

1 **Part I - General**

2 **Article 1 - Purpose and Authority**

3 **9VAC20-40-10. [Reserved]**

4 **9VAC20-40-20. Purpose of chapter.**

5 ~~The Virginia Hazardous Waste Facilities Siting Act~~ Sections 10.1-1433 et seq. of the Code of  
6 Virginia ~~contains~~ contain a detailed description of the process and procedures for a certification  
7 of site suitability. ~~Because of the Act's specificity, this~~ This chapter is designed to amplify and  
8 supplement the statutes where appropriate. This chapter together with the statute establish  
9 administrative procedures for the submission and evaluation of applications for certification of  
10 hazardous waste facility sites.

11 **9VAC20-40-30. [Reserved]**

12 **Article 2 - Definitions**

13 **9VAC20-40-40. Definitions.**

14 Section 10.1-1433 of the ~~Act~~ Code of Virginia defines several words and terms which are used in  
15 this chapter. Unless the context clearly indicates otherwise, those words and terms will have the  
16 same meaning when used in this chapter. In addition, the following words and terms, when used  
17 in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

18 "Act" means Sections 10.1-1433 through 10.1-1449 of the Code of Virginia.

19 "Affected communities" means those counties, cities or towns contiguous to the host community  
20 which may be affected by the siting of a hazardous waste facility in the host community.

21 "Applicant" means the person applying for a certification of site suitability or submitting a notice

22 of intent to apply for that. The applicant must be the person who intends to own or operate the  
23 proposed facility.

24 "Application" means an application to the ~~council~~board for a certification of site suitability.

25 "Board" means the Virginia Waste Management Board.

26 "Certification of site suitability" or "certification" means the certification issued by the  
27 ~~Hazardous Waste Facility Siting Council~~board pursuant to Chapter 14 (§10.1-1400 et seq.) of  
28 Title 10.1 of the Code of Virginia.

29 "Construct or construction" means:

30 ~~After July 1, 1984, no person shall construct or commence construction of a hazardous~~  
31 ~~waste facility without first obtaining a certification of site approval by the board in the~~  
32 ~~manner prescribed here. For the purpose of this section, "construct" and "construction"~~  
33 ~~shall mean~~ (i) with respect to new facilities, the significant alteration of a site to install  
34 permanent equipment or structures or the installation of permanent equipment or  
35 structures; (ii) with respect to existing facilities, the alteration or expansion of existing  
36 structures or facilities to initially accommodate hazardous waste, any expansion of more  
37 than 50% of the area or capacity of an existing hazardous waste facility, or any change  
38 in design or process of a hazardous waste facility that will, in the opinion of the ~~council~~  
39 board, result in a substantially different type of facility. It does not include preliminary  
40 engineering or site surveys, environmental studies, site acquisition, acquisition of an  
41 option to purchase or activities normally incident to that.

42 ~~"Council " means the Hazardous Waste Facility Siting Council established pursuant to §10.1-~~

43 ~~1433 et seq. of the Code of Virginia.~~

44 "Criteria" means the criteria adopted by the ~~council board~~, pursuant to §10.1-1436 of the Code of  
45 Virginia.

46 "Department" means the Virginia Department of Environmental Quality.

47 "Disposal" means the discharge, deposit, injunction, dumping, spilling, leaking or placing of any  
48 solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous  
49 waste or any constituent ~~of that~~ thereof may enter the environment or be emitted into the air or  
50 discharged into any waters, including groundwaters.

51 "Emergency situation" means where an imminent and substantial endangerment to human health  
52 or the environment is determined.

53 "Fund" means the technical assistance fund created pursuant to §10.1-1448 of the Code of  
54 Virginia.

55 "Hazardous waste" means a solid waste classified as a hazardous waste by ~~regulations adopted~~  
56 ~~pursuant to §10.1-1433 et seq. of the Code of Virginia~~ the Virginia Hazardous Waste  
57 Management Regulations, 9 VAC 20-60.

58 "Hazardous waste facility" or "facility" means any facility, including land and structures,  
59 appurtenances, improvements and equipment for the treatment, storage or disposal of hazardous  
60 wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of  
61 this chapter, it does not include: (i) facilities which are owned and operated by and exclusively  
62 for the on-site treatment, storage or disposal of wastes generated by the owner or operator; (ii)  
63 facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an

64 on-site production process; and (iii) facilities used exclusively for the pretreatment of wastes  
65 discharged directly to a publicly-owned sewage treatment works.

66 "Hazardous waste management facility permit" means the permit for a hazardous waste  
67 management facility issued by the ~~State Health Commissioner~~ director or the U.S.  
68 Environmental Protection Agency.

69 "Host community" means any county, city or town within whose jurisdictional boundaries  
70 construction of a hazardous waste facility is proposed.

71 "On-site" means facilities that are located on the same or geographically contiguous property  
72 which may be divided by public or private right-of-way, and the entrance and exit between the  
73 contiguous properties are at a crossroads intersection so that the access is by crossing, as opposed  
74 to going along, the right-of-way. On-site also means noncontiguous properties owned by the  
75 same person but connected by a right-of-way which the owner controls and to which the public  
76 does not have access.

