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Regulatory
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Proposed Regulation Agency Background Document

Approving authority name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC 20-80-10 et seq.
Regulation title	Virginia Solid Waste Management Regulations
Action title	Amendment 4, Waste Pile Permit by Rule
Document preparation date	May 18, 2004

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

Brief Summary

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

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

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

Conditional exemptions for some types of waste piles have been provided in section 60 E. Procedures have been included to store waste materials that are not readily putrescible in piles as long as waste materials are stored in the manner prescribed and no open dump, hazard or nuisance is created. No permit is required for the exempt activity.

Basis

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

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

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

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

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

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

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

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

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

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

The Virginia Waste Management Act is codified as chapter 14 sections 10.1-1400 through 10.1-1457 of the 1950 Code of Virginia, as amended. The web site address for the full text is:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC1001000001400000000000>

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons 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.

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

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

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

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

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

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

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

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

Issues

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

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.
- If there are no disadvantages to the public or the Commonwealth, please indicate.
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- 1. Advantages to the public include eliminating requirements for mandatory full permits by providing exempt waste storage activities under certain circumstances as well as expedited permit procedures for the storage of waste materials in piles. The requirements for the conditional exemption and the permit by rule (PBR) maintain the protection of human health and the environment. PBR is a less burdensome process than that required under the current regulations.
- 2. The advantages to the Commonwealth include quicker permit processing procedures quicker turn around of permits and less staff time spent on processing permit applications.
- 3. No foreseeable disadvantages exist. The regulations are easier and cheaper to comply with than the current regulations while still maintaining protection of human health and the environment.

Requirements More Restrictive Than Federal

Please identify and describe any requirement of the proposal which are 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.

None

Locality 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.

No locality would bear and disproportionate impact resulting from the provisions of this regulation.

Public Participation

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

In addition to any other comments, the Virginia Waste Management Board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forest land preservation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Michael J Dieter, P.O Box 10009, Richmond, Virginia 23240-0009, ph: (804) 698-

4146, fax: (804) 698-4327, mjdieter@deq.state.va.us . Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

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	none
Projected cost of the regulation on localities	none
Description of the individuals, businesses or other entities likely to be affected by the regulation including specific information on the impact on small businesses as defined in § 2.2-2279	Those businesses storing significant quantities of organic wastes including sawdust and other wood wastes, cotton gin trash, peanut hulls, and similar woody waste streams.
Agency’s best estimate of the number of such entities that will be affected	none
Projected cost of the regulation for affected individuals, businesses, or other entities	none

Currently, there are no facilities that hold waste pile permits that would be impacted by this modification.

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.

Several alternatives were discussed regarding the size of the facility that would qualify for an exemption under the provisions of 9 VAC 20-80-60E.

The primary concern associated with the size of the pile was the potential risk from fire and the potentially large volumes that could be abandoned.

National fire protection standards recommend wood waste pile heights less than 50 feet, while studies by Virginia Polytechnic & State University indicate piles over 12 feet in height may present a high fire risk.

Because of the potential for long term storage of these waste materials, the proposed regulations provide a pile height of 15 feet. This height was provided both to decrease the potential for fire and reduce the amount of material being stored.

The size of the exempt storage in a pile was restricted to 1/3 of an acre 15 feet high in order to minimize the potential impact from abandonment. In addition, under the exemption, only active industrial operations are allowed to store materials. If industrial activities were to cease, the materials would have to be removed to proper reuse or disposal within 90 days.

Larger and smaller pile sizes were considered, but this size was the most conservative discussed. TAC members preferred a pile 25 feet in height. Sizes between 1/4 and 1/3 of an acre were considered.

The TAC had considered modifying the criteria for the speculative accumulation of materials such as saw dust and other woody waste materials. Under the criteria for speculative accumulation, 75% of the waste materials generated by a process must be removed from the site annually. The rationale for modifying the definition was that the woody waste materials would decompose to a soil like material within a number of years and allowing one year to remove the materials was not enough time. The department indicated that if long term storage was needed, composting permits, vegetative waste management permits were available for long term storage and were appropriate for long term decomposition of the material. The criteria for speculative accumulation was not changed since this definition is a basic premise for the identification of legitimate waste management activities, and it is used to identify activities that are not legitimate waste management activities and are sham recycling or waste management activities. The exempt storage of waste materials was provided as an alternative to redefining speculative accumulation.

