



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9VAC20-160
Regulation title	Voluntary Remediation Regulations
Action title	Voluntary Remediation Regulations – Exempt Amendment 3
Document preparation date	June 25, 2014

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A of the Administrative Process Act (APA), 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, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

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 Voluntary Remediation Regulations allow persons that have an interest in contaminated property to voluntarily remediate releases of contamination on the property and obtain a certificate of satisfactory completion of remediation from the department. The certificate allows restricted or unrestricted use of the property and provides immunity from enforcement action under the Virginia Waste Management Act (Code of Virginia § 10.1-1400 et seq.), the State Water Control Law (Code of Virginia § 62.1-44.2 et seq.), and other applicable laws and regulations. The regulation provides definitions, eligibility criteria, application requirements, descriptions of work to be performed, a review process for submittals, requirements for remediation levels, conditions for termination or issuance of a certificate of satisfactory completion of remediation, and public notice requirements. The regulation also provides for the collection of registration fees capped at the lesser amount of 1% of actual remediation costs or \$5000.

Chapter 366 of the 2014 Acts of Assembly requires that the Virginia Waste Management Board adopt amendments to the regulation to remove the registration fee cap, to defray actual reasonable costs of the program, and to implement the amendments with an effective date of July 1, 2014. It also requires that the Department of Environmental Quality (the department) utilize a regulatory advisory panel (RAP) to assist in the development of necessary regulations and provide an opportunity for public comment. The RAP met on April 11, 2014 and made amendment recommendations to the department.

The proposed amendments include (i) removal of the registration fee cap, (ii) implementation of a three-phase registration fee structure for applications received on or after July 1, 2014, (iii) provision for managing the fee structures in place prior to July 1, 2014 and the fee structure implemented on and after July 1, 2014, (iv) provision for action resulting from nonpayment of registration fees, (v) provision for registration fees for any changes to applications and eligibility that require additional program staff review, and (vi) provision for registration fees for amending previously issued certificates.

Statement of final agency action

Please provide a statement of the final action taken by the agency, including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On June 24, 2014, the Virginia Waste Management Board took final action to adopt amendments to Voluntary Remediation Regulations (9VAC20-160). The regulatory action is to be effective on July 1, 2014.

These amendments to the regulation are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of Chapter 366 of the 2014 Acts of Assembly and are necessary to conform to Virginia statutory law.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

In accordance with the requirements of Chapter 366 of the 2014 Acts of Assembly, on May 8, 2014 the department published a general notice on the Virginia Regulatory Town Hall seeking comments on proposed amendments to the Voluntary Remediation Program regulation regarding fees. The comment period was open from May 9, 2014 to May 30, 2014. A link was provided in the general notice to the DEQ webpage for public notices concerning Land Protection and Revitalization where a copy of the notice and proposed amendments was made available for review.

A summary and analysis of the public comments, along with the basis for the decision of the Board, is attached.

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC20-160 Voluntary Remediation Regulations			

160-10		Terms used on the chapter are defined.	Proposed change: A new term "applicant" is defined. Necessary in order to clarify who pays the phase 1 registration fee.
160-10		The term "participant" is defined.	Proposed change: The definition is revised to specify payment of the phase 2 registration fee. Necessary to clarify that the applicant is not a participant in the program until the phase 2 registration fee is remitted to the department.
160-10		The term "registration fee" is defined.	Proposed change: The definition is revised to be consistent with a 3-phase registration fee tied to the existing milestones of the program and to eliminate the cap on registration fees. Necessary to clarify the nature of the registration fees and to implement Chapter 366 of the 2014 Acts of Assembly.
	160-55 A	None.	Proposed change: Provision is made for managing registration fees for applications received by the department prior to January 29, 2014, the effective date for Amendment 2. Revision in response to comments: It is clarified that any area added to a participating site on or after July 1, 2014 will be treated as a new site, which requires an application and the payment of registration fees under the three phase schedule of 9VAC20-160-65. Necessary to manage refunds of registration fees paid for applications received prior to the effective date of the current regulation.
	160-55 B	None.	Proposed change: The amount and payment options for registration fee due to the department prior to January 29, 2014 are stated. Necessary to manage refunds of registration fees paid for applications received prior to the effective date of the current regulation.
	160-55 C	None.	Proposed change: The options for resolving registration fees paid to the department for applications prior to January 29, 2014, based upon an estimate of remediation costs are stated. Necessary to manage refunds of registration fees paid for applications received prior to the effective date of the current regulation.
	160-55 D	None.	Proposed change: The options for resolving registration fees paid to the department for applications prior to January 29, 2014, based upon prepayment of the maximum registration fee are stated. Necessary to manage refunds of registration fees paid for applications received prior to