77 "Operating characteristics": These include, but are not limited to:

- 78 1. Brief description of the nature of the business of the facility, including an estimate of the size  
79 of the business (number of employees, etc.);
- 80 2. Specification of each hazardous waste involved in the operation of the facility and an estimate  
81 of the annual quantity of each;
- 82 3. Description of the physical facility (number and size of buildings, tanks and other structures);
- 83 4. General description of the process to be used in the treatment, storage, or disposal or both of  
84 each hazardous waste;

85 5. Description of the anticipated traffic to and from the facility (number, type, and capacity of  
86 those vehicles transporting hazardous waste as well as other types of vehicles);

87 6. Short and long term projections for the facility, including its projected life expectancy; and

88 7. Any other relevant information which will assist the ~~council~~board and other persons to gain a  
89 clear understanding of the nature and operation of the facility.

90 "Operator" means a person who is responsible for the overall operation of a facility.

91 "Owner" means a person who owns a facility or a part of a facility.

92 "Person" means an individual, trust, firm, joint stock company, corporation, including a  
93 government corporation, partnership, association, state, municipality, commission, political  
94 subdivision of a state, interstate body or federal government agency.

95 "Site plan" means a design of the proposed facility and site. The site plan must accurately  
96 represent all structures of the proposed facility. If the site has existing structures, the site plan  
97 must designate these and specify the alterations to be made to each. The site plan shall also  
98 include a topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5  
99 centimeters (one inch) equal to not more than 61.0 meters (200 feet). Contours shall be shown on  
100 the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow  
101 in the vicinity of and from each operational unit of the facility, for example, contours with an  
102 interval of 1.5 meters (five feet), if relief is greater than 6.1 meters (20 feet) or an interval of 0.6  
103 meters (two feet), if relief is less than 6.1 meters (20 feet). Owners and operators of facilities  
104 proposed in mountainous areas should use a larger contour interval to adequately show  
105 topographic profiles of facilities. The map shall clearly show the following:

- 106 1. Map scale and date;
- 107 2. 100 year floodplain area;
- 108 3. Surface waters including intermittent streams;
- 109 4. Surrounding land uses (residential, commercial, agricultural, recreational);
- 110 5. A wind rose (i.e., prevailing wind speed and direction);
- 111 6. Orientation of the map (north arrow);
- 112 7. Legal boundaries of the facility site;
- 113 8. Access control (fences and gates);
- 114 9. Injection and withdrawal wells, both on-site and off-site;
- 115 10. Buildings; treatment, storage, or disposal operations; or other structures (recreation areas,
- 116 run-off control systems, access and internal roads; storm, sanitary, and process sewerage
- 117 systems; loading and unloading areas; fire control facilities, etc.);
- 118 11. Barriers for drainage or flood control;
- 119 12. Location of operational units within the facility site where hazardous waste is proposed to be
- 120 treated, stored or disposed, including equipment cleanup areas; and
- 121 13. Such additional information as the ~~council~~ board deems necessary to carry out its duties as
- 122 required by the Act.
- 123 "Solid waste" means any garbage, refuse, sludge and other discarded material, including solid,
- 124 liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining
- 125 and agricultural operations and from community activities but does not include (i) solid or
- 126 dissolved material in domestic sewage; (ii) solid or dissolved material in irrigation return flows

127 or in industrial discharges which are sources subject to a permit from the State Water Control  
128 Board, or (iii) source, special nuclear, or byproduct material as defined by the Federal Atomic  
129 Energy Act of 1954 (42 USCS §§2011 et seq.), as amended.

130 "Storage" means the containment or holding of hazardous wastes pending treatment, recycling,  
131 reuse, recovery or disposal.

132 "Treatment" means any method, technique or process, including incineration or neutralization,  
133 designed to change the physical, chemical or biological character or composition of any  
134 hazardous waste so as to neutralize such waste or so as to render such waste less hazardous or  
135 nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in  
136 volume. Such term includes any activity or processing designed to change the physical form or  
137 chemical composition of a hazardous waste so as to render it less hazardous or nonhazardous.

138 **Part II - Initiation of Certification Process**

139 **9VAC20-40-50. Requirement of certification and waiver.**

140 A. ~~After July 1, 1984, no~~ No person shall construct or commence construction of a hazardous  
141 waste facility without first obtaining a certification of site approval by the ~~council~~ board in the  
142 manner prescribed here.

143 An owner or operator of a facility may submit a notice of intent as prescribed in 9VAC20-40-60  
144 below or submit a request for a waiver from the procedures established in the ~~Hazardous Waste~~  
145 ~~Facilities Siting~~ Act and this chapter.

146 B. Upon receiving a written request from the owner or operator of a facility, the ~~council~~ board  
147 may grant a waiver upon such conditions as it may determine, provided that the proposed

148 changes to the facility are designed to:

- 149 1. Prevent a threat to human health or the environment because of an emergency situation; or  
150 2. Comply with federal or state laws and regulations promulgated after July 1, 1984; or  
151 3. Demonstrably result in safer or environmentally more acceptable processes.

