

TENTATIVE AGENDA
AND REVISED MINIBOOK (SUMMARY OF COMMENTS AND
RESPONSE DOCUMENT AND REVISED FEE REGULATION BEGIN ON PAGE 8)

WASTE MANAGEMENT BOARD MEETING

Monday, June 14, 2010
HOUSE ROOM C
GENERAL ASSEMBLY BUILDING
9TH & BROAD STREETS
RICHMOND, VIRGINIA

Convene – 10:00 a.m.

	TAB
I. Minutes (December 16, 2009)	A
II. Regulations - Final Exempt Solid Waste Management Permit Action Fees and Annual Fees 9VAC20-90, Amendment A10w	B
III. Regulations – Proposed Voluntary Remediation Regulations 9 VAC 20-160, Amendment 2	C
IV. Significant Noncompliance Report	D
V. Public Forum	
VI. Other Business Division Director's Report Legislative Update Future Meetings	Steers Jenkins
VII. ADJOURN	

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Debra A. Miller at (804) 698-4206.

PUBLIC COMMENTS AT WASTE MANAGEMENT BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

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Final Regulations- Final Exempt

Solid Waste Management Permit Action Fees and Annual Fees - 9VAC20-90, Amendment A10w

Budget item 354 of House Bill 30, as amended and enacted by the 2010 General Assembly, removes \$1,250,000 of general funds from the Department of Environmental Quality's budget for waste programs and specifies that the board adopt regulations to ensure that general funds "shall not be required to cover direct costs related to issuance of all permits for the hazardous waste management program" and further specifies that the board adopt regulations to ensure that the "total fees collected are sufficient to cover not more than 60 percent of the direct costs of (i) processing an application to issue, reissue, amend or modify permits, and (ii) performing inspections and enforcement actions necessary to assure the compliance with permits issued for any sanitary landfill and other facility for the disposal, treatment or storage of nonhazardous solid waste." The Waste Management Regulation affected by this action is 9VAC20-90 (Solid Waste Management Permit Action Fees and Annual Fees). 9VAC20-60 (Virginia Hazardous Waste Management Regulations) is not affected by this action. The budgetary shortfall resulting from budget item 354 is predicted to be at least \$1,250,000. This action addresses that shortfall by providing an 80 percent increase in the annual fees to be collected from nonhazardous solid waste facilities. Because this shortfall is expected to grow as the program costs grow, provision is also made for annual adjustments to the solid waste annual fees based on the Consumer Price Index. This action also provides that the total amount of fees collected from nonhazardous waste facilities shall not exceed 60 percent of the direct costs of that program. After this increase, the total amount of permit fees collected in support of nonhazardous waste permits will represent 60 percent of the current direct costs of administration, compliance and enforcement of those permit programs, which is consistent with the 60 percent budgetary limit on such fees. Budget item 354 provides that regulations adopted by the board to initially implement the budget item 354 shall be exempt from requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter 40, Title 2.2 of the Code of Virginia (the Administrative Process Act) and specifies that the regulations shall be effective no later than July 1, 2010. The regulation will become final upon publication in the Virginia Register. Nonetheless, comments from the public were invited during an abbreviated comment period (May 14, 2010 to May 27, 2010). Notice of the comment period was published electronically on the Department's web site throughout the comment period and was published electronically as a notice and by email distributed through the Virginia Regulatory Town Hall on May 14, 2010. The comments received during the comment period and the Department's responses will be provided to the Board prior to the meeting. The department will present final amendments to the Board at the meeting, request board adoption.

Proposed Regulations

Proposed Regulatory Amendments to the Voluntary Remediation Regulations

(9VAC20-160 – Amendment 2):

The Voluntary Remediation Regulation was last amended in 2002 and became effective as a final regulation on July 1, 2002. Based on a 4-year periodic review, it was determined that the regulations needed to be updated to include current remediation levels; sampling and analysis methods; improved reporting requirements; and clarification of eligibility, termination, and application requirements. Amendment 2 is intended to revise the procedures of the program so that sites can be processed more efficiently and to reflect changes in technology. A Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register of Regulations on January 31, 2008. The Department utilized the participatory approach by forming an ad hoc technical advisory committee (TAC) that held three (3) public noticed meetings (October 27, 2008; December 18, 2008; and August 31, 2009). A list of the members of the TAC as well copies of the TAC Meeting notes are attached to this memo. The TAC members discussed all of the key issues identified by the staff for consideration during the first two TAC meetings and provided recommendations for specific language changes to the staff for consideration. The TAC was called back for a third meeting to discuss options for dealing with program funding issues which were identified in a program "white paper" and to go over the proposed regulatory language amendments. DEQ staff reviewed and considered the recommendations made by the TAC, including possible EPA reaction and programmatic considerations. After this review, DEQ staff then developed the proposed regulation. This memorandum summarizes the key issues discussed and how those issues were resolved in the attached draft regulation. A document identifying all of the proposed changes to the regulation is attached.

Key Issues Addressed by the Proposed Regulatory Changes:

A. Section 10 - Definitions:

The members of the TAC discussed several changes to the definition section that were presented for consideration by program staff. Several changes to definitions to make them consistent with current practices were discussed and agreed to by the TAC. The definition of "remediation" was revised to clarify that "remediation may include, when appropriate and approved by the department, land use controls; natural attenuation; as well as monitored natural attenuation." In addition, several definitions designed to clarify the regulations were agreed to by the TAC. These included new definitions for "monitored natural attenuation"; "natural attenuation"; "post certificate monitoring."

B. Section 20 - Purpose:

This section has been revised to include characterization as part of the purpose of this chapter.

C. Section 30 - Eligibility criteria:

The section was revised to clarify that both the applicant and the proposed site must meet certain eligibility criteria. Requirements to clarify the intent of "access to a site"; "changes in property ownership"; "changes in agent"; and "site eligibility" were discussed and agreed to by the TAC.

The eligibility criteria related to the determination of a site being an "open dump" was discussed at length by the members of the TAC and an alternative version was agreed to by the TAC which provided specific conditions under which VRP eligibility related to the "open dump" criteria would be determined. DEQ staff revisited these eligibility criteria and revised them to make the VRP regulations consistent with Amendment 7 of the Virginia Solid Waste Management Regulations (VSWMR). This revision clarifies that VSWMR requirements are applicable to sites which have been determined to be an open dump or unpermitted facility.

D. Section 40 - Application for participation:

Proposed changes to this section include a clarification of the minimum required elements that are to be included in an application for participation in the program. A requirement for a map and acreage of the property has been added to the application materials. This section also provides a timeline for the department's completeness review of the application and establishes a verification process.

E. Section 60 - Registration fee:

This section has been revised to require that the statutory maximum registration fee be submitted at the time of program enrollment and that reconciliation of the final fee occurs after case closure rather than the existing system of estimating costs up front and reconciling prior to certificate issuance. The changes to this process are deemed necessary due to staff resources spent on tracking the amount of fee spent, reconciling fees and the issuance of refund checks. The proposed amendments would require the participant to seek a refund. A process for seeking a partial refund of the registration fee is included.

F. Section 70 - Work to be performed:

This section of the regulations has been revised to clarify the required components of the Voluntary Remediation Report. This revision requires the submittal of an assessment of any risks to off-site properties, clarifies the use of land use controls, and also clarifies the reporting requirements in the case where the participant determines that no remedial action is necessary. A requirement for analysis to be performed by laboratories certified by the Virginia Environmental Accreditation Program has been added.

A new requirement is being proposed that stipulates that an annual status report be submitted for all sites that are enrolled on the VRP. The status report contains a brief summary of any actions ongoing or completed as well as any planned future actions and will

help staff monitor site progress as well as report development. A requirement related to the possible termination of eligibility due to failure to submit the required annual report has also been added.