			the effective date of the current regulation.
160-60		The section title is "Registration fee."	Proposed change: The title is revised to clarify that this section only applies to applications received by the department on or after January 29 and prior to July 1, 2014. Necessary to differentiate between fees due and managed under sections 55, 60, and 65.
160-60 A		A registration fee is required according to the requirements of this section.	Proposed change: Language is added to specify that only registration fees for applications received by the department on or after January 29 and prior to July 1, 2014 are covered under this section. Revision in response to comments: It is clarified that any area added to a participating site on or after July 1, 2014 will be treated as a new site, which requires an application and the payment of registration fees under the three phase schedule of 9VAC20-160-65. Necessary to differentiate between fees due and managed under sections 55, 60, and 65.
160-60 C		Nonpayment of the registration fee within 90 days of the date of eligibility results in loss of eligibility.	Proposed change: Language is added to specify that an applicant or site that loses eligibility for nonpayment of the registration fee under this section must reapply and pay the higher fees due under section 65 in order to participate in the program. Necessary to ensure that the costs for reevaluating eligibility, monitoring the site, and issuing the certificate are paid according to a fee structure that better defrays the actual program costs.
	160-65 A	None.	Proposed change: For applications received on or after July 1, 2014, a 3-phase registration fee is required in accordance with this section. Necessary to differentiate between fees due and managed under sections 55, 60, and 65 and to implement Chapter 366 of the 2014 Acts of Assembly in accordance with the recommendations of the RAP.
	160-65 B	None.	Proposed change: The \$2,000 phase 1 registration fee and the requirements for payment of the fee are described. Necessary to implement Chapter 366 of the 2014 Acts of Assembly in accordance with the recommendations of the RAP.
	160-65 C	None.	Proposed change: A phase 2 registration fee of \$7,500 is described for applications received on or after July 1, 2014. Necessary to implement Chapter 366 of the 2014 Acts of Assembly in accordance with the recommendations of the RAP.
	160-65 C 1	None.	Proposed change: Payment of the \$7,500 phase 2 registration fee is required once the

			<p>site is determined to be eligible to participate in the program. Necessary to implement the phase 2 registration fee.</p>
	160-65 C 1 a	None.	<p>Proposed change: A phase 2 registration fee shall be required for each site for which a separate eligibility determination is made. Necessary to implement the phase 2 registration fee.</p>
	160-65 C 1 b	None.	<p>Proposed change: A separate phase 2 registration fee is required for each section of a phased remediation project that requires a separate eligibility determination or certificate. Necessary to implement the phase 2 registration fee to defray the increased costs associated with evaluating and/or issuing certificates for the separate phases.</p>
	160-65 C 1 c	None.	<p>Proposed change: It is specified that phase 2 registration fees under this section will not be charged for a site with an earlier application date (subject to lower registration fees under section 55 or 60) unless the participant makes changes that require a new or revised eligibility determination. Revisions in response to comments: By removing the conditional language, it is clarified that sites participating under an application received prior to July 1, 2014 will not be subject to phase 2 registration fees. Language added to subsections 55 A and 60 A specify that acreage added after July 1, 2014 is subject to the new fee structure. Necessary to be clear about what sites are subject to the new fee structure.</p>
	160-65 C 2	None.	<p>Proposed change: Provisions describing how payments of phase 2 registration fees shall be made and requiring that payment be remitted within 90 days of the date of eligibility determination unless another date is agreed upon by the department. Necessary to ensure that the phase 2 registration fee payment is remitted in a timely manner.</p>
	160-65 C 3	None.	<p>Proposed change: Provision is made so that failure to remit the phase 2 registration fee by the due date results in loss of eligibility. Necessary to ensure that phase 2 registration fee payment is remitted in a timely manner and that no additional costs are incurred if payment is not made.</p>
	160-65 C 3 a	None.	<p>Proposed change: Provision is made to ensure that the applicant is aware that payment is required and that loss of eligibility is pending in enough time to make the</p>