152 C. The waiver provisions of this chapter shall apply to existing facilities when construction is  
153 defined to be:

- 154 1. The alteration or expansion of existing structures or facilities to initially accommodate  
155 hazardous waste;  
156 2. Any expansion of more than 50% of the area or capacity of an existing hazardous waste  
157 facility; or  
158 3. Any change in the design or process of a hazardous waste facility that will result in a  
159 substantially different type of facility or will cause the facility to be reclassified as a higher  
160 numbered category.

161 D. Emergency situation.

162 1. Scope of waiver: The owner or operator of a facility may be permitted to make changes which  
163 are designed to prevent a threat to human health or the environment because of an emergency  
164 situation.

165 2. Applying for waiver: The owner or operator of the facility may obtain verbal approval from  
166 the ~~executive~~ director effective for a period up to 30 days, unless revised by the ~~council~~ board at  
167 its next regular meeting, and, in addition, must submit the request for waiver in writing to the  
168 ~~executive director of the council~~. The request at a minimum must contain the following



169 information:

170 a. The name and address of the owner or operator or both of the facility;

171 b. Location of the facility and a description of its operation;

172 c. Description of the circumstances creating the emergency situation;

173 d. Description of the resulting threat to human health or the environment or both;

174 e. Description of the changes to be made in the facility; and

175 f. Efforts to restore the facility to original conditions of certification after emergency conditions  
176 are abated.

177 3. The waiver: Upon receipt of the request, the ~~executive~~ director will grant or deny the request  
178 for waiver. In the event the ~~executive~~ director grants the request for waiver, such waiver is  
179 subject to the approval of the council at its next regularly scheduled meeting. If the ~~executive~~  
180 director denies the request, the applicant may renew the request at the next regularly scheduled  
181 meeting of the ~~council~~ board.

182 E. State or federal laws; more acceptable process.

183 1. Scope of waiver: The owner or operator of a facility may be permitted to make changes which  
184 are designed to comply with state or federal laws enacted or regulations promulgated after July 1,  
185 1984, or changes which demonstrably result in safer or environmentally more acceptable  
186 processes.

187 2. Applying for waiver: The owner or operator of the facility must make the request in writing to  
188 the ~~council~~ director. At a minimum the request must contain the following information:

189 a. Name and address of the owner and/or operator of the facility;

- 190 b. Location of the facility and a description of its operation; and
- 191 c. Either:
- 192 (1) A copy of the state or federal law or regulation necessitating the change, if applicable, and a
- 193 description of the changes to be made in the facility to effect compliance with the law or
- 194 regulation; or
- 195 (2) A description of the changes the owner or operator wishes to make and an analysis
- 196 demonstrating the improved safety or environmental soundness resulting from the changes.
- 197 3. The waiver: At its next regularly scheduled meeting, the ~~council board~~ will consider the
- 198 request for waiver. The owner or operator or his representative should attend the meeting. At the
- 199 meeting the ~~council board~~ may:
- 200 a. Grant the request for waiver;
- 201 b. Deny the request for waiver;
- 202 c. Determine that additional information is needed from the owner or operator;
- 203 d. Decide that a public hearing is needed; or
- 204 e. Take any other action the ~~council board~~ deems appropriate.
- 205 4. Should the ~~council board~~ decide to hold a public hearing, it will also determine from among
- 206 the following who will conduct the hearing: a member or members of the ~~council board~~, the
- 207 ~~executive~~ director, or a hearing officer, or both; appointed from outside the ~~council board~~. The
- 208 ~~council director~~ will give notice of the hearing to the same parties and in the same manner as
- 209 described in 9VAC20-40-60 C, regarding distribution of the notice of intent. The owner or
- 210 operator shall provide the ~~council director~~ with a list of the names and addresses of all owners of

211 property adjoining the facility. The notice of the hearing shall specify the date, time, and location  
212 of the hearing and include a copy of the request for waiver.

213 **9VAC20-40-60. Contents of the notice of intent.**

214 A. After December 31, 1984, any person may submit to the ~~council~~board a notice of intent to  
215 file an application for a certification of site approval. The notice shall contain:

216 1. Name and address of the applicant;

217 2. A copy of the property deed, option, or other document giving right, title, or interest to the  
218 proposed site;

219 3. A description of the proposed facility including a description based on its operating  
220 characteristics;

221 4. A USGS map showing the location of the property at a scale of one inch = 2,000 feet;

222 5. Names and addresses of all owners of property adjacent to the proposed site; and

223 6. Any state agency filing a notice of intent shall include a statement explaining why the  
224 Commonwealth desires to build a hazardous waste facility and how the public interest will be  
225 served by that.

226 B. Determination of completion of notice of intent. The ~~executive~~ director will review the notice  
227 of intent and determine within 45 days of its receipt whether the notice of intent is complete. If  
228 the ~~executive~~ director determines that the notice of intent is incomplete, the ~~executive~~ director  
229 shall so advise the applicant, specifying the information needed to complete the notice and  
230 designating a deadline for the correction of any deficiencies.

231 C. Distribution of notice of intent. Upon the determination that a notice of intent is complete, the

232 ~~council~~board, at the applicant's expense, shall promptly:

233 1. Deliver by certified, return receipt mail a copy of the notice of intent with a copy of the Act, a  
234 copy of this chapter, and notice of the date, time, location and purpose of the briefing meeting to:

235 a. The governing body of each host community;

236 b. The governing body of each affected community;

237 c. State legislators elected from the areas in which the host community and affected communities  
238 are located;

239 d. The regional planning district commissions of the host community and the affected  
240 communities; and

241 e. Each person owning property immediately adjoining the site of the proposed facility.

