

MEMORANDUM

Department of Environmental Quality
Waste Division

SUBJECT: Guidance Memo No. 03-2003(Code of Virginia Chapter 859 of the 2003 Acts of the Assembly and Section 58.1-609.3 and 58.1-3660) Tax Certification for Pollution Control Materials and Equipment

TO: Waste Compliance/Permit Mangers, Solid Waste Permit Writers

FROM: Karen Jackson Sismour, Director of Waste Division

DATE: APPROVED 06/18/2003

COPIES: John Ely, Leslie Romanchik, Paul Farrell, Mike Dieter

The 2003 General Assembly amended legislation (HB 2726) for Tax Certification for Pollution Control Equipment and Materials. Prior to the amendment, the Code authorized DEQ to certify tax exemptions for pollution equipment and material that met two criteria: 1.) the equipment and material had to be required by regulation and permit and 2.) the material and equipment was used primarily to prevent or abate pollution. The amendment to the Code allowed mulching equipment and material to be considered for tax exemption. Since the Code amendment does not require DEQ certification for mulching equipment and because mulching equipment is not required by regulation to prevent or abate pollution, the Department can not certify mulching equipment or materials.

Attached to this memo is provided written guidance for the Solid Waste Permitting staff to review and process requests for Certification. In addition to the written guidance are a revision to the Permit Manual, example letters for approval and NOD's, and a review checklist.

A draft of the guidance and letters were sent to the Regions and the OTA staff. The draft guidance generated 8 comment submittals with extensive comments. Thank you to the commenters. A review checklist was added to the guidance package after the draft was sent. Formal submission instructions have not been developed for the guidance because the "certification" that DEQ provides is not considered to be a solid waste permit. The informal submission instructions are provided in the form of the revision to the Permit Manual that is included in this package.

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE DIVISION
OFFICE OF WASTE PERMITTING**

**PERMITTING GUIDANCE FOR CERTIFYING POLLUTION CONTROL
EQUIPMENT FOR EXEMPTION FROM STATE SALES TAX**

The procedures set forth in this document are intended solely for the guidance of solid waste permit writers at the Department of Environmental Quality (Department). They are not intended to, nor do they constitute rulemaking by the Department. They may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. Whether and how the Department applies these procedures in any given case will depend on the facts of the case.

1. Introduction

Solid Waste Disposal Facilities must install controls that comply with Virginia Solid Waste Management Regulations [Regulations]. The materials that are purchased for the construction or operation of the controls at these facilities are exempt from State Sales Tax as long as those materials are “certified” by the DEQ Waste Program. Any Company or Facility owner who purchases these materials must request [by letter] a certification from the Solid Waste Permitting Program. The certification is then prepared by DEQ and sent to the State Tax Department. The type of materials purchased must be used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and must meet the requirements for abatement or control of water or atmospheric pollution or contamination as contained in the Regulations.

Legislation was passed and signed into Law in 2003 that amended the original Act for certification. The amendment to the Act allowed for wood mulching equipment to be included in the statutory definition of Certified Pollution Control Equipment and Facilities. However, mulching equipment and property is not required by the Regulations. Therefore, DEQ can not provide certification of equipment and material that is purchased which is not required by the Regulations to prevent or abate pollution. This guidance provides example letters to be prepared by the Department for certification. It also provides a response letter to requests for certification of mulching equipment.

2. Authority

Chapter 859 of the 2003 Acts of the Assembly and Section 58.1-609.3 and 58.1-3660 of the Code of Virginia relates to certification of pollution control equipment and facilities classification. *Italicized text indicates changes made to the Code of Virginia by Chapter 859 of the 2003 Acts of the Assembly.*

Be it enacted by the General Assembly of Virginia:

1. That §§ [58.1-609.3](#) and [58.1-3660](#) of the Code of Virginia are amended and reenacted as

follows:

§ [58.1-609.3](#). Commercial and industrial exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ [58.1-605](#) and [58.1-606](#) shall not apply to the following:

9. (i) Certified pollution control equipment and facilities as defined in § [58.1-3660](#), *except for any equipment that has not been certified to the Department of Taxation by a state certifying authority pursuant to such section* and (ii) effective retroactive to July 1, 1994, and ending July 1, 2006, certified pollution control equipment and facilities as defined in § [58.1-3660](#) and which, in accordance with such section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas production, including gas, natural gas, and coalbed methane gas.