Public comment

Please summarize all public comment received during 30-day period following the publication of the NOIRA, and provide the agency response.

No comments were received during the 30-day public comment period.

Commenter	Comment	Agency response

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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

Detail of changes

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

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

For changes to existing regulations, use this chart:

Current section number 9 VAC 20-80-	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
60E	N/A	None	Waste piles that store waste materials in the manner prescribed in this section are exempt from the solid waste regulations and do not need to obtain permits. The wastes must be managed in a prescribed manner to prevent pollution and are limited in size (1/3 acre x 15' high). The regulation contains siting provisions similar to a permitted facility and provides setbacks from sensitive environmental receptors such as streams and wetlands and setbacks other setbacks to prevent nuisance associated with operation. The section indicates that if any provisions cannot be met that the facility must obtain a permit or be considered and unpermitted facility.
400 A	N/A	The current requirements do not allow for the storage of waste materials in piles if they are putrescible. The section requires putrescible waste materials to be stored in containers at the end of the day.	The requirements were modified to allow the storage of organic materials that are not readily putrescible. The intent is <u>not</u> to allow highly putrescible materials such as meat or dairy products to be stored in piles, but to allow materials such as woody wastes that decompose over longer timeframes. Examples of the types of materials allowed under this section include sawdust, cotton gin trash, peanut hulls, log-yard wastes and similar woody materials. This subdivision also clarifies that materials that are products are not wastes and are not subject to these storage requirements. The section also indicates that logging operations are regulated under by the Department of Forestry and are not subject to these provisions.
400 B	N/A	Current requirements are non specific with reference	Proposed requirements specify the design of access roads, and restrict the location of the

		to the types of roads that are required for access to the facility. Current requirements specify siting restrictions adjacent to surface streams only. Current regulations restrict development of sites in areas that are heavily dissected or are geologically unstable.	<p>facility with reference to all surface waster bodies.</p> <p>The facility design is intended to address the proper design of the facility with reference to stability and seasonal groundwater issues. These issues are more appropriately addressed in other subdivisions under this section.</p>
400 C	N/A	This section contains design and construction requirements for waste piles.	<p>Proposed requirements address leachate storage as well as storage and treatment unit design appropriate to the materials managed. The regulation has been clarified to indicate that testing is required on storage/treatment areas and imperfections found in the construction performed will be repaired. The section now provides appropriate design requirements and strengthened testing requirements.</p> <p>Less clear road design provisions have been removed since road construction is now addressed in the facility siting and operational provisions.</p>
400 D	N/A	This section contains the operational requirements for waste piles.	<p>The section has been modified to allow for the storage of organic wastes that are not readily putrescible. This will allow the regulated community to store a wider array of materials under the provisions of this section.</p> <p>The provisions for the operating plan have been modified to include leachate management and dust suppression, two additional factors that can potentially cause impact to the environment. The plan now addresses the segregation of undesirable waste materials in order to divert them from the process and provide for proper management or disposal. The first-in, first-out waste management discussion will require order wastes to be diverted to reuse or disposal first.</p> <p>Once included in the facility design section, facility operational requirements for roads are now included under operational provisions.</p>
400 E	N/A	The section contains the closure requirements for waste piles.	A new provision has been included requiring a copy of the closure plan to be maintained at the facility so that the facility is prepared at any time to begin closure activities or discuss them with the department.
480	N/A	This section describes the applicability of Part VII of the regulations, which are	Clarifies that section 485, Permit by Rule (PBR), is a substitute for obtaining a full permit under Part VII.

		the provisions for obtaining permits.	
485 A 5	N/A	This section provides a number of PBRs for various activities.	The section has been modified to include a subdivision, which provides a PBR for waste piles. The section is consistent with other sections for materials recovery, transfer stations, incinerators and composting facilities, which require certifications and plans in order to obtain a PBR. The section will allow for expedited approval of applications for waste pile permits without compromising environmental protection.