G. Section 90 - Remediation levels:

Significant reformatting of this section was deemed necessary for clarification, stream-lining, and updating of references. The section was revised to provide a distinction between remediation levels based on human health and remediation levels based on ecological receptors. The acceptable carcinogenic risk for individual constituents was increased from 10^{-6} to 10^{-5} when calculating remediation levels. Language was also revised to clarify the process for selecting Tier II remediation levels for surface water. A subsection specifically addressing the presence of ecological receptors on a site has been added.

H. Section 100 - Termination:

This section was revised to clarify the conditions under which participation in the program may be terminated and adds a requirement that the participant must make reasonable progress towards completion of the program to remain eligible.

I. Section 110 - Certification of satisfactory completion of remediation:

This section has been revised to clarify the conditions under which the department shall issue a certification of satisfactory completion of remediation. A subsection has been added to clarify when a site meets the requirements for unrestricted use. Revised language also provides the requirements that must be met if the site does not achieve an unrestricted use classification. Requirements for the filing of the certificate within 90 days of execution as well as the inclusion of any post certificate requirements have been added. A 60-day notification requirement has been added for those properties that have a certificate of satisfactory completion and are subject to use restrictions when there is a change in ownership.

J. Section 120 - Public notice:

The concept of the department's "acceptance" of the site characterization report and the proposed or completed remediation has been clarified. DEQ has included a requirement for the participant to provide written notice to all adjacent property owners and other owners whose property has been impacted by the release being addressed under the VRP project as soon as the department accepts the site characterization report and the proposed or completed remediation and prior to the department's issuing a certificate has been added. The notification requirements have been revised and reformatted for clarification. The revised language also provides for the acknowledgement of the receipt of written comments and an evaluation of the comment's impact on the planned or completed action or actions.

Staff Recommendation: After making a presentation on the above issues, and answering any questions the Board may have, staff will be asking the Board for approval to proceed to notice of public comment and hearing on the draft regulatory changes proposed for Amendment 2 to 9 VAC 20-160, the Voluntary Remediation Regulations.

HAZARDOUS WASTE SIGNIFICANT NON-COMPLIERS AND SOLID WASTE FINAL ORDERS FOR FEDERAL FISCAL YEAR 2010 TO DATE (October 1, 2009 to June 14, 2010)

Active HW SNC Cases – Table A

Location (DEQ Region)	Case Name	Brief Description of Alleged Violations	Status
City of Roanoke (BRRO)	Chemicals and Solvents, Inc.	Failure to adhere to hazardous waste ("HW") generator and transporter requirements. Possible releases.	Pending EPA enforcement action.
Westmoreland Co. (PRO)	Carry-On Trailer Corp.	Unpermitted storage of HW. Manifest, record keeping and reporting violations. Training violations.	Consent Order under development.
City of Richmond (PRO)	Dominion Packaging Inc.	Storage and labeling violations. Manifest, record keeping, and training violations.	Consent Order under development.
City of Danville (BRRO)	Essel Propack Graphics	Labeling and storage violations. Failure to conduct weekly inspections.	Consent Order under development.
Fauquier Co. (NRO)	Fiberglass Engineering Co.	Failure to have waste analysis plan. Failure to make proper HW determination. Training violations.	Consent Order under development.
Carroll Co. (SWRO)	Gary H. Parsons	Improper storage of HW. HW container violations.	EPA removal action at the site.

City of Lynchburg (BRRO)	Griffin Pipe Products	Failure to make a HW determination. Labeling and storage requirements. Land disposal restriction violation.	Consent Order under development.
City of Hopewell (PRO)	Honeywell International, Inc.	Final violations undetermined by EPA at this point.	Pending EPA enforcement action.
Sussex Co. (PRO)	Indmar Coatings (2)	Unpermitted storage of HW. Container violations. Failure to do HW training. Other violations.	Draft order sent to party 11/5/09. Party requested Ability-to-Pay analysis.
City of Roanoke (BRRO)	ITT Corporation-Night Vision	Improper acceptance of HW from off-site facility.	Consent Order signed by the party April 29, 2010. Draft in public notice. 1,800 civil charge.
City of Radford (BRRO)	J & J Sales	Failure to make HW determination. HW Container violations.	Draft Consent Order sent to party on 9-25-2009.
Fauquier Co. (NRO)	Kelmar, Inc.	Failure to make HW determination. Labeling and storage violations. Unpermitted HW management.	Consent Order under development.
Accomack Co. (TRO)	KMX	Land Disposal Restrictions violations.	Pending EPA enforcement action.
Amherst Co. (BRRO)	Lynchburg Steel Company, LLC	Failure to notify as Large Quantity Generator and submit reports and fees. Universal Waste ("UW"), manifest, and labeling violations.	Consent Order signed by party April 14, 2010. Draft in public notice. \$17,407 civil charge.
City of Norfolk (TRO)	Naval Station Norfolk	Accumulation of HW past 90 days as LQG.	Consent Order under development.
City of Portsmouth (TRO)	Norfolk Naval ShipYard	Transporter and manifest violations.	Consent Order under development.
Henrico Co. (PRO)	Oilfield Pipe and Supply, Inc.	Labeling violations. Failure to make HW determination. Failure to inspect containers.	Consent Order signed by party March 26, 2010. Public notice ended May 7, 2010. \$9,814 civil charge.
City of Roanoke (BRRO)	Pragmatic Environmental Solutions Co.	Failure to make HW determination. HW container violations. Failure to perform HW training.	Draft Consent Order sent to party on January 13, 2010. Party requested Ability-to-Pay analysis.
City of Richmond (PRO)	Sampson Coatings	HW container violations. UW violations.	Consent Order under development.
Amelia Co. (PRO)	The Amelia Lumber Co.	HW storage violations. HW generator violations.	Draft Consent Order sent to party on February 19, 2010.
City of Roanoke (BRRO)	Transformer Electric Co. Inc.	HW container violations. Solid waste violations. HW emergency and preparedness violations.	Draft Consent Order sent to party on 9-25-2009.
City of Harrisonburg (VRO)	Transprint USA, Inc.	Air emission violations. Improper labeling, managing, and contingency plan violations.	Pending EPA enforcement action.

Resolved HW Cases – Table B

Location (DEQ Region)	Case Name	Brief Description of Alleged Violations	Status
Henrico Co. (PRO)	Advanced Technologies Processing, Inc., et als.	Failure to obtain permit to receive, store or recycle HW. Failure to operate UW lamp processing equipment properly. Failure to contain releases from UW lamps. Other violations.	Consent Order effective December 21, 2009. \$165,000 civil charge and Schedule of Compliance included. Consent Order requires RCRA closure at the facility.
Henry Co. (BRRO)	Bassett Furniture Industries, Incorporated	Failure to make HW determination. Improper labeling and training violations.	Consent Order effective October 16, 2009. \$5,500 civil charge.
Campbell Co. (BRRO)	BGF Industries, Inc.	Improper labeling and UW storage violations.	Consent Order effective April 26, 2010. \$3,850 civil charge.
Campbell Co. (BRRO)	Georgia-Pacific Wood Products	Improper managing and labeling of HW. Failure to meet Land Disposal Restrictions.	Consent Order effective February 24, 2010. \$11,000 civil charge.
City of Harrisonburg (VRO)	James Madison University	HW generator violations. HW storage violations. HW container violations. Failure to perform HW training. UW violations.	Executive Compliance Agreement effective January 25, 2010. Schedule of Compliance included.
Essex Co. (PRO)	SCER Supreme Inc. (New Jersey ID)	Failure to meet notification or storage requirements for HW and UW lamps in trailers at facility. Failure to obtain HW transporter permit.	Issues combined with Advanced Technologies Processing, Inc.
Russell Co. (SWRO)	Strata Mine Services Inc.	HW container violations. HW generator violations. Multi-media VPDES violations identified as well.	Waste and Water Consent order effective October 28, 2009. \$8,400 civil charge for HW violations.
City of Salem (BRRO)	Tecton Products	Failure to make HW determination. Improper HW treatment. HW generator violations.	Consent Order effective December 21, 2009. \$44,642 civil charge. Schedule of Compliance included.