3. Definitions

The definitions in § 58.1-609.3 of the Code of Virginia apply to these Procedures.

Certified pollution control equipment and facilities.

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation.

B. As used in this section:

"Certified pollution control equipment and facilities" shall mean any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. *Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, or fuel, whether or not such property has been certified to the Department of Taxation by a state certifying authority.*

State certifying authority shall mean the State Water Control Board, for water pollution; the State Air Pollution Control Board, for air pollution; the Department of Mines, Minerals and Energy, for coal, oil, and gas production, including gas, natural gas, and coalbed methane gas; and the Virginia Waste Management Board, for waste disposal facilities, and shall include any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

4. Requirements-Permit Manual

Section VI TAX CERTIFICATION

A. REQUEST PROCESSING

1. Permit Writers must receive the request and check to make sure that the property that certification is requested, has been constructed inspected and approved by DEQ. The property described in the request must be explained in enough detail that the permit writer can associate the property with a unit or cell at the facility that has been approved. A request must contain a description of the materials and equipment that were purchased to construct a facility. The materials purchased must be those materials or equipment, which are listed in the Specifications in the Design Report or Closure Plan of the Permit, typically Module III, IV, V or XII.
2. Some materials or equipment in the specifications of the permit may not qualify for certification because the materials or equipment are not used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth. Example: A public water drinking fountain in the scale house may have a specification in the Design Report, but because a drinking fountain is not used to abate pollution, it does not qualify for certification. A list of the specific materials or equipment that are eligible to be certified is not provided because the number of potential items is extensive. Typical possibilities include, but are not limited to, liner components, leachate management materials, gas collection components and final cover components. If you are unsure whether the material or equipment that may be requested is eligible, contact the Regional Waste Compliance/Permit Manager. Any further questions can be directed to the Permit Coordinator.
3. Labor associated with construction is not property and therefore cannot be certified. Quantity of materials or equipment is not required to be included in the request and will not be listed in the DEQ approval. The applicant will address quantity of materials and tax credit directly with the State Tax Department.
4. For any request associated with an existing permitted facility, the permit writer will either prepare an approval letter to the State Tax Department and by letter copy notify the Facility that DEQ has certified or send a NOD to the property owner that the Department has comments on the request. Sample approval letter, NODs and approval memorandum and review checklist are provided in this guidance.
5. All tax certification requests must be associated with a current permit and completed facility construction activity that has received DEQ approval, i.e., CTO approvals.

TAX EXEMPT CERTIFICATION CHECKLIST

Chapter 859 of the 2003 Acts of the Assembly and Section 58.1-609.3 and 58.1-3660 of the Code of Virginia relates to certification of pollution control equipment and material classification. This requirement is state statute only. There is no promulgated Regulation on this requirement.

PROJECT: _____

REVIEWER: _____

DATE: _____

SITE NAME: _____

APPLICANT: _____

		Provided (Y/N)	Complete (Y/N)	Technically Adequate (Y/N)	See Attached Comments	Location of Information
I	Permit Number	_____	_____	_____	_____	_____
II	Unit Designation Phase or Cell	_____	_____	_____	_____	_____
III	DEQ Construction Approval	_____	_____	_____	_____	_____
IV	Dates and/ or Units of Prior Certifications	_____	_____	_____	_____	_____
V	Material or Equipment List	_____	_____	_____	_____	_____
VI	M/E Specs in Permit	_____	_____	_____	_____	_____
VII	M/E Abate Or Prevent Pollution	_____	_____	_____	_____	_____
VIII	Labor Not Included	_____	_____	_____	_____	_____

CERTIFICATION APPROVAL LETTER

ALL COLOR AREAS NEED EDITING AS APPROPRIATE

(Color letters are italicized)

Month Day, 200X

Virginia Department of Taxation
Taxpayer Assistance Section
Post Office Box 1115
Richmond, Virginia 23218-1115

RE: ***Name Waste Management Facility, Permit #XXX***
Name County, Virginia

Dear Sir or Madam:

In accordance with Virginia Code Section 58.1-3660, the Department of Environmental Quality, on behalf of the Virginia Waste Management Board, certifies to the Department of Taxation that the enclosed information from ***Company or Owner, [Inc.]***, describes property that have been constructed, erected, or acquired in conformity with the state program or requirements for abatement or control of pollution or contamination. The submittal provides information regarding the construction of ***Cell 2, Cells 3A-S and 3B-S, and Cell B at the Name Waste Management Facility***. The applicant should be able to provide proof of cost, installation location, or other documentation that the Department of Taxation might require in order to further determine eligibility for (or the amount of) the tax exemption being requested.