			<p>payment before eligibility is lost. Necessary to avoid loss of eligibility for nonpayment without the applicant being aware.</p>
	160-65 C 3 b	None.	<p>Proposed change: Provision is made to ensure that payment of new phase 1 and phase 2 registration fees are required if a site has lost eligibility because of nonpayment of the phase 2 registration fee (equivalent to starting the application process over again). Necessary to ensure that staff costs for restarting the eligibility determination process again are defrayed.</p>
	160-65 D	None.	<p>Proposed change: An annual phase 3 registration fee of \$4,500 is described for applications received on or after July 1, 2014. Necessary to implement the phase 3 registration fee and to implement Chapter 366 of the 2014 Acts of Assembly in accordance with the recommendations of the RAP.</p>
	160-65 D 1	None.	<p>Proposed change: Provision is made so that sites participating in the program on November 1 of each year, based upon applications received in a prior calendar year are assessed a phase 3 registration fee (equivalent to a one year grace period for phase 3 registration fees). Necessary to ensure that sites participating in the program longer than 1 year pay more of the costs of the program in accordance with the recommendations of the RAP.</p>
	160-65 D 1 a	None.	<p>Proposed change: An example is provided for a site for which an application is received in 2014. Necessary to clarify the process of determining which sites will be assessed phase 3 registration fees.</p>
	160-65 D 1 b	None.	<p>Proposed change: An example is provided for a site for which an application is received in years earlier than 2017. Necessary to clarify the process of determining which sites will be assessed phase 3 registration fees.</p>
	160-65 D 1 c	None.	<p>Proposed change: Examples of sites that will not be assessed a phase 3 registration fee are provided. Necessary to clarify the process of determining which sites will be assessed phase 3 registration fees.</p>
	160-65 D 2	None.	<p>Proposed change: Since the phase 3 registration fees are assessed based upon participation on a date certain (November 1),</p>

			<p>it is specified that phase 3 registration fees are not prorated for participation for portions of a calendar year. Necessary to clarify the amount of phase 3 registration fees that will be assessed.</p>
	160-65 D 3	None.	<p>Proposed change: The department's billing date for the phase 3 registration fees is specified as March 1 following the November 1 assessment date. Necessary to clarify the payment process for the assessed phase 3 registration fees.</p>
	160-65 D 4	None.	<p>Proposed change: Provision is made for the payment due date for phase 3 registration fees (April 1) and for how payment will be remitted. Necessary to clarify the payment process for the assessed phase 3 registration fees.</p>
	160-65 D 5	None.	<p>Proposed change: Provision is made for remitting the phase 3 registration fee payment and for extending the due date for the payment. Necessary to clarify the payment process for the assessed phase 3 registration fees.</p>
	160-65 D 5 a	None.	<p>Proposed change: Provision is made for action resulting from nonpayment of phase 3 registration fees within 30 days of the due date (cause for termination). Necessary to clarify the result of nonpayment of an assessed phase 3 registration fees.</p>
	160-65 D 5 b	None.	<p>Proposed change: Provision is made to ensure that the participant is aware that payment is overdue and that the department intends to terminate participation for nonpayment in time to correct the nonpayment before termination. Necessary to avoid termination for nonpayment without the applicant being aware.</p>
	160-65 D 6	None.	<p>Proposed change: It is specified that phase 3 registration fees under this section will not be charged for a site with an earlier application date (subject to lower registration fees under section 55 or 60) unless the participant makes changes that require a new or revised eligibility determination. Revisions in response to comments: By removing the conditional language, it is clarified that sites participating under an application received prior to July 1, 2014 will not be subject to phase 3 registration fees. Language added to subsections 55 A and 60 A specify that acreage added after July 1, 2014 is subject to the new fee structure. Necessary to be clear about what sites are</p>

