



## Exempt Action Final Regulation Agency Background Document

<b>Approval authority name</b>	Virginia Waste Management Board	
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 20 – 70 – 10 <i>et seq.</i>	
<b>Regulation title</b>	Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, Amendment 3	
<b>Action title</b>	Immediate Final Rule 2005	<b>DRAFT</b>
<b>Final agency action date</b>	May 12, 2005	
<b>Document preparation date</b>	April 22, 2005	

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) ([townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://townhall.state.va.us/dpbpages/dpb_apa.htm)), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act ([leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100](http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100)), the *Virginia Register Form, Style, and Procedure Manual* ([legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)), and Executive Orders 21 (02) and 58 (99) ([governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html))

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Virginia Waste Management Board is proposing clarifying language and the correction of two technical errors inconsistent with other regulatory text in 9 VAC 20 – 70 – 290. Currently, the regulations contain two technical errors in 9 VAC 20 – 70 – 290 Wording of Financial Mechanisms, which obscure the intent and clarity of the financial assurance program. These are not consistent with other sections of the regulations (sections 200 & 210).

The current text of the chief financial officer's letter requires a ratio of total liabilities to net worth of 2.0. This figure is inconsistent with the ratio of 1.5 required under the corporate financial test at 9 VAC 20 – 70 – 200.1.a(2).

The current text of the chief financial officer's local government letter requires an affirmative answer to financial ratio questions 8 through 12 for the officer to use the second financial alternative presented. In

essence, a negative response to questions 8 or 9 in 290.G Alternative II would mean that an applicant is disqualified from using this financial alternative because an operating deficit may have occurred in either the latest or previous fiscal year. However, this wording is inconsistent with an exception provided at 9 VAC 20 – 70 – 210.1.c.(3). At 210.1.c.(3), the restriction equivalent to 290.G allows an applicant to have operated at a deficit of 5% or less in the last two previous fiscal years while still qualifying for the financial alternative. Therefore, 210.1.c.(3) affords a broader allowance to qualify for the financial alternative. Other conditions in 210 remain protective of financial assurance for the facilities. The most efficient way to reconcile the two sections is to eliminate the requirement for affirmation of questions 8 through 12 in the chief financial officer's local government letter.

Without these specific clarifications and typographical corrections, the intent of the regulation is unclear and may cause inconsistency in the implementation of the requirements. These corrections will also make clear that the owners and the operators will bear the costs of closure, post-closure care, and corrective action at solid waste management facilities, as intended by the Board, rather than for these costs to be borne by the public if the owners/operators abandon the facility. There are no disadvantages to the public or the Commonwealth anticipated with this third amendment of the regulation.

The department will limit its amendment to this regulatory section: 9 VAC 20 – 70 – 290 for the purposes of correcting technical errors. No other regulatory sections are being changed.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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On May 12, 2005, the Virginia Waste Management Board approved this action, Immediate Final Rule 2005, and adopted the rule as final regulations of the board, Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, Amendment 3, 9 VAC 20 – 70 – 10 *et seq.*

### Family impact

*Assess the impact of this 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.*

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This action has no direct impact on the family or family stability.