Total FFY 10 to date Hazardous Waste Consent Orders = 6

Total FFY 10 to date Civil Charges= \$234,542

Resolved Solid Waste Cases – Table C

Note: SNC status does not apply to Solid Waste cases

Location (DEQ Region)	Case Name	Brief Description of Alleged Violations	Status
City of Suffolk (TRO)	American Transportation Systems LLC f/k/a American Environmental Group AEG LLC	Unpermitted regulated medical waste management activity, including loading, repackaging, and storage of regulated medical waste.	Consent Order effective October 1, 2009. \$75,000 civil charge. Schedule of Compliance included.
City of Chesapeake (TRO)	C & M Industries, Inc.	Unpermitted solid waste management activity.	Consent Order effective October 1, 2009. \$4,200 civil charge. Schedule of Compliance included.
Albemarle Co. County (VRO)	Crown Orchard Company L.P., L.L.P	Unpermitted solid waste management activity involving municipal solid waste.	Consent Order effective January 10, 2010. \$9,551 civil charge. Schedule of Compliance included.
City of Marion (SWRO)	Department of Behavioral	Improper management and disposal of regulated medical	Executive Compliance Agreement effective April 6, 2010. Schedule of

Location (DEQ Region)	Case Name	Brief Description of Alleged Violations	Status
	Health and Developmental Services and Southwestern Virginia Mental Health Institute	waste.	Compliance included.
County of Montgomery (BRRO)	Haile Landscaping Design, Inc.	Unpermitted solid waste management activity and open burning of solid waste.	Consent Order effective December 21, 2009. \$13,164 civil charge.
City of Winchester (VRO)	PolyOne Engineered Films, Inc.	Old unpermitted solid waste management site.	Consent Order effective March 17, 2010. Schedule of Compliance included.
City of Chesapeake (TRO)	Tidewater Green Corporation	Unpermitted materials recovery facility.	Consent Order effective October 1, 2009. \$3,500 civil charge. Schedule of Compliance included.
City of Arlington (NRO)	Virginia Hospital Center Arlington Health System and Aramark Healthcare Support Services, LLC for Virginia Hospital Center	Improper regulated medical waste handling and disposal.	Consent Order effective October 5, 2009. \$93,758 civil charge. Schedule of Compliance included.

Total FFY 10 to date Solid Waste Consent Orders =7

Total FFY 10 to date Civil Charges= \$199,173

**COMMONWEALTH OF VIRGINIA
WASTE MANAGEMENT BOARD
SUMMARY AND ANALYSIS OF PUBLIC COMMENT FOR
REGULATION REVISION A10w
CONCERNING**

**SOLID WASTE MANAGEMENT PERMIT ACTION FEES AND ANNUAL FEES
(9VAC20 CHAPTER 90)**

INTRODUCTION

The department opened for public comment a proposed regulation revision concerning amendments to the regulation for solid waste management permit action fees and annual fees (9VAC20-90).

A public comment period was advertised accordingly and held from May 14 to May 27, 2010. The proposed regulation amendments subject to the comment period are summarized below followed by a summary of the public participation process and an analysis of the public comment.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering solid waste management permit action fees and annual fees. A summary of the amendments follows:

1. An 80% increase in the annual fees to be collected from permitted solid nonhazardous waste facilities to allow DEQ to recover revenue lost from the general fund appropriations under Item 354 of House Bill 30 (HB30), as amended and enacted by the 2010 General Assembly;
2. A predictable annual adjustment of annual fees in order to cover changes in the direct costs for administration, compliance and enforcement of nonhazardous solid waste permits; and
3. A cap on the amount of total fees collected from nonhazardous solid waste facilities.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public comment period was held from May 14 to May 27, 2010. Twenty-one different written comments were received from various sources. Notice of the comment period was given to the public on or about May 14, 2010 on the Virginia Regulatory Town Hall web site (<http://www.townhall.virginia.gov>) and on the department web site (http://www.deq.virginia.gov/info/permit_changes.html). In addition, personal notice of this opportunity to comment was given by email to those persons signed up on the Town Hall web site to receive notices of regulatory actions. The complete text of each comment is included in the public comment report which is on file at the department.

ANALYSIS OF COMMENT

Below is a summary of each comment and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the board's response (analysis and action taken). Each issue is discussed in light of all of the

comments received that affect that issue. The board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The board's action is based on consideration of the overall goals and objectives of the waste program and the intended purpose of the regulation.

1. **SUBJECT**: Landfill fees should be higher than material recovery facility (MRF) fees.

COMMENTER: Blue Ridge Disposal

TEXT: I would like to point out what we believe is a significant inequity in the current (and proposed) fee structure. Specifically, sanitary landfills have far more environmental impact (requiring far more regulatory oversight) than material recovery facilities, yet a small landfill pays substantially less in annual fees than our MRF. A landfill processing 10,000 tpy currently pays only \$1,000 in annual fees (half what our MRF pays). Under the proposed fees, a 10,000 tpy landfill will pay \$1,800 per year and our MRF will be required to pay double that amount or \$3,600. Please provide justification for why a MRF, with far less environmental impact (and necessary oversight), should pay double what a small landfill pays in annual fees. As an alternative, we would suggest that the sliding fee scale for sanitary landfills based on tons processed should also be used for other facilities like MRFs. To be equitable, the fees in the sliding scale for MRFs and other facilities should be lower than that used for landfills considering the lower environmental impact and reduced need for regulatory oversight. As a final point, I believe setting annual fees for MRFs above the annual fees for small landfills is inconsistent with the state and EPA solid waste management hierarchy which promotes recycling over landfilling.

RESPONSE: The amount of annual fees assigned to each category of nonhazardous solid waste facility in current regulation is set by § 10.1-1402.1:1 of the Code of Virginia. Those relative fee amounts reflect priorities enacted by the General Assembly. This proposal is a near-term fix that maintains some of those legislative priorities by keeping the relative fee amounts between MRFs and sanitary landfills constant (among others), and raising both fees by approximately 80%. Item 354 of HB30 also requires the Department to convene a representative group of stakeholders to make recommendations to both the Secretary of Natural Resources and the Chairs of the Senate Finance and House Appropriations Committees for appropriate changes to that fee structure. If other significant changes to the fee structure are to be made beyond what the Department has proposed, that will be the appropriate forum for consideration of those concerns. No change is made to the proposal in response to this comment.

2. **SUBJECT**: Fees cover 60% of DEQ cost.

COMMENTER: Solid Waste Association of North America (SWANA).

TEXT: The fees proposed by SWANA recover 60% of DEQ's direct costs for the permitting program.

RESPONSE: Fees must be increased to recover the full 60% of direct costs in order to make up for the budgetary shortfall. While the proposal from SWANA would recover 60% of the program direct costs, the Department's proposal also recovers the full 60% of those direct costs. No change is made to the proposal in response to this comment.

3. **SUBJECT**: Fees for industrial and construction, demolition and debris (CDD) landfills should be more similar to those for sanitary landfills.

COMMENTER: SWANA.

TEXT: The current fee structure is not equitable to all solid waste facilities. For instance, fees directed at industrial and construction, demolition and debris (CDD) landfills are not structured similarly to those for sanitary landfills, when each is burying waste. A straight increase across the board as proposed in the amendment does not address the current inequities.

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

4. **SUBJECT**: Implement a flat fee rate for sanitary landfills and other landfills.

COMMENTER: SWANA; City of Waynesboro; Frederick County.

TEXT: A flat \$/ton fee should be applied to all landfills, including Sanitary Landfills, Construction and Demolition Debris Landfills, and Industrial Landfills (not including captive landfills). An equitable fee is \$0.14-\$0.16 per buried waste ton, which represents a very small percentage of the overall revenue/cost per ton for disposal incurred by customers.