			subject to the new fee structure.
	160-65 D 7	None.	Provision is made so that all assessed phase 3 registration fees are collected before a certificate is issued. Necessary to ensure all fees are properly collected and costs are defrayed.
	160-65 E	None.	Proposed change: Provision is made so that excess fees are not collected beyond the actual reasonable costs of the program. Necessary to ensure that authority to collect registration fees under Chapter 366 of the 2014 Act of Assembly is not exceeded.
	160-65 F	None.	Proposed change: Provision is made to ensure that applicants and participants know that phase 1, phase 2, and phase 3 registration fees are not refundable. Necessary to ensure that the maximum amount of actual reasonable program costs are defrayed.
	160-65 G	None.	Proposed change: Provision is made for reenrollment of sites terminated from the program, and for fees that will be required for reenrollment. Necessary to ensure that the maximum amount of actual reasonable program costs are defrayed.
	160-65 H	None.	Proposed change: Provision is made for collecting registration fees for amendments to a certificate issued at an earlier date. Necessary to ensure that the maximum amount of actual reasonable program costs are defrayed.
	160-65 H 1	None.	Proposed change: Provision is made for collecting a phase 1 registration fee for changes to the certificate that do not require a technical review. Necessary to ensure that the maximum amount of actual reasonable program costs are defrayed.
	160-65 H 2	None.	Proposed change: Provision is made for collecting a reduced phase 2 registration fee in the amount of \$4,500 and any necessary phase 3 registration fees for changes to the certificate that require a technical review. Necessary to ensure that the maximum amount of actual reasonable program costs are defrayed.
	160-65 I	None.	Original proposed change: None. Revisions in response to comments: A new provision was added to specify that a change in participants for a participating site does not make the site subject to the new three phase registration fee schedule. Necessary to address concerns about what changes to a participating site make the site

			subject to the new registration fee structure.
	160-100 A 4	None.	Proposed change: Provision is made for terminating participating sites for nonpayment of required registration fees and for prior notification of the department's intent to terminate participation. Provision is also made for collecting unpaid registration fees after termination. Necessary to ensure that the maximum amount of actual reasonable program costs are defrayed.
160-110 A 4 and A 5		Two of the conditions for issuing a certificate of satisfactory completion of remediation are described.	Proposed change: Revision of conjunctions and punctuation. Necessary to support the addition of new subdivision A 6.
	160-110 A 6	None.	Proposed change: Provision is made to require a participant to have made all registration fee payments before a certificate is issued. Necessary to ensure that the maximum amount of actual reasonable program costs are defrayed.

Regulatory flexibility analysis

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

This is a voluntary program. There are no known alternative regulatory methods that would achieve the stated purpose of the program in a less burdensome and intrusive manner.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

This proposed regulatory action has no substantial impact on the institution of the family or on family stability.

**COMMONWEALTH OF VIRGINIA
VIRGINIA WASTE MANAGEMENT BOARD
SUMMARY AND ANALYSIS OF PUBLIC COMMENT FOR
REGULATION AMENDMENT 3
CONCERNING**

**VOLUNTARY REMEDIATION REGULATION
(9VAC20-160)**

INTRODUCTION

By Chapter 366 of the 2014 Acts of Assembly, the Board is required to adopt regulations to implement the provisions of subdivision A 5 of § 10.1-1232 of the Code of Virginia, as amended by the act, which removed the statutory cap on the amount of registration fees collected to defray the costs of the voluntary remediation program.

Although the act specified that the regulation shall be exempt from Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia, the act also required that the Department of Environmental Quality provide an opportunity for public comment on the regulation. A public comment period was advertised accordingly. The comment period opened on May 9, 2014 and closed on May 30, 2014. The proposed regulation amendments subject to the comment period are summarized below, followed by a summary of the public participation process and an analysis of the public comments, along with the basis for the decision of the Board.

SUMMARY OF PROPOSED AMENDMENTS

The regulation amendments proposed for public comment concerned provisions covering the voluntary remediation program. A summary of the proposed amendments follows:

1. Section 10: Definitions - Terms were clarified and some new ones added to implement the new registration fee structure.
2. Section 55: Registration fees for applications received prior to January 29, 2014. This new section was added to conform to registration fee requirements in effect prior to the current regulation in order to restore the registration fee payment and fee refund procedure in place at that time.
3. Section 60: Registration fees for applications received on or after January 29, 2014 and prior to July 1, 2014. This section was revised to preserve the current registration fee structure and refund procedure for applications submitted prior to the effective date of the new fee structure and to clarify the result of failure to pay those registration fees in a timely manner.
4. Section 65: Registration fees for applications received on or after July 1, 2014: This new section was added to describe the new three-phase registration fee structure, to implement procedures for assessing and collecting those registration fees, and to implement procedures for handling instances of failure to pay the registration fees. Also procedures were provided for collecting fees for sites reentering the program after termination and for amending previously issued certificates.
5. Section 100: Termination: The section was revised to add nonpayment of registration fees as a new reasonable cause for termination of a site from the program.
6. Section 110: Certification of satisfactory completion of remediation: This section was revised to specify that payment of all registration fees is required prior to issuing a certificate.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