242 2. Have an informative description of the notice published in a newspaper of general circulation  
243 in each host community once each week for four successive weeks. The description shall include  
244 the name and address of the applicant, a description of the proposed facility and its location, the  
245 places and times where the notice of intent may be examined, the address and telephone number  
246 of the ~~council~~board or other state agency from which information may be obtained, and the date,  
247 time and location of the initial public briefing meeting on the notice.

248 3. Copies of the notice of intent will be mailed to any person who has specifically requested such  
249 notice.

250 **9VAC20-40-70. Waiver of participation by host community.**

251 Section 10.1-1438 of the Act permits the governing body of the host community to waive further  
252 participation in the certification process. Should the governing body elect to waive participation

253 it must notify the ~~council~~board in writing with a copy of its adopted resolution within 45 days of  
254 receiving the notice of intent. Although this waiver permits the ~~council~~board to issue a  
255 certification of site approval without further participation by the governing body of the host  
256 community, such waiver in no way restricts the rights of any other person or organization to  
257 participate in the certification process.

258 **9VAC20-40-80. Briefing meeting.**

259 A. Not more than 75 nor less than 60 days after the delivery of the notice of intent to the host  
260 community, the ~~council~~board shall conduct a briefing meeting in or in reasonable proximity to  
261 the host community. Notice of the date, time, place and purpose of the briefing session shall be  
262 prepared by the ~~council~~board and shall accompany the notice of intent delivered pursuant to  
263 §10.1-1439 et seq. of the Code of Virginia, and be included in the notice published pursuant to  
264 §10.1-1439 et seq. of the Code of Virginia.

265 At least one representative of the applicant shall be present at the briefing meeting.

266 The primary purpose of the briefing meeting will be to provide information on the proposed site  
267 and facility and to receive comments, suggestions and questions on them from the public.

268 B. The ~~council~~board shall select from among its membership a briefing officer who will be  
269 responsible for conducting the meeting as follows:

- 270 1. The briefing officer will call the meeting to order and explain the purpose of the briefing;
- 271 2. The applicant shall be allowed to give a presentation describing the proposal and to respond to  
272 questions;
- 273 3. Persons asking questions shall be requested to state their names, addresses, and interests in the

274 project;

275 4. The briefing officer shall conduct the meeting in an orderly manner while ensuring that all  
276 interested parties present are as fully briefed as possible on the proposal; and

277 5. A stenographic or electronic record shall be made of all briefing meetings. A transcript of the  
278 meeting, together with copies of any documents submitted at the briefing, shall be made  
279 available for inspection at the office of the ~~council~~board and host community during normal  
280 working hours.

281 C. If the ~~council~~board conducts additional briefing meetings, notice of such meetings shall be  
282 provided as follows:

283 1. Notice of the date, time, place and purpose of the meeting is delivered in writing to the  
284 applicant, each member of the governing body of the host community, and to all owners of  
285 property adjoining the proposed site at least 15 days in advance of the meeting;

286 2. Such notice is published once each week for at least two successive weeks in a newspaper of  
287 general circulation in the host community;

288 3. Such notice is broadcast over one or more radio stations within the area to be affected by the  
289 subject of the notice;

290 4. Such notice is mailed to each person who has asked to receive notice; and

291 5. Such notice is disseminated by any additional means the ~~council~~board deems appropriate.

292 **9VAC20-40-90. Impact analysis.**

293 A. The applicant shall submit a draft impact analysis in accordance with §10.1-1440 of the Code  
294 of Virginia and, in addition, shall furnish a copy of the draft impact analysis to each person

- 295 designated in that section.
- 296 B. The draft impact analysis shall include:
- 297 1. A detailed assessment of the project's suitability with respect to the criteria.
- 298 2. A cover letter signed by the applicant;
- 299 3. An executive summary providing a brief description of the applicant's proposal, the impacts,
- 300 and mitigating actions;
- 301 4. A site plan;
- 302 5. A full report addressing each of the following:
- 303 a. Effects on botanical resources;
- 304 b. Energy and water consumption;
- 305 c. Discharge of any substance, or of heat, in surface or ground waters;
- 306 d. A description of any necessary clearing, excavating, dredging, filling;
- 307 e. The types and amounts of wastes which will be accepted;
- 308 f. The process or processes to be employed including its basic characteristics and principal
- 309 limitations;
- 310 g. Planned operational safeguards and monitoring of the facility following cessation of
- 311 operations;
- 312 h. Emission of radiation; and
- 313 i. Solid waste disposal.
- 314 6. An ownership report containing:
- 315 a. A legal description of the applicant, including identification of all principal participants;