RESPONSE: The amount of annual fees assigned to each type of nonhazardous solid waste facility in current regulation is set by § 10.1-1402.1:1 of the Code of Virginia. The annual structure for sanitary landfills includes both a graduated base fee rate and a sliding dollar per buried waste ton rate, both of which reflect priorities enacted by the General Assembly. If significant changes to this fee structure (such as a shift to flat fees) are to be made beyond what the Department has proposed, the appropriate forum for consideration of those concerns would be the stakeholder group provided for in paragraph 4 of HB30 budget item 354. However, treating different landfills more similarly appears to be an equitable way to assign some portion of the fee increases necessary to meet the budgetary shortfall. This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

5. **SUBJECT**: Increase fees more on other types of solid waste facilities.

COMMENTER: SWANA.

TEXT: Increase the existing fees for energy recovery, composting, medical waste, material recovery and transfer facilities which have minimal impact on a per ton and per customer basis. Fee increases of 50% to 200% are proposed, depending on the type of facility.

RESPONSE: There appears to be no basis in the SWANA proposal for increasing fees for some of these types of facilities more than others. Because the amount of annual fees assigned to these types of nonhazardous solid waste facility in the current regulation is set by § 10.1-1402.1:1 of the Code of Virginia, they reflect priorities enacted by the General Assembly. If fee increases are to be made, it is more appropriate that they reflect the former legislative priorities than the SWANA proposal, especially if there is no compelling reason for changing the relative amounts of these fees. Raising these fees as the Department has proposed, preserves those priorities. If significant changes to the fee structure are to be made for these facilities beyond what the Department has proposed, the appropriate forum for consideration of those concerns would be the stakeholder group provided for in paragraph 4 of HB30 budget item 354.

No change is made to the proposal in response to this comment.

6. **SUBJECT**: A flat fee would be easy to implement.

COMMENTER: SWANA.

TEXT: Implementation of the flat \$/ton fee for landfills in addition to increases in existing base fees for energy recovery, composting medical waste, material recovery and transfer facilities would result in a simpler calculation for invoicing and could be implemented July 1, 2010.

RESPONSE: Implementation of a flat fee for sanitary landfills would not greatly simplify the fee calculation. As shown in the examples in the existing regulation, the calculation is very simple, and the calculation has been done correctly by all of the landfills for years. Invoicing is similarly simple. Simplifying calculations and invoicing are not sufficient reasons for abandoning the legislative priorities that resulted in the original regulation. No change is made to the proposal in response to this comment.

7. **SUBJECT**: DEQ should be held accountable for meeting efficiency goals.

COMMENTER: SWANA; Republic Services, Inc.

TEXT: Proposed fees and projected revenue should be contingent on DEQ meeting certain efficiency levels. An annual performance report of DEQ permitting and enforcement activities prepared by March 1 of each year should provide accounting of the use of all funds and actual metrics on the productivity and efficiency of DEQ.

RESPONSE: The Department reviews its programs for efficiency continually and makes changes to improve efficiency whenever possible. These proposed increases are not the result of program inefficiencies, but are the direct result of a statewide revenue shortfall, which the General Assembly passed on, in part, to the Department in the form of a \$1,250,000 budget reduction. The General Assembly also provided in HB30, item 354 that the Department increase fees to make up for that shortfall. In doing so, the General Assembly did not provide that the fee increases be contingent upon other factor than to recover funds (i) sufficient to replace the reduction in general funds imposed during the budget approval process and (ii) not to exceed collections of fees in excess of 60% of direct costs for the program. There is no basis for limiting fees based upon SWANA's proposed criteria. No change is made to the proposal in response to this comment.

8. **SUBJECT**: Method proposed to measure DEQ efficiency.

COMMENTER: SWANA.

TEXT: Under the SWANA proposal: An annual performance report of DEQ permitting and enforcement activities is prepared by March 1 of each year to provide accounting of the use of all funds and actual metrics on the productivity and efficiency of DEQ.

RESPONSE: See the response to comment 7. In addition to not being consistent with the legislative requirement, the development of goals, metrics and reporting requirements for the suggested efficiency review, and the criteria for limiting fees based upon this review, are not consistent with the short legislative deadline for development and implementation of this amendment. No change is made to the proposal in response to this comment.

9. **SUBJECT**: Lower the fees for sanitary landfills.

COMMENTER: Anthony W. Creech.

TEXT: The current fee structure inequitably places additional burden on sanitary landfills at the expense of other solid waste management facilities. SWANA has provided a proposed alternative which more impartially structures the fee schedule. I think that it is important for the Board, the Department of Environmental Quality, the Virginia General Assembly, and the Governor to consider that every single citizen in the Commonwealth generates waste and recyclables. It is reasonable that a portion of the costs of the regulatory program should be shared by the citizenry (i.e., that some portion of the costs appropriately come out of the General Fund). I do not therefore support an ultimate goal that 100% of the costs should be borne by the municipalities, commercial entities, and industries that directly manage solid waste.

RESPONSE: See the response to comment 4. The Department has no control over how much of the program that the General Assembly finances out of the General Fund. The Department will still receive approximately \$1,900,000 from the General Fund and does not intend to fund 100% of program costs from permit fees. The budget item (HB30, item 354) requires that no more than 60% of direct costs be funded from permit fees. No change is made to the proposal in response to this comment.

10. **SUBJECT**: No increase in fees for municipal facilities.

COMMENTER: New River Resource Authority (NRRRA); Scott County; Floyd County; Sharon S. Williams; Pepper's Ferry Regional Wastewater Treatment Authority (PFRWTA); Montgomery Regional Solid Waste Authority (MRSWA); City of Radford; Bedford County; Augusta County Service Authority (ACSA).

TEXT: VDEQ should not bill local government agencies for the fee increase. Since our taxpayers are paying the wages and salaries of VDEQ personnel through the state budget, why should we also pay them through the local tax revenues? We are all public servants to the tax payers. Billing commercially operated-for-profit landfills for inspection fees is understandable, but to bill local governments is a supplement to the state budget by the county government. We oppose any increase to Permit Action Fees and/or Annual Fees because it will adversely impact every resident and customer in our Member Jurisdiction.

RESPONSE: Many opinions have been offered concerning who should bear the burden of increased fees. Increases in fees charged to both municipal solid waste facilities and any commercial solid waste facilities used by the municipality pose an additional burden on residents that are municipal taxpayers. Municipalities suffer when fees are increased because tax revenues are not easily adjusted to respond to such additional expenses. However, not increasing any solid waste facility fees is not an option. The General Assembly has reduced funding of the non-hazardous solid waste programs with the specific intention that the shortfall be made up through increased user fees, not by reducing the Department's solid waste permit and compliance services. Those services protect public groundwater supplies and make it possible for municipality residents to dispose of trash and other solid waste in a safe and responsible manner. No change is made to the proposal in response to this comment.

11. **SUBJECT**: Support for increasing fees on CDD facilities, incinerators and captive industrial

facilities.

COMMENTER: NRRRA, Giles County, Floyd County; Bedford County; Sharon S. Williams; PFRWTA; MRSWA; City of Radford; Southwest Virginia Solid Waste Management Association (SVSWMA).

TEXT: NRRRA participated in several stakeholder meetings to include the April 5 meeting with Director Paylor, several key DEQ personnel, VWIA representatives, Waste Management representatives, Republic representatives and others. The DEQ amendment of the Permit Action Fees and Annual Fees doesn't reflect those meetings. Careful consideration and time was taken by the SWANA, Southwest Solid Waste Management Association, VWIA, and others to submit comments and ideas to DEQ supposedly prior to DEQ drafting the referenced Amendment language. It is apparent those comments and ideas were not taken into consideration. The Amendment must include a per ton rate for CDD Facilities and incinerators, the flat rate is not consistent with the fair distribution of fees collected and the usage of DEQ personnel. It also unfairly places the burden on the other facilities to fund DEQ's time and direct costs for these facilities. The DEQ personnel in solid waste division utilize their time to review, inspect, permit and other DEQ activities for Captive Industrial Facilities yet no permit action and annual fees are collected from them. Captive Industrial Facilities must be considered in this Amendment to equally and fairly distribute the impact of the increase. A flat rate increase of 80% or a factor of 1.8 took no thought or consideration. It accomplished the shortfall from the General Fund and no consideration for the Virginia residents and Businesses that will be directly economically impacted without consideration of a fair distribution.