If we may be of further assistance, please do not hesitate to contact ***Permit Writer at XXX-XXX-XXXX***.

Sincerely,

Name
Land Protection Manager

Attachments ***[Request Letter from Company or Owner]***

C: DEQ – ***Name Regional Office*** (letter only)
DEQ – ***Permit Writer***, Waste Permitting
Facility Permittee

CERTIFICATION APPROVAL MEMO

ALL COLOR AREAS NEED EDITING AS APPROPRIATE

(Color letters are italicized)

Month Day, 200X

MEMORANDUM

TO: *Solid Waste Compliance/Permit Manager, Name Regional Office*

FROM: *Name, Environmental Engineer Senior, Regional Office*

SUBJECT: *Name* County, Tax Certification Approval

Tax exemption certification has been submitted for equipment and/or material cost associated with the installation of pollution control equipment and/or materials installed by *Company, Inc.*, at the *Name* Waste Management Facility, Permit # *000*, and is attached. The tax exemption has been requested for *Cells 3A-N and 3B-N*. The facility units for which certification have been requested have been inspected and have been approved for operation; therefore, the requirements of Virginia Code 58.1-3660 have been met.

The staff recommends that you approve this tax exemption certification and sign the attached letter.

CERTIFICATION- NOTICE OF DEFICIENCY
ALL COLOR AREAS NEED EDITING AS APPROPRIATE

(Color letters are italicized)

Month Day, 200X

Mr. Representative
Company or Owner, Inc.
Post Office Box XXXX
City or Town, Virginia 2XXXX

RE: *Name Waste Management Facility, Permit #XXX*
Name County, Virginia

Dear *Mr./Ms. Representative*:

This is to advise that this Department has received your Tax Certification request dated *Month Day, 200X*. In accordance with Virginia Code Section 58.1-3660, the Department of Environmental Quality, on behalf of the State Water Control Board, State Air Pollution Control Board and Virginia Waste Management Board reviews requests for Certification. The type of materials purchased must be used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and must meet the requirements contained in the Regulations and the Facility Permit.

This is to advise you that the Department has reviewed your request and has the following comments:

- 1.
- 2.
- 3.

All property for which certification is requested must have been installed and constructed in accordance with a solid waste permit and must be approved by the Department. If you have any questions on this letter, please do not hesitate to contact me *at XXX-XXX-XXXX*.

Sincerely,

Permit Writer

C: DEQ – *Name Regional Office*
DEQ – *Permit Manger*, Waste Permitting

***CERTIFICATION- NOTICE OF DEFICIENCY FOR MULCH
ALL COLOR AREAS NEED EDITING AS APPROPRIATE***

(Color letters are italicized)

Month Day, 200X

*Mr. Representative
Company or Owner, Inc.
Post Office Box XXXX
City or Town, Virginia 2XXXX*

RE: *Name Mulch Facility
Name County, Virginia*

Dear *Mr./Ms. Representative*:

This is to advise that this Department has received your Tax Certification request dated *Month Day, 200X*. In accordance with Virginia Code Section 58.1-3660, the Department of Environmental Quality, on behalf of the State Water Control Board, State Air Pollution Control Board and Virginia Waste Management Board reviews requests for Certification. Your request provides information regarding the purchase of materials or equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, or fuel.

This is to advise you that this office is not able to provide certification for the equipment or materials you have described. The items, you describe, are not used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and the DEQ Solid Waste Program does not have regulations that require this material or equipment to be constructed or installed.

A tax exemption related to property used for mulching or grinding of wood contained in Virginia Code Section 58.1-3660 and 58.1-609.3 is an issue that you will need to discuss directly with the Department of Taxation. If we you have any questions on this letter, please do not hesitate to contact me *at XXX-XXX-XXXX*.

Sincerely,

Permit Writer

C: DEQ – *Name Regional Office*
DEQ – *Permit Manger*, Waste Permitting