- 316 b. A current audited financial statement or statements prepared by a certified public accountant  
317 including the accountant's opinions;
- 318 c. A description of all liability insurance the applicant has or plans to obtain for the proposed site  
319 and facility and a description of the financial and managerial arrangements for closure and post-  
320 closure care of the site;
- 321 d. A description of the applicant's experience in the field, including any other hazardous waste  
322 facilities operated or owned currently or in the past by the applicant and details of their  
323 compliance record; and
- 324 e. A description of how the applicant intends to finance the project.
- 325 7. An appendix providing any supporting documentation.
- 326 C. The ~~council~~board at the applicant's expense, shall cause notice of the filing of the draft  
327 impact analysis to be made in the manner provided in §10.1-1440 of the Code of Virginia, within  
328 10 days of receipt. The notice shall include (i) a general description of the analysis, (ii) a list of  
329 recipients, (iii) a description of the places and times that the analysis will be available for  
330 inspection, (iv) a description of the ~~council's~~board's procedures for receiving comments on the  
331 analysis, and (v) the addresses and telephone numbers for obtaining information from the ~~council~~  
332 board.
- 333 D. The ~~council~~board shall allow 45 days after publication of notice for comment on the draft  
334 impact analysis. No sooner than 30 and no more than 40 days after publication of notice of the  
335 draft impact analysis, the ~~council~~board shall conduct a public meeting on the draft impact  
336 analysis in or near the host community. The meeting shall be for the purpose of explaining,



337 answering questions and receiving comments on the draft impact analysis. A representative of  
338 the governing body and a representative of the applicant shall be present at the meeting.

339 E. The ~~council~~board will receive comments on the draft impact analysis pursuant to the  
340 following procedures:

341 1. Comments on the draft analysis may be in writing and mailed to the ~~council~~board within 45  
342 days of publication of the notice for comment; and

343 2. Comments may be submitted in writing or by presentation before the ~~council~~board at the  
344 public meeting conducted pursuant to §10.1-1444 of the Act. The meeting will be conducted in  
345 the same manner as the briefing meeting in 9VAC20-40-80 B.

346 F. Within 10 days after the close of the comment period, the ~~council~~board shall forward to the  
347 applicant a copy of all comments received on the draft impact analysis, together with its own  
348 comments.

349 G. The applicant shall prepare and submit a final impact analysis to the ~~council~~board after  
350 receiving the comments. The final impact analysis shall reflect the comments as they pertain to  
351 each of the items listed in subsection B of this section. A copy of the final impact analysis shall  
352 be provided by the applicant upon request to each of the persons who received the draft impact  
353 analysis.

354 H. Preparation and submission of the final impact analysis will be in accordance with §10.1-1440  
355 of the Code of Virginia.

356 **Part III – Application for Certification of Site Approval**

357 **9VAC20-40-100. Application.**

358 A. At any time within six months after submission of the final impact analysis, the applicant may  
359 submit to the ~~council~~board an application for certification of site approval. The application shall  
360 contain:

- 361 1. A summary of the proposal including a general description of the facility and the nature of the  
362 business;
- 363 2. Conceptual engineering designs for the proposed facility;
- 364 3. A copy of the final impact analysis which evaluates the siting criteria;
- 365 4. A detailed description of the facility's suitability to meet the criteria promulgated by the  
366 ~~council~~board, including any design and operation means that will be necessary or otherwise  
367 undertaken to meet the criteria;
- 368 5. A siting agreement, if one has been executed pursuant to 9VAC20-40-100 F, H and 9VAC20-  
369 40-110 and §10.1-1442 of the Code of Virginia, or, if none has been executed, a statement to that  
370 effect.

371 B. Fees. The application shall be accompanied by the fee established by the Fee Schedule  
372 Regulation.

373 C. Form of the application.

- 374 1. The application should be contained in one or more three-ring loose-leaf binders preferably on  
375 8 ½ X 11 inch paper.
- 376 2. All maps required by this chapter shall be detachable, but may be fold outs.
- 377 3. The summary shall be capable of separate reproduction and distribution.

378 D. The ~~executive~~ director shall review the application for completeness and notify the applicant

379 within 15 days of receipt that the application is incomplete or complete.

380 If the application is incomplete, the ~~executive~~ director shall so advise the applicant and shall  
381 identify the information necessary to make the application complete. The ~~executive~~ director shall  
382 take no further action until the application is complete.

383 If the application is complete, the ~~executive~~ director shall so advise the applicant and shall direct  
384 the applicant to furnish copies of the application to the following: five to the host community;  
385 ~~one to the State Health Commissioner~~, and one to each person owning property adjoining the  
386 proposed site. At least one copy of the application shall be made available by the applicant for  
387 inspection and copying at a convenient place in a host community during normal business hours.

388 E. The ~~council~~board shall cause notice of the application to be made in the manner provided in  
389 §10.1-1441 of the Code of Virginia, and shall notify each governing body that upon publication  
390 of the notice the governing body must conclude all negotiations with the applicant within 30  
391 days. The applicant and the governing body may, by agreement, extend the time for negotiation  
392 to a fixed date but shall forthwith notify the ~~council~~board of this date. The ~~council~~board may  
393 also extend the time to a fixed date for good cause shown.

394 F. At the end of the period specified in subsection E of this section, a governing body shall  
395 submit to the ~~council~~board and to the applicant a report containing:

396 1. A complete siting agreement, if any, or in case of failure to reach full agreement, a description  
397 of points of agreement and unresolved points; and

398 2. Any conditions or restrictions on the construction, operation or design of the facility that are  
399 required by local ordinance.