RESPONSE: Assigning new fees to new stakeholders (such as captive industrial facilities) within the constraints of the shortened regulatory process necessary to meet the General Assembly's July 1 deadline would deprive those stakeholders of the opportunity to participate fully in that process. A new fee structure for other stakeholders (such as adding per ton fee rates) without a full stakeholder participation and negotiation process would similarly disadvantage those stakeholders. The General Assembly directed the Department to act by July 1 to increase fees, but the General Assembly also foresaw that there might be such disagreement and provided for a longer process to resolve those differences. All of the proposals presented to the Department were carefully considered, but in light of a lack of agreement over the spectrum of comments received, it was deemed fairer to apportion the increases equally among those facilities already paying fees according to the assignments made previously by the General Assembly (see § 10.1-1402.1:1 of the Code of Virginia) than it would be to deprive some stakeholders of a fair voice in this shorter regulatory process.

12. **SUBJECT:** The proposed fee increases are exorbitant.

COMMENTER: Scott County; ACSA.

TEXT: If the fee increases are in order and authorized by the state legislators to pass on this cost to the local governments, it appears these charges are exorbitant, based on the time spent. Localities must be fiscally responsible at these lean years in our economy, just as the Commonwealth must be. Take another look at this fee structure and correct the amounts.

RESPONSE: HB 30, item 354 requires the Department to increase fees to cover a budgetary shortfall caused by removal of \$1,250,000 from the Department's solid waste funding. See the response to comment 10. No change is made to the proposal in response to this comment.

13. **SUBJECT**: An alternative plan for fee increases.

COMMENTER: Virginia Waste Industries Association (VWIA); Republic Services, Inc.; Envirosolutions, Inc.; Waste Management of Virginia, Inc.

TEXT: VWIA does not support the proposal pending before the Board because that proposal results in little, if any, increase to the fees paid by facilities other than sanitary landfills. Sanitary landfills are given literally the lion's share of the burden, and will be responsible for making up nearly 100% of the \$1.2M shortfall. This approach is both inequitable and unsustainable. VWIA suggests that there is a better approach, and recommends that the Board impose a more judicious distribution of the increase so that all segments of the solid waste management in the community share in the burden. VWIA proposes that the Board accomplish this as follows:

1. Require all types of disposal facilities (including CDD landfills, non-captive industrial landfills, incinerators and energy recovery facilities, in addition to sanitary landfills) to pay the same annual tonnage fees now assessed only against sanitary landfills;
2. Require that facilities in the categories listed above be assessed a base fee calculated in the same way as the base fee is calculated for sanitary landfills. That can be accomplished by applying the "base tonnage to maximum tonnage" fees listed in Table 4.1 of the proposed regulation to CDD landfills, non-captive industrial landfills, incinerators and energy recovery facilities. For those facilities that do not weigh incoming waste, a conversion factor of two cubic yards per ton should be used to calculate the base fee.
3. In addition to extending the annual fee per ton over the base fee to include the facilities listed in paragraph 1, the per ton over base fee should be doubled for each increment in Table 4.1. The basic "sliding scale" structure would remain unchanged.
4. The remaining types of facilities listed in the Regulation would not be assessed a base fee or fee for additional tonnage. However, their annual fees should be tripled. That would result in increasing the annual fee for materials recovery facility or transfer station from \$2,000 to \$6,000; a regulated medical waste facility from \$1,000 to \$3,000 and a compost facility and a post closure care facility from \$500 to \$1,500.
5. Modifying the weight/volume conversion factor for CDD waste. The weight of CDD waste should be approximated by multiplying the volume of waste by a factor of 0.2 instead of the 0.5 used in the Regulation. This is based on actual scale data which can be provided upon request.

VWIA estimates that the approach outlined above will result in annual revenue of at least \$2m, surpassing the estimated shortfall. Because tonnage information is unavailable for incinerators; it is likely that the actual revenues will be higher than that estimate.

RESPONSE: Under the Department's proposal, every facility currently subject to annual fees will suffer the same proportional increase in those fees, so sanitary landfills will not bear 100% of the cost of the \$1,250,000 budgetary shortfall. The Department's proposal is an interim fix to exactly cover the shortfall using information immediately available to the Department while other approaches such as the VWIA proposal are considered. The Department's proposal protects the fee structure last approved by the General Assembly and passed with stakeholder support. However, treating different types of landfills more similarly appears to be an equitable way to assign some portion of the fee increases necessary to meet the budgetary shortfall. Any other proposal, especially ones that make more significant changes to the existing fee structure, should undergo a full stakeholder participation process to protect small stakeholders that are less able to pay for fee increases and to allow new stakeholders (that may end up paying new fees) to participate. This meets the intent of the HB30, item 354, paragraph 4, which specifically provides for the necessary process to review and negotiate conflicting proposals. Full stakeholder participation and information collection and analysis are activities that are not consistent with the short statutory deadline for this proposal. Appropriate changes reflecting the intent of the comment have been made to the proposal.

14. **SUBJECT**: Impose new fees on captive industry landfills.

COMMENTERS: City of Waynesboro; Frederick County.

TEXT: DEQ should consider imposing fees on Captive Industries which are proportional to those fees currently being placed on MSW landfills.

RESPONSE: See the response to comment 11. No change is made to the proposal in response to this comment.

15. **SUBJECT**: Opposition to the proposal for fee increases.

COMMENTER: Susan A. Waddell, Esq.

TEXT: I wish to write to you with my concerns about the proposed Budget Amendment to the increased fees proposed by DEQ. I oppose this Amendment, which apparently has no support among the Stakeholders groups, SWANA, SVSWMA, and VWIA. Their concerns should be addressed by any legislation imposing additional fees on solid waste facilities.

RESPONSE: Stakeholders have weighed in with comments reflecting positions as varied as "no fee increases," "flat fees only," "sliding scale fees for more facilities," and "new fees on more types of solid waste facilities." Some of the stakeholders mentioned in this comment have proposed significant changes to the fee structure, as well as significantly higher fees than those proposed by the Department. In making the Department's decision on how best to cover the shortfall, the proposals submitted by the listed stakeholders were considered. However, many of the proposals and opinions submitted by stakeholders are incompatible with each other and those significant differences will require formation of a stakeholder group to discuss and negotiate the differences. That process is not compatible with the General Assembly's statutory deadline of July 1, 2010 for the fee increases necessary to cover the imminent budgetary shortfall. It will require the much longer participatory approach that the General Assembly required in HB 30, item 354, paragraph 4. The concerns of the listed stakeholders will be more fully addressed by that process. The Department's proposal is an interim solution to the budgetary shortfall which uses the last statutory framework that received both stakeholder and legislative support and applies an across-the board increase to that framework. Although the stakeholder input to that framework is several years old, no other option is based upon such a broad spectrum of stakeholder input (including members of SWANA, at the time) and meets the existing statutory apportionment of responsibility for those fees. No change is made to the proposal in response to this comment.

16. **SUBJECT**: MRF and compost facilities should be exempt from fee increases.

COMMENTER: SVSWMA.

TEXT: SVSWMA previously provided a proposed fee structure to address changes in annual fees (correspondence of April 15, 2010). Although SVSWMA opposes increases in annual permit fees, the Association feels strongly that any increase should be done in an equitable and consistent manner. Compost facilities and material recovery facilities are important to promoting the waste management hierarchy and therefore should not be subject to increased fees. The development and operation of these facilities should be encouraged and therefore fees should

not be increased.

RESPONSE: See the response to comment 1. No change is made to the proposal in response to this comment.

17. **SUBJECT:** Opposition to increases in fees for recycling facilities.

