dissected or are geologically unstable.</p>	<p>Proposed requirements specify the design of access roads, and restrict the location of the facility with reference to all surface water bodies.</p> <p>The facility design is intended to address the proper design of the facility with reference to stability and seasonal groundwater issues. These issues are more appropriately addressed in other subdivisions under this section.</p>
400 C	N/A	<p>This section contains design and construction requirements for waste piles.</p>	<p>Proposed requirements address leachate storage and storage/treatment unit design appropriate to the materials managed. The regulation has been clarified to indicate that testing is required on storage/treatment areas and imperfections found in the construction performed will be repaired. The section now provides appropriate design requirements and strengthened testing requirements.</p> <p>Less clear road design provisions have been removed since road construction is now addressed in the facility siting and operational provisions.</p>
400 D	N/A	<p>This section contains the operational requirements for waste piles.</p>	<p>The section has been modified to allow for the storage of organic wastes that are not readily putrescible. This will allow the regulated community to store a wider array of materials under the provisions of this section.</p> <p>The provisions for the operating plan have been modified to include leachate management fire suppression and dust suppression, three factors that can potentially cause impact to the environment. The operating plan now addresses the segregation of undesirable waste materials in order to divert them from the process and provide for proper management or disposal.</p>

			<p>The first-in, first-out waste management discussion will require older wastes to be diverted to reuse or disposal first.</p> <p>Once included in the facility design section, facility operational requirements for roads are now included under operational provisions.</p>
400 E	N/A	The section contains the closure requirements for waste piles.	A new provision has been included requiring a copy of the closure plan to be maintained at the facility so that the facility is prepared at any time to begin closure activities or discuss them with the department.
480	N/A	This section describes the applicability of Part VII of the regulations, which are the provisions for obtaining permits.	Clarifies that section 485, Permit by Rule (PBR), is a substitute for obtaining a full permit under Part VII.
485 A 5	N/A	This section provides a number of PBRs for various activities.	The section has been modified to include a subdivision, which provides a PBR for waste piles. The section is consistent with other sections for materials recovery, transfer stations, incinerators and composting facilities, which require certifications and plans in order to obtain a PBR. The section will allow for expedited approval of applications for waste pile permits without compromising environmental protection.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

The regulations protect the public’s health, safety and welfare and the environment from harmful results of the mismanagement of solid wastes. However, Amendment 4 of the Virginia Solid Waste Management Regulations has no direct impact on the institution of the family.