400 G. If the report is not submitted within the time required, the ~~council~~board may proceed as  
401 specified in §10.1-1443 A of the Code of Virginia.

402 H. The applicant may submit comments on the report of the governing body at any time prior to  
403 the issuance of the draft certification of site approval.

404 **9VAC20-40-110. Negotiations; role of ~~council~~board; good faith required.**

405 A. The governing body or its designated representatives and the applicant, after submission of  
406 notice of intent to file an application for certification of site approval, may meet to discuss any  
407 matters pertaining to the site and the facility, including negotiations of a siting agreement. The  
408 time and place of any meeting shall be set by agreement, but at least a 48-hour notice shall be  
409 given to members of the governing body and the applicant.

410 B. The ~~council~~board shall assist in facilitating negotiations between the local governing body  
411 and the applicant to the extent of recommending a mediator or other conflict resolution  
412 mechanism, but shall not become integrally involved in the siting agreement negotiations.

413 C. The siting agreement may include any terms and conditions, including mitigation of adverse  
414 impacts and financial compensation to the host community, concerning the facility. In the event  
415 that a provision of a siting agreement conflicts with state or federal law, the state or federal law  
416 shall prevail.

417 D. The siting agreement shall be executed by the signatures of (i) the chief executive officer of  
418 the host community, who has been so directed by a majority vote of the local governing body,  
419 and (ii) the applicant or authorized agent.

420 E. Determination of agreement.

421 1. If the report submitted by the governing body pursuant to §10.1-1442 of the Code of Virginia  
422 indicates that no siting agreement has been reached and contains a written allegation that the  
423 applicant has failed or refused to negotiate in good faith, the ~~executive~~ director shall issue notice  
424 to the applicant and host community of the ~~council's~~ board's intention to hold an informal  
425 conference pursuant to ~~§9-6.14:11~~ §2.2-4019 of the Virginia Administrative Process Act. The  
426 notice shall state the time, place and date of such conference. The purpose shall be to determine  
427 the sole issue of whether or not the applicant has failed or refused to negotiate in good faith with  
428 the governing body in developing a siting agreement.

429 2. If the ~~council~~ board finds that the governing body has shown by a preponderance of the  
430 evidence that the applicant has failed or refused to negotiate in good faith with the governing  
431 body for the purpose of attempting to develop a siting agreement, the ~~council~~ board may deny  
432 the application for certification of site approval. Such a finding shall constitute final action by the  
433 ~~council~~ board.

434 3. If the ~~council~~ board finds that the governing body has not shown by a preponderance of the  
435 evidence that the applicant has failed or refused to negotiate in good faith with the governing  
436 body for the purpose of attempting to develop a siting agreement, the ~~council~~ board may issue  
437 the draft certification of site approval pursuant to §10.1-1443 of the Code of Virginia. Such  
438 finding shall not be considered final action by the ~~council~~ board.

439 **9VAC20-40-120. Draft certification of site approval.**

440 A. Within 30 days after receipt of the governing body's report or as otherwise provided in §10.1-  
441 1443 of the Code of Virginia, the ~~council~~ board shall issue or deny a draft certification of site

442 approval.

443 B. The ~~council~~board may deny the application for certification of site approval if it finds that the  
444 applicant has failed or refused to negotiate in good faith with the governing body for the purpose  
445 of attempting to develop a siting agreement.

446 C. The draft certification of site approval shall specify the terms, conditions and requirements  
447 that the ~~council~~board, on a case-by-case basis, deems necessary to protect health, safety,  
448 welfare, the environment and natural resources.

449 D. Copies of the draft certification of site approval, together with notice of the date, time and  
450 place of public hearing required under §10.1-1444 of the Code of Virginia, shall be delivered by  
451 the ~~council~~board to the governing body of each host community, and to persons owning  
452 property adjoining the site for the proposed facility. At least one copy of the draft certification  
453 shall be available for inspection and copying at a convenient place in the host community during  
454 normal business hours.

455 **9VAC20-40-130. Public hearing on draft certification of site approval.**

456 A. The ~~council~~board shall conduct a public hearing on the draft certification not less than 15 nor  
457 more than 30 days after the first publication of notice. The hearing shall be conducted in the host  
458 community.

459 B. Notice of the hearing shall be made at the applicant's expense and shall:

460 1. Provide for public participation by sending a copy of the notice by certified, return receipt  
461 mail to the following:

462 a. The governing body of the host community;

- 463 b. The governing body of the affected communities;
- 464 c. Legislators elected from the areas in which the host community is located and the affected  
465 communities are located;
- 466 d. The regional planning district commissions of the host community and affected communities;
- 467 e. Persons owning property adjoining the site of the proposed facility.
- 468 f. The applicant.
- 469 g. Any person who has been designated a party pursuant to 9VAC20-40-130 D.
- 470 2. In addition to the requirements imposed by paragraph 1, in accordance with §10.1-1447 of the  
471 Code of Virginia, the notice shall be disseminated:
- 472 a. By publication once each week for two successive weeks in a newspaper of general circulation  
473 within the area to be affected by the subject of the notice;
- 474 b. By broadcast over one or more radio stations within the area to be affected by the subject of  
475 the notice;
- 476 c. By mail to each person who has asked to receive notice; and
- 477 d. By such additional means as the ~~council~~board deems appropriate.
- 478 Every notice shall provide a description of the subject for which notice is made and shall include  
479 the name and telephone number of a person from whom additional information may be obtained.
- 480 3. Provide that the contents of such notice include:
- 481 a. A brief description of the terms and conditions of the draft certification;
- 482 b. Information describing the date, time, place and purpose of the hearing;
- 483 c. The location where the draft certification may be reviewed;