COMMENTER: Bedford County.

TEXT: Bedford County opposes fee increases for providers of recycling services, including: operation of 13 recycling centers, a transfer station sorting operation at the landfill, a sorting/baling facility, a permanent household hazardous waste program, and a permanent electronics waste recycling facility. Increasing the annual fee would take away resources from these important programs. For example, increasing permit fees by 80 percent would cost the county an additional \$5,000 per year. To put this in perspective, the county spends less than \$5,000 per year operating an electronics recycling program.

RESPONSE: See the response to comment 1. No change is made to the proposal in response to this comment.

18. **SUBJECT:** Opposition to increases in fees for transfer stations collocated with other facilities.

COMMENTER: Bedford County.

TEXT: Bedford County is unique in that we have a permitted transfer station within the permit boundaries of our landfill. The transfer station exists to provide greater waste screening, additional sorting for recyclables, and a convenient drop-off area for our citizens and businesses. Unfortunately, by providing this greater level of service, we are penalized by having to pay two annual fees. There is one fee for the landfill operation and one fee for the transfer station operation even though the operations share the same property, the same waste, and are inspected by DEQ simultaneously. An increase in annual fees would affect Bedford County's operation more than other municipal landfills because of the additional level of services that we provide through our transfer station. Transfer stations located within the permit boundary of an operating landfill, where the waste is hauled to an onsite landfill, should not be subject to an additional annual fee for the transfer station.

RESPONSE: See the response to comment 1. No change is made to the proposal in response to this comment.

19. **SUBJECT:** Alternative to fee increases of more than 60%.

COMMENTER: Rapidan Service Authority.

TEXT: The Rapidan Service Authority operates a number of facilities that are affected by these proposed changes in the fee structure. From what we can tell it appears these new fees will be in excess of 60% of what we currently are paying or an increase from approximately \$16,700 to \$27,500 annually. As a small utility provider, an increase of this magnitude will certainly have a serious impact. We cannot simply increase the rates to our customers to offset this added expense. We would like to see no increase in the fees at this time. If that is not possible, we

propose that the fee be lowered to not exceed an increase of 25% of the current fee and phased in rather than applied fully at one time. This will afford smaller organizations time to prepare for this.

RESPONSE: See the responses to comments 10 and 12. No change is made to the proposal in response to this comment.

20. **SUBJECT:** Comfortable with 80% increase in annual base fee

COMMENTER: S. B. Cox, Inc.

TEXT: S.B. Cox has reviewed the Virginia Department of Environmental Quality (DEQ) regulatory amendment to increase the annual solid waste fees, and we are comfortable with the recommendation to raise the annual base fee for construction debris landfills by 80%. This proposed structure seems equitable for all types of facilities.

RESPONSE: The Department appreciates the support for its proposal.

21. **SUBJECT:** Oppose conversion to tonnage fee structure.

COMMENTER: S. B. Cox, Inc.

TEXT: We cannot support the Virginia Waste Industries Association's proposal to convert construction debris landfills to a tonnage based fee structure if the current conversion rate of .50 ton equals 1 cubic yard is not adjusted to current industry construction debris standards of .2 tons equals 1 cubic yard (cubic yard of C & D waste weighing approximately 400 lbs). In addition, any fee on a per ton basis for construction debris should be significantly lower than that of municipal waste due to the tipping fee difference on these two types of waste. This fee structure would place a significant monetary burden and competitive disadvantage to privately held construction debris landfills in the Commonwealth.

RESPONSE: The suggested change to the conversion rate was carefully considered during the review of the recent Amendment 7 to the waste management regulations. The result of that review did not indicate a compelling reason to change this conversion factor. It is difficult to justify continuing to treat CDD facilities differently from other landfill facilities whose fees are based upon their tonnage. It is more important to maintain enough competitive advantage for CDD landfills to ensure that C and D waste is placed in CDD landfills instead of MSW landfills. No change is made to the proposal in response to this comment.

9VAC20-90-65. Payment of annual fees.

A. Operators of permitted solid waste management facilities shall pay annual fees based on the requirements of this ~~part~~ section. An annual fee is required for each activity occurring at a permitted facility.

1. Annual fees, including those that are based on annual tonnage shall be calculated using the procedures in [9VAC20-90-114 and] 9VAC20-90-115.

2. For facilities engaged in multiple activities under the provisions of a single permit, an operator shall pay multiple annual fees. ~~These activities and the associated fees are provided in Table 4.1 of 9VAC20-90-130.~~

3. Annual fees assessed for single or multiple activities conducted under a permit reflect the time and complexity of inspecting and monitoring the different categories of facilities identified in § 10.1-1402.1:1 of the Code of Virginia.

B. Due date.

1. Submission date. The department may bill the operator for amounts due or becoming due in the immediate future. Payments are due on or before October 1 or 30 days after receipt of a bill from the department, whichever comes later, unless the operator is using the [deferred payment or] quarter payment option. ~~Each operator of a permitted waste management facility shall be assessed an annual fee as shown in Table 4.1 of 9VAC20-90-130. Except as specified in subdivisions subdivision 2 and 3 of this subsection, all annual fees are submitted on a yearly basis and are due on or before October 1 (for the preceding annual year). Annual fees, including those that are based on annual tonnage shall be calculated using the procedures in 9VAC20-90-115. Annual tonnage will be determined from the total amount of waste reported as having been either landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-80-115 and 9VAC20-130-165).~~

2. All fees to be paid in 2004 will be submitted on or before October 1, 2004, (for the 2003 annual year) unless the operator of a facility submits a written request to the department prior to that date requesting a deferred payment until January 1, 2005. Requests for deferral will be sent to the address listed in subdivision C 2 of this section. No deferred payment will be allowed for facilities opting to use a quarter payment schedule. Subsequent annual payments will be submitted on or before the first day of October (for the preceding annual year).

3. 2. Optional quarter payment. Facility operators that are required to pay annual fees exceeding \$8,000 for single or multiple permits may submit four equal payments totaling the annual fee on or before October 1, January 1, April 1, and June 1. The annual payment cycle for quarter payments will begin with the October 1 payment and will end with the June 1 payment. Those facilities opting for the quarter payment schedule shall accompany all payments with a copy of DEQ form PF001.

4. 3. Late quarter payments. If the quarter payment is not paid by the deadline, DEQ may, in addition to seeking other remedies available under the law, issue a notice of failure to pay. The notice shall require payment of the entire remainder of the annual fee payment within 30 days of the date of the notice, or inform the owner that he is ineligible to opt for the quarter payment schedule until eligibility is reinstated by written notice from the department, or both.

C. Method of payment. 1. ~~The operator of the facility shall send a payment transmittal letter to the Department of Environmental Quality. The letter shall contain the name and permit number of the facility, the Federal Identification Number (FIN) for the facility or operator, the amount of the annual fee, and for sanitary landfills and incinerators, the waste reported as landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-80-115 and 9VAC20-130-165). In addition, a copy of the transmittal letter will be placed in the facility's operating record.~~ 2. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ," and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 40150, 1104, Richmond, VA 23240 23218. When the department is able to accept electronic payments, payments may be submitted electronically. ~~The payment transmittal letter required in subdivision 1 of this subsection shall accompany the payment.~~

D. Incomplete payments. All incomplete payments will be deemed nonpayments.

E. Late payment of annual fee. Interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to Section 6621(a)(2) of the Internal Revenue Code. This rate is prescribed in § 58.1-15 of the Code of Virginia and is calculated on a monthly

basis at the applicable periodic rate. A 10% late payment fee may be charged to any delinquent (over 90 days past due) account. The Department of Environmental Quality is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and other administrative costs incurred in pursuing and collecting any past due amount.

F. Annual fees received by the department shall be deposited in the Virginia Waste Management Permit Program Fund and used exclusively for the solid waste management program as set forth in the Code of Virginia.

[9VAC20-90-114. Annual fee calculation for noncaptive industrial landfills and construction and demolition debris landfills.