As required by Chapter 366 of the 2014 Acts of Assembly, a regulatory advisory panel (RAP) was utilized to assist in the development of the necessary amendments. The RAP met on April 11, 2014 and reached consensus on five overlapping recommendations for the new registration fee structure. The department developed the regulation proposal around those recommendations.

As required by Chapter 366 of the 2014 Acts of Assembly, a public comment period was provided by the department to solicit input on the proposed amendments. A 21-day comment period was advertised in the general notices on the Virginia Regulatory Town Hall beginning on May 8, 2014. The comment period closed on May 30, 2014. One set of written comments was received during the public comment period. Members of the RAP were individually notified of the comment period and the proposal. The complete text of all comments is included in the public participation report which is on file at the Department.

ANALYSIS OF COMMENT

Below is a summary of each of the comments and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the Board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The Board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The Board's action is based on consideration of the overall goals and objectives of the voluntary remediation program and the intended purpose of the regulation.

1. **SUBJECT**: Phase 2 registration fees for changes requiring a revised eligibility determination.

COMMENTER: James A. Thornhill; McGuireWoods LLP.

TEXT: The proposed revisions provide for Phase 1, 2 and 3 fees. In the section regarding the Phase 2 fees, 9 VAC 20-160-65.C.1.c provides:

“c. No phase 2 registration fee shall be required for a site that has been determined to be eligible for participation in the program based upon an application received by the Department prior to July 1, 2014 unless changes are made to the application on or after July 1, 2014 that require a new or revised eligibility determination made pursuant to the provisions of 9VAC20-160-30 and 9VAC20-160-40. On and after July 1, 2014, any change to the site that requires a new or revised eligibility determination makes the site subject to a new phase 2 registration fee under this subsection.”

If a site is deemed eligible pursuant to an application filed before July 1, 2014 it is subject to a maximum \$5,000 fee either under 9 VAC 20-160-55 or 20-160-60. I understand that portion of 20-16-65.C.1.c. What does “unless changes are made to the application on or after July 1, 2014 that require a new or revised eligibility determination made pursuant to the provisions of 9VAC20-160-30 and 9VAC20-160-40” mean? Once eligibility is determined the application has served its purpose, so is this language to capture changes in the application filed prior to July 1, 2014 before eligibility is determined? If the language is meant to capture this then the language needs to be revised and state that more precisely. However, I believe what the language is intended to address is a post eligibility change to the site that requires a new eligibility determination. This would be necessary to add new land to the program or a new participant. The reference to the “application” confuses the provision though as the participant would not be amending the previously approved application but filing a new one.

The language as written also leaves open the possibility that it could be interpreted to include simple changes of a participant as triggering the new fees. The requirements for applicants in 9 VAC 20-160-30 and 40 are to own, operate, have a security interest in or a contract to purchase

the site. The review of the required information to change the participant should not trigger any fees and there should be explicit language that it does not apply to changes in participants. (See COMMENT 4 for more on this issue).

“Unless changes are made to the application on or after July 1, 2014 that require a new or revised eligibility determination” also raises a timing issue. If an application was made prior to July 1, 2014 and deemed eligible and then the participant asks for an additional acre to be added is the request when it “requires a new or revised eligibility determination?” So what if the one new acre is deemed ineligible? Does the application alone subject the existing site to the new fees? Or only when and if the new one acre is deemed eligible, which should be the case? The language needs to be explicit on this point.

With all of the issues regarding what the language beginning with “unless” means, including what it embraces, when the so-called trigger occurs and what happens with the existing fee, the Department needs to reconsider what the language is really meant to cover, i.e. is it necessary?

Based upon the foregoing I recommend the deletion of the language shown below as it creates confusion and there does not appear to be a need for the language in the section:

c. No phase 2 registration fee shall be required for a site that has been determined to be eligible for participation in the program based upon an application received by the Department prior to July 1, 2014 unless changes are made to the application on or after July 1, 2014 that require a new or revised eligibility determination made pursuant to the provisions of 9VAC20-160-30 and 9VAC20-160-40. On and after July 1, 2014, any change to the site that requires a new or revised eligibility determination makes the site subject to a new phase 2 registration fee under this subsection.

