



Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9VAC20-70
Regulation title	Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities
Action title	Amendment for Local Government Financial Test
Date this document prepared	December 10, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This regulatory action will amend the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities under 9VAC20-70. Currently, local governments may use the financial test to assure the closure, post-closure care, and corrective action costs for their solid waste management facilities if those costs are less than 43% of their total annual revenue; however, the regulations currently require submittal of an additional mechanism to cover any amount over 20%. This requirement for an additional mechanism is more stringent than the federal requirement which allows use of the financial test of up to 43% of total annual revenue. Since the amendment for the additional mechanism in 2001, only a few localities were required to meet this additional requirement and it was considered burdensome. This amendment will allow local governments to use the financial tests to assure environmental costs for solid waste management facilities up to 43% of the total annual revenue.

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.

At their meeting on January 7, 2013, the Virginia Waste Management Board approved the following:

- The Board authorized the Department to promulgate the proposed amendment of 9VAC20-70 for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial.
- The Board's authorization also constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more members of the public, or any member of the applicable standing committee of either house of the General Assembly or the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
- The Board authorized the Department to set an effective date 15 days after close of the public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. The identification should include a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary

Section 10.1-1402 of the Virginia Waste Management Act, Chapter 14 (Section 10.1-1400 *et seq.*) of Title 10.1 of the Code of Virginia, authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law. Specifically, §10.1-1410 authorizes the Board to promulgate regulations which ensure that, if a solid waste treatment, transfer or disposal facility is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility.

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 the regulation 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.

The rationale for this regulatory action is to provide clarity and simplify the financial test requirements for local governments. Under the current requirements, local governments must provide an additional financial assurance mechanism in order to use the financial test to assure the closure, post-closure care, and corrective action costs for their solid waste management facilities if those costs are over 20% but less than 43% of their total annual revenue. This amendment will allow the use of the financial test for demonstrating financial assurance under 9VAC20-70 for costs up to 43% of the total annual revenue, as is required under the federal regulations. Currently, only a few localities were required to meet this additional requirement and it was considered overly burdensome as it tied up funds that could be otherwise allocated for local government use.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If either an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the Department shall (i) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The proposed amendment is expected to be non-controversial, and therefore using the fast-track process is justified.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. Note, more detail about all provisions or changes is provided in the "Detail of changes" section.

The requirements for the additional financial mechanism for costs exceeding 20% have been removed from the local government financial test section in 9VAC20-70-210.

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.

The public will benefit as these amendments will not tie up local government revenue in an additional financial assurance mechanism for environmental liabilities over 20% of their total annual revenue when a financial test is used under 9VAC20-70. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments to 9VAC20-70.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The amendment does not include any requirements more restrictive than applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The impact of this regulation is statewide; therefore, the Department anticipates that all localities will be equally affected.

Public Participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Debra Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218; phone (804)698-4209; FAX (804) 698-4234; email to Debra.Harris@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: (a) fund source / fund detail; and (b) a delineation of one-time versus on-going expenditures	No net increase in the costs associated with implementing and enforcing.
Projected cost of the new regulations or changes to existing regulations on localities.	No net increase in costs to localities is anticipated based on the historical costs associated with this regulation.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	Local governments will be provided additional flexibility in providing financial assurance under 9VAC20-70 when using the financial test for that obligation.
Agency's best estimate of the number of such entities that will be affected. Please include an	The DEQ reports indicate that approximately 168 local government own solid waste management

<p>estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>facilities in Virginia that demonstrate financial assurance using the local government financial test. This change affects local governments only, not any small businesses.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There is no projected cost increase for implementation of this amendment for any local government that chooses to use the financial test to assure their environmental cost obligations under 9VAC20-70.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>This amendment will allow local governments to use the financial test under 9VAC20-70-210 to assure environmental costs for solid waste management facilities up to 43% of the total annual revenue and to not have to obligate revenue in an additional financial assurance mechanism for costs over 20%.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation

There are no viable alternatives to this proposal. The rationale for this regulatory action is to simplify the financial test requirements for local governments while ensuring that the costs associated with protecting the public health and safety from the consequences of abandonment may be recovered from the person abandoning the facility. This amendment will allow the use of the financial test for demonstrating financial assurance under 9VAC20-70 for costs up to 43% of the total annual revenue, as is required under the federal regulations.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No flexibility analysis is necessary as this action provides more flexibility for the regulated community by simplifying the financial test requirements for local governments.

Family impact

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 Department does not anticipate that the proposed changes to the regulations will erode the authority and rights of parents in the education, nurturing and supervision of their children; 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; strengthen or erode the marital commitment; or increase/decrease disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
210		Local government financial test.	Removed the requirements for an additional financial mechanism to be provided for closure, post-closure care and corrective action costs of solid waste management facilities when those costs exceed 20% of the local government revenue.