A. General. All persons operating a noncaptive industrial landfill or a construction and demolition debris landfill permitted under the regulations outlined in 9VAC20-90-50 shall submit annual fees according to the procedures provided in 9VAC20-90-65. Annual fees shall be calculated using the procedures provided in subsection B of this section. Fees shall be rounded to the nearest dollar.

B. Fee calculation. The amount of the annual fees to be submitted for a specified year shall be calculated according to the following formulae:

$$F = B \times C$$
$$C = 1 + \Delta CPI$$
$$\Delta CPI = \frac{CPI - 215.15}{215.15}$$

where:

F = the annual fee amount due for the specified calendar year, expressed in dollars.

B = the base fee rate for the type of facility determined as provided in subdivision 1 of this subsection, expressed in dollars.

ΔCPI = the difference between CPI and 215.15 (the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30, 2009), expressed as a proportion of 215.15.

CPI = the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30 of the calendar year before the specified year for which the permit maintenance fee is due. (The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0).

1. Values for B (base fee rate) in Table 4.1 of 9VAC20-90-130 for construction and demolition debris landfills and noncaptive industrial landfills shall be calculated using the procedures in this subdivision. Annual tonnage will be determined from the total amount of waste reported as having been either landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-80-115 and 9VAC20-130-165). Base fee rates for construction and demolition debris landfills and noncaptive industrial landfills include the base tonnage fee rate plus an additional fee amount per ton of waste over the base tonnage that is landfilled based on the tonnage reported on the previous year's Solid Waste Information Reporting Table, Form DEQ 50-25.

a. For example, the base fee rate for a construction and demolition debris landfill that reported 120,580 tons of waste landfilled for the previous year is the \$10,000 base tonnage fee rate for a facility landfilling 100,001 to 250,000 tons of waste, plus an additional fee amount of \$0.09 per ton of waste landfilled over the base tonnage, as provided in Table 4.1 of 9VAC20-90-130. The base fee rate for this facility is \$10,000 + [(120,580 tons - 100,001 tons) x \$0.09/ton] = \$11,852. The base tonnage fee rate and the additional fee amount per ton vary with the tonnage of the waste that the facility landfilled.

b. Tonnage used to determine the base fee rate shall be rounded to the nearest full ton of waste.

2. Calculation of the 2010 annual fee (F) for the construction and demolition debris landfill discussed in subdivision B 1 of this subsection is provided as an example:

CPI = 215.15 (the average of CPI values from May 1, 2008, to April 30, 2009, inclusive would be used for the 2010 annual fee calculation).

$\Delta\text{CPI} = \text{zero}$ for the 2010 annual fee calculation (i.e., $\text{CPI} - 215.15 = 215.15 - 215.15 = 0$). (Note: ΔCPI for other years would not be zero.)

$C = 1.0$ for the 2010 annual fee calculation (i.e., $1 + \Delta\text{CPI} = 1 + 0 = 1.0$).

$B = \$11,852$ (i.e. the value of the base fee rate for the example construction and demolition debris landfill in subdivision 2 of this subsection).

$F = \$11,852$ for the 2010 annual fee calculation for this example construction and demolition debris landfill (i.e., $B \times C = \$11,852 \times 1.0 = \$11,852$).

C. Weight/volume conversions. For facilities required to pay annual fees based on the tonnage of the waste landfilled or incinerated, the annual fee shall be based on the accurate weight of waste. If scales are unavailable, the volume of the waste landfilled or incinerated by the facility must be multiplied by 0.50 tons per cubic yard to determine the weight of the waste landfilled or incinerated. If the volume of waste is used to determine the tonnage of waste landfilled or incinerated, accurate and complete records of the waste received and managed must be maintained in addition to the calculated weight records described in this part. These records must be maintained onsite throughout the life of the facility and made available to the department upon request.

D. Emergency. The director may waive or reduce annual fees assessed during a state of emergency or for waste resulting from an emergency response action. A facility operator may request a determination if a given volume of waste landfilled or incinerated in a given calendar year qualifies for a waived or reduced fee by submitting documentation of the emergency to the regional office where the facility is located. The request will provide the name and permit number of the facility, a facility contact, the nature of the emergency or response action, a description of the waste, and an accurate accounting of the type and tonnage of waste managed as a result of the emergency. Requests for a determination by the director must be submitted by March 31 of the year following the emergency coincident with the solid waste information assessment report. A separate request shall be provided for each year if the emergency lasts for multiple years.

E. Annual fee discounts for environmental excellence program participants are set out in 9VAC20-90-117.

F. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste processing or disposal operations at the facility.

G. Closure. Facilities that remove all waste materials at the time of closure and are subject only to closure requirements are subject to payment of the annual fee if they were operating at any time during the calendar year.

H. Transition from closure to post-closure care. Landfills entering post-closure care will pay the full annual fee for an active facility if they were operating, were inactive or were conducting closure activities at any time during the calendar year. Landfills in post-closure care for a full calendar year (January 1 through December 31) will pay the annual fee for post-closure care provided in Table 4.1 of 9VAC20-90-130. The post-closure care period will begin on the date provided in 9VAC20-80-250 E 7, 9VAC20-80-260 E 6, or 9VAC20-80-270 E 6 as applicable.

I. The total annual sum of annual fees and permit application fees collected by the board from sanitary landfills and other nonhazardous solid waste facilities shall not exceed 60% of the direct costs of (i) processing an application to issue, reissue, amend, or modify permits; and (ii) performing inspections and enforcement actions necessary to assure compliance with permits issued for any sanitary landfill and other facility for the disposal, treatment, or storage of nonhazardous solid waste. The Director shall take whatever action is necessary to ensure that this limit is not exceeded.]

9VAC20-90-115. Annual fee calculation [for sanitary landfills, incinerators and other types of facilities] .

A. General. All persons operating a sanitary landfill [, an incinerator,] or [other another type of] facility [other than a noncaptive industrial landfill or construction and demolition debris landfill, that is] permitted under the regulations outlined in 9VAC20-90-50 shall submit annual fees according to the procedures provided in 9VAC20-90-65. Annual fees are provided in Table 4.1, Annual Waste Management Facility Fees, in 9VAC20-90-130. Annual fees that include an additional fee based on tonnage shall be calculated using the procedures in this section. Annual tonnage will be determined from the total amount of waste reported as having been either landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant

to the Waste Information Assessment Program (9VAC20-80-115 and 9VAC20-130-165). Annual fees shall be calculated using the procedures provided in subsection B of this section. Fees shall be rounded to the nearest dollar.

B. Fee calculation. The amount of the annual fees to be submitted for a specified year shall be calculated according to the following formulae:

$$F = B \times A \times C$$

$$A = 1 + (P/100)$$

$$C = 1 + \Delta\text{CPI}$$

$$\Delta\text{CPI} = \frac{\text{CPI} - 215.15}{215.15}$$

where:

F = the annual fee amount due for the specified calendar year, expressed in dollars.

B = the base fee rate for the type of facility determined as provided in subdivisions 1, 2, and 3 of this subsection, expressed in dollars.

A = the direct cost adjustment factor.

P = [80.079]

ΔCPI = the difference between CPI and 215.15 (the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30, 2009) [, expressed as a proportion of 215.15] .

CPI = the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30 of the calendar year before the specified year for which the permit maintenance fee is due. (The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0).

1. Values for B (base fee rate) are provided in Table 4.1, Base Fee Rates for Annual Waste Management Facility Fees, in 9VAC20-90-130.