- 484 d. The name, address and telephone number of an official designated by the ~~council~~board to  
485 receive written comments of the draft certification;
- 486 e. A brief description of the rules and procedures to be followed at the hearing and the time for  
487 receiving comments; and
- 488 f. Any such information as the ~~council~~board deems appropriate.
- 489 C. Designation and powers of hearing officer.
- 490 1. The public hearing held pursuant to these procedures will be conducted by a hearing officer  
491 designated by the ~~council~~board.
- 492 2. The hearing officer shall conduct the hearing in an orderly and expeditious manner, and shall  
493 hold all powers necessary to those ends, including, but not limited to, the power to do the  
494 following:
- 495 a. Prescribe the methods and procedures to be used in the development of evidentiary facts and  
496 the presentation of evidence by the parties, including the issuance of pre-hearing orders setting  
497 forth the issues for hearing and establishing deadlines for the filing of written testimony and  
498 exhibits;
- 499 b. Impose reasonable limitations on the time permitted for oral testimony;
- 500 c. Consolidate the presentation of factual data, arguments and proof to avoid repetitive  
501 presentation of them;
- 502 d. Administer oaths and affirmations;
- 503 e. Receive probative evidence, rule upon offers of proof and, upon his own motion or the  
504 objection of any party, exclude irrelevant, immaterial, insubstantial or repetitive proofs, rebuttal



- 505 or cross-examination;
- 506 f. Examine witnesses;
- 507 g. Hold preheating conferences for the settlement determination, simplification or stipulation of  
508 issues and facts by consent;
- 509 h. Rule on procedural matters; and
- 510 i. Issue subpoenas and subpoenas duces tecum in accordance with ~~§9-6.14:13~~ §2.2-4022 of the  
511 Code of Virginia.
- 512 3. Rulings of the hearing officer on the admissibility of evidence or testimony, on the propriety  
513 or conduct of cross-examination, and on any and all procedural matters shall appear in the  
514 hearing record and shall control further proceedings in the hearing. Parties shall be presumed to  
515 have taken objection to any adverse ruling, and no objection shall be considered waived by  
516 further participation on the hearing.
- 517 D. Parties; rights of parties; petition to become a party.
- 518 1. The following persons are entitled to become parties to the public hearing conducted pursuant  
519 to this section:
- 520 a. The applicant;
- 521 b. The host community, acting through its governing body; and
- 522 c. Any person owning land adjoining the site of the proposed facility.
- 523 2. In addition to the above named parties, any person whose significant interest will be adversely  
524 affected by the decision of the ~~council~~ board may file a petition to become a party to the hearing.
- 525 The following procedures apply to such petitions:

526 a. The petition to become a party must be received by the ~~council~~board at least 10 days prior to  
527 the scheduled hearing date.

528 b. The petition shall contain the following:

529 (1) The names and addresses of the petitioner, the petitioner's counsel (if any) and all persons for  
530 whom the petitioner is acting as a representative;

531 (2) A statement setting forth the interest of the petitioner in the matter;

532 (3) A statement by the petitioner that, should his petition be granted, the petitioner will be  
533 available, without cost to any other party, to appear at the hearing; and

534 (4) A statement by the petitioner explaining how his interests would not be adequately  
535 represented by existing parties to the hearing.

536 c. The ~~executive~~ director shall acknowledge the receipt of all petitions to become a party.

537 d. The ~~executive~~ director shall consider all petitions filed in accordance herewith, and shall grant  
538 those petitions that both:

539 (1) Raise one or more genuine substantial issues in the petition which, if resolved adversely to  
540 the petitioner, would result in an injury to a significant interest of the petitioner; and

541 (2) Adequately describe how the petitioner's interest is not represented by an existing party to the  
542 hearing.

543 e. The ~~executive~~ director shall notify the petitioner, and all other parties, of his decision to grant  
544 or deny petition to become a party by mail at least five days prior to the scheduled hearing date.

545 The decision of the ~~executive~~ director in no way limits the rights of judicial review granted under  
546 §10.1-1433 et seq. of the Code of Virginia.

547 3. The rights of the parties to the hearing shall be limited to those enumerated in this chapter and  
548 the Act.

549 E. Evidence at the hearing.

550 1. Parties to the hearing may present direct and rebuttal evidence in written and oral form, as the  
551 hearing officer may direct.

552 2. The hearing officer shall admit all relevant, competent and material evidence offered by the  
553 parties but shall exclude evidence which he determines to be repetitive, irrelevant, immaterial or  
554 otherwise inadmissible.

555 3. Whenever any evidence or testimony is excluded by the hearing officer as inadmissible, so  
556 much of the excluded material as is in written form shall remain in the record as an offer of  
557 proof, and shall be marked "excluded" by the hearing officer. Where oral testimony is excluded,  
558 the party seeking to introduce it may make an offer of proof in the form of a brief descriptive  
559 statement for the record.