RESPONSE: The language of 9VAC20-160 1 c was intended to address a post eligibility change to the site that required a new eligibility determination, just as the commenter supposes. It was intended to capture changes such as the addition of new acreage to a site already deemed eligible under the new three phase fee structure. It was not intended to trigger new fees for simple changes such as changing or adding a participant. However, 9VAC20-160-65 A does not adequately specify that a new application would be required for extending a site already participating in the program under an application received earlier than July 1, 2014. Deletion of language in subdivision 65 C 1 c would have to be accompanied by a requirement to ensure that new acreage be treated as a new site under the new three phase registration fee structure in order to retain this intended requirement. This comment is appropriate and changes in 9VAC20-160-55 A, 9VAC20-1260-60 A, and 9VAC20-160-65 C 1 c have been made to reflect the intent of this comment.

2. **SUBJECT:** Failure to address disposition of fees previously paid.

COMMENTER: James A. Thornhill; McGuireWoods LLP.

TEXT: Additionally, [9VAC20-160-65 C 1 c] fails to address what happens to the fee paid by the participant under either [9VAC]20-160-55 or 60 for a site that was deemed eligible under an application filed before July 1, 2014. Is it forfeited by the participant or is it applied toward the new Phase 2 fee?

RESPONSE: 9VAC20-160-65 C 1 c as written failed to specifically address registration fees previously paid by the participant under either 9VAC20-160-55 or -60. However, sections 55 and 60 clearly state that fees and refunds applicable to the original site under an application filed before July 1, 2014 apply in accordance with the applicable provisions in those sections. This comment is appropriate, but the changes made in response to comment 1 treating new acreage

as a new site subject to the new three phase registration fee structure should resolve confusion concerning which registration fee requirements apply.

3. **SUBJECT**: Registration fees for changes to applications.

COMMENTER: James A. Thornhill; McGuireWoods LLP.

TEXT: Same concerns as with the language discussed in COMMENT 1. Please consider deleting the language in 9 VAC 20-160-65.D.6:

6. No phase 3 registration fee shall be assessed for a site participating in the program based upon an application received by the department prior to July 1, 2014 unless changes are proposed and accepted to the original application after July 1, 2014 that require a new or revised eligibility determination made pursuant to the provisions of 9VAC20-160-30 and 9VAC20-160-40. In that case, the site shall become subject to phase 3 registration fees in accordance with this subsection using the date of the revised application. If changes are made to the application that do not require a new or revised eligibility determination, the site shall not become subject to phase 3 registration fees as a result of those changes.

RESPONSE: See the response to comment 1. Deletion of language in subdivision 65 D 6 would have to be accompanied by a requirement to ensure that new acreage be treated as a new site under the new three phase registration fee structure in order to retain this intended requirement. This comment is appropriate and changes in 9VAC20-160-55 A, 9VAC20-160-60 A, and 9VAC20-160-65 D 6 have been made to reflect the intent of this comment.

4. **SUBJECT**: Registration fees for changes in participants.

COMMENTER: James A. Thornhill; McGuireWoods LLP.

TEXT: The language discussed in the previous comments has given me a concern that there needs to be explicit language that the fees under 9 VAC 20-160-65 will not be triggered for a change in participant for a site deemed eligible for participation when the original application was filed prior to July 1, 2014. The participant on VRP sites can change in particular when the property is sold. As there are only minimal actions needed by the Department to acknowledge this change, the new fees should not apply. I suggest the following addition to 20-160-65:

1. For a site that has been determined to be eligible for participation in the program based upon an application received by the Department prior to July 1, 2014, a request to change the participant for such site received by the Department on or after July 1, 2014, or the Department making such change, will not in and of itself subject the site to the fees under this section.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

5. **SUBJECT**: Support for other comments.

COMMENTER: Charles L. Williams; Gentry, Lock, Rakes and Moore, LLP.

TEXT: Jim and I collaborated to some extent and I agree with his observations.

RESPONSE: See the responses to comments 1 though 4. No additional changes are made to the proposal in response to this comment.