2. Values for B (base fee rate) in Table 4.1 of 9VAC20-90-130 that are based on tonnage shall be calculated using the procedures in this subdivision. Annual tonnage will be determined from the total amount of waste reported as having been either landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-80-115 and 9VAC20-130-165).

a. Base fee rates for sanitary Sanitary landfills are required to submit include the base tonnage fee rate; plus an additional fee amount per ton of waste over the base tonnage that is landfilled based on the tonnage reported on the previous year's Solid Waste Information Reporting Table, Form DEQ 50-25. For example, the base fee rate for a sanitary landfill that reported 120,580 tons of waste landfilled for the previous year is the \$10,000 base tonnage fee rate for a facility landfilling 100,001 to 250,000 tons of waste, plus an additional fee amount of \$0.09 per ton of waste landfilled over the base tonnage, as provided in Table 4.1 of 9VAC20-90-130. The base fee rate for this facility is \$10,000 + [(120,580 tons - 100,001 tons) x \$0.09/ton] = \$11,852. The base tonnage fee rate and the additional fee amount per ton vary with the tonnage of the waste that the facility landfilled.

b. Base fee rates for incinerators are Incinerators are required to submit a fee based only on the amount of waste incinerated as reported on the previous year's Solid Waste Information Reporting Table, Form DEQ 50-25. For example, the base fee rate for an incinerator that reported 501,230 tons of waste incinerated for the previous year is \$5000 for a facility incinerating 100,001 or more tons of waste, as provided in Table 4.1 of 9VAC20-90-130. Incinerator fees vary with the tonnage of waste that the facility incinerated.

c. The tonnage Tonnage used in to determine the base fee rate calculation will shall be rounded to the nearest full ton of waste.

3. Values for B (base fee rate) for other Other facilities are required to submit based only an annual fee based on the facility type. Fees shall be rounded to the nearest dollar. For example, the base fee rate in Table 4.1 of 9VAC20-90-130 for a composting facility is \$500.

4. Calculation of the 2010 annual fee (F) for the composting facility discussed in subdivision B 3 of this subsection is provided as an example:

CPI = 215.15 (the average of CPI values from May 1, 2008, to April 30, 2009, inclusive would be used for the 2010 annual fee calculation).

Δ CPI = zero for the 2010 annual fee calculation (i.e., CPI - 215.15 = 215.15 - 215.15 = 0). (Note: Δ CPI for other years would not be zero.)

C = 1.0 for the 2010 annual fee calculation (i.e., $1 + \Delta$ CPI = 1 + 0 = 1.0).

B = \$500 (i.e. the value of the base fee rate for the example composting facility in subdivision 3 of this subsection).

[A = 1.80 (i.e., $1 + (P/100) = 1 + (80.0/100) = 1.80$).

A = 1.79 (i.e., $1 + (P/100) = 1 + (79/100) = 1.79$).]

[F = \$900 for the 2010 annual fee calculation for this example composting facility (i.e., $\$500 \times 1.80 \times 1.0 = \900).

F = \$895 for the 2010 annual fee calculation for this example composting facility (i.e., $B \times A \times C = \$500 \times 1.79 \times 1.0 = \895).]

Examples:

1. A composting facility is required to submit only the base fee in Table 4.1.

Composting facility annual fee = base fee = \$500.

2. A sanitary landfill that reported 120,580 tons landfilled on the Solid Waste Information Reporting Table, Form DEQ 50-25, from the previous year, is required to submit a base tonnage fee plus an additional fee per ton of waste over the base tonnage as provided in Table 4.1. The base fee and the fee per ton vary with the tonnage of the waste that the facility landfilled.

Sanitary landfill annual fee = base tonnage fee + (tonnage landfilled from previous year's waste information assessment - base tonnage) x fee per ton = \$10,000 + (120,580 tons - 100,001 tons) x \$0.09/ton = \$11,852.

3. An incinerator that reported 501,230 tons incinerated on the Solid Waste Information Reporting Table, Form DEQ 50-25, from the previous year, is required to submit the fee required in Table 4.1. Incinerator fees vary with the tonnage of waste that the facility incinerated.

Incinerator annual fee = annual fee associated with the tonnage incinerated = \$5000.

C. Weight/volume conversions. For facilities required to pay annual fees based on the tonnage of the waste landfilled or incinerated, the annual fee shall be based on the accurate weight of waste. If scales are unavailable, the volume of the waste landfilled or incinerated by the facility must be multiplied by 0.50 tons per cubic yard to determine the weight of the waste landfilled or incinerated. If the volume of waste is used to determine the tonnage of waste landfilled or incinerated, accurate and complete records of the waste received and managed must be maintained in addition to the calculated weight records described in this part. These records must be maintained onsite throughout the life of the facility and made available to the department upon request.

D. Emergency. The director may waive or reduce annual fees assessed during a state of emergency or for waste resulting from an emergency response action. A facility operator may request a determination if a given volume of waste landfilled or incinerated in a given calendar year qualifies for a waived or reduced fee by submitting documentation of the emergency to the regional office where the facility is located. The request will provide the name and permit number of the facility, a facility contact, the nature of the emergency or response action, a description of the waste, and an accurate accounting of the type and tonnage of waste managed as a result of the emergency. Requests for a determination by the director must be submitted by March 31 of the year following the emergency coincident with the solid waste information assessment report. A separate request shall be provided for each year if the emergency lasts for multiple years.

E. Annual fee discounts for environmental excellence program participants are set out in 9VAC20-90-117.

F. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste processing or disposal operations at the facility.

G. Closure. Facilities that remove all waste materials at the time of closure and are subject only to closure requirements are subject to payment of the annual fee if they were operating at any time during the calendar year.

H. Transition from closure to post-closure care. Landfills entering post-closure care will pay the full annual fee for an active facility if they were operating, were inactive or were conducting closure activities at any time during the calendar year. Landfills in post-closure care for a full calendar year (January 1 through December 31) will pay the annual fee for post-closure care provided in Table 4.1 [of 9VAC20-90-130]. The post-closure care period will begin on the date provided in 9VAC20-80-250 E 7, 9VAC20-80-260 E 6, or 9VAC20-80-270 E 6 as applicable.

I. The total annual sum of annual fees and permit application fees collected by the board from sanitary landfills and other nonhazardous solid waste facilities shall not exceed 60% of the direct costs of (i) processing an application to issue, reissue, amend, or modify permits; and (ii) performing inspections and enforcement actions necessary to assure compliance with permits issued for any sanitary landfill and other facility for the disposal, treatment, or storage of nonhazardous solid waste. The Director shall take whatever action is necessary to ensure that this limit is not exceeded.

9VAC20-90-130. Annual Base fee rate schedules.

TABLE 4.1. BASE FEE RATES FOR ANNUAL WASTE MANAGEMENT FACILITY FEES.

Category of Facility/Activity	Annual Fee Base Fee Rate (B)	
[1. Noncaptive industrial landfills]	[\$8,000]	
[2. Construction and demolition debris landfills]	[\$4,000]	
[3. 1.] Sanitary landfills [, noncaptive industrial landfills, and construction and demolition landfills] shall be assessed are assigned a two part base fee rate (B) based on their annual tonnage as follows:		
Base Tonnage to Maximum Tonnage	Base Tonnage Fee Rate	Additional Fee Per Ton Over Base Tonnage
Up to 10,000	\$1,000	none
10,001 to 100,000	\$1,000	\$0.09
100,001 to 250,000	\$10,000	\$0.09
250,001 to 500,000	\$23,500	\$0.075
500,001 to 1,000,000	\$42,250	\$0.06
1,000,001 to 1,500,000	\$72,250	\$0.05
Over 1,500,000	\$97,250	\$0.04
[4. 2.] Incinerators and energy recovery facilities shall be assessed are assigned a base fee rate based upon their annual tonnage as follows:		
Annual Tonnage	Base Fee Rate (B)	
10,000 or less	\$2,000	
10,001 to 50,000	\$3,000	
50,001 to 100,000	\$4,000	
100,001 or more	\$5,000	

[5- 3.] Other types of facilities shall be assessed are assigned a base fee rate a follows as follows:

<u>Type of Facility/Activity</u>	<u>Base Fee Rate (B)</u>
Composting	\$500
Regulated medical waste	\$1,000
Materials recovery	\$2,000
Transfer station	\$2,000
Facilities in post-closure care	\$500