560 4. Any other interested person may be given an opportunity to testify during the hearing. The  
561 hearing officer shall allow such testimony to be heard as is not irrelevant, immaterial,  
562 insubstantial or repetitive. Any interested person who so testifies shall be sworn and subject to  
563 cross-examination as prescribed in this section.

564 F. Hearing record.

565 1. The hearing officer shall assemble a hearing record after the close of the hearing.

566 The hearing record shall consist of:

567 a. A transcript of the hearing, and any exhibits admitted in evidence;

- 568 b. A copy of the final impact statement;
- 569 c. A copy of the application for certification of site approval;
- 570 d. Reports of any consultants hired by the ~~council~~board that have been made available to the
- 571 parties prior to the hearing;
- 572 e. A copy of the draft certification of site approval; and
- 573 f. A summary of the record, if the hearing officer so desires.
- 574 2. Within 15 days after the close of the hearing, the hearing officer shall deliver a copy of the
- 575 hearing record to each member of the ~~council~~board.

576 **Part IV - Certification and Approval of Site**

577 **9VAC20-40-140. Final decision on certification of site approval.**

- 578 A. Within 45 days after the close of the public hearing, the ~~council~~board shall meet within or in
- 579 close proximity to the host community and shall vote to issue or deny the certification of site
- 580 approval. The ~~council~~board may include in the certification any terms and conditions which it
- 581 deems necessary and appropriate to protect and prevent injury or adverse risk to health, safety,
- 582 welfare, the environment and natural resources. At least seven days notice of the date, time,
- 583 place and purpose of the meeting shall be made in the manner provided in §10.1-1447 of the
- 584 Code of Virginia. No testimony or evidence will be received at the meeting.
- 585 B. The ~~council~~board shall grant the certification of site approval if it finds:
- 586 1. That the terms and conditions of it will protect and prevent injury or unacceptable adverse risk
- 587 to health, safety, welfare, the environment and natural resources;
- 588 2. That the facility will comply and be consistent with the criteria promulgated by the ~~council~~

589 board; and

590 3. That the applicant has made reasonable and appropriate efforts to reach a siting agreement  
591 with the host community including, though not limited to, efforts to mitigate or compensate the  
592 host community and its residents for adverse economic effects, if any, of the facility.

593 C. The ~~council's~~board's decision to grant or deny certification will be based on the hearing  
594 record and shall be accompanied by the written findings of fact and conclusions upon which the  
595 decision was based. The ~~council~~board shall provide the applicant and the governing body of the  
596 host community with copies of the decision, together with the findings and conclusions, by  
597 certified mail.

598 D. The grant or denial of certification constitutes final action by the ~~council~~board.

599 **9VAC20-40-150. Amendment of certification of site approval.**

600 A. Certification may be amended at the request of any interested party as defined in 9VAC20-40-  
601 130 D or upon the ~~council's~~board's initiative, but only for the causes listed in this section. All  
602 requests shall be in writing and shall contain facts or reasons supporting the request. The ~~council~~  
603 board shall make its determination following a review of the cause based on appropriate  
604 information or testimony by the initiator or the applicant (current owner or operator) or both  
605 within 45 days of receiving notice. If, in the opinion of the ~~council~~board, the amendment is of  
606 major public interest, the ~~council~~board may schedule a public hearing according to the  
607 requirements outlined in 9VAC20-40-130.

608 B. If the ~~council~~board decides the request is not justified, it shall send the requestor a brief  
609 response giving a reason for the decision.

610 C. The following are causes for amendment of certification of site approval:

611 1. There are material or substantial alterations or additions to the approved site which occurred  
612 after certification which justify the application of conditions that are different or absent in the  
613 existing certification;

614 2. The ~~council-board~~ has received information pertaining to circumstances or conditions existing  
615 at the time the certification of the site was approved that was not included in the administrative  
616 record and would have justified the application of different ~~condition-conditions~~, if, in the  
617 judgment of the ~~council-board~~, such modification is necessary to prevent significant adverse  
618 effects on public health or the environment; and

619 3. The standards or regulations on which the certification was based have been changed by  
620 promulgation of amended standards or regulations or by judicial decision after the certification  
621 was approved, if, in the judgment of the ~~council-board~~, such modification is necessary to prevent  
622 significant adverse effects on public health or the environment. Certification may be amended by  
623 reason of judicial decision only if a court of competent jurisdiction has remanded and stayed  
624 ~~council-board~~ regulations, and if the remand and stay concern that portion of the regulations on  
625 which the certification condition was based and a request is filed within 90 days of judicial  
626 remand.

627 D. Certification of site approval shall be terminated in accordance with §10.1-1446 of the Code  
628 of Virginia.

629 **Part V - Delegations**

630 **9VAC20-40-160. Delegations.**

631 The director may perform any act of the board provided under this chapter, except as limited by

632 Sections 10.1-1433 through 10.1-1449 of the Code of Virginia.

633

634 Certified True and Accurate: \_\_\_\_\_

635 Robert G. Burnley, Director, DEQ

636

637 Date: \_\_\_\_\_