



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-170
Regulation Title:	Transportation of Solid and Medical Wastes on State Waters
Action Title:	Transportation of Solid and Medical Wastes on State Waters - Adoption of Final Regulation
Date:	December 20, 2000

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

On December 18, 2000, the Virginia Waste Management Board adopted final regulations governing transportation of solid and medical wastes on state waters. This regulatory action set forth guidelines for the permitting of the facilities loading or receiving solid wastes and regulated medical wastes on to or from a ship, barge or other vessel transporting such wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law. Specific requirements for containers include a performance standard, testing requirements, a manifest system, and stacking restrictions in the loading and unloading areas. There is a requirement that all vessels used to transport solid waste or regulated medical waste on state waters shall be in compliance with all applicable requirements of the U.S. Coast Guard, the U.S. Department of Transportation and any other federal or state agency having jurisdiction.

The regulations establish permits-by-rule requirements, including permit fees, for facilities receiving solid wastes and regulated medical wastes from a ship, barge or other vessel, and they prescribed specific siting, design/construction, and operational standards for the receiving facilities. The regulations prescribe specific design/construction standards for the containers holding wastes and they establish a financial responsibility requirement for the owners and operators of vessels.

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.

On December 18, 2000, the Virginia Waste Management Board approved the promulgation and adoption of final regulations, Transportation of Solid and Medical Wastes on State Waters, (9 VAC 20-170-10 - 9 VAC 20-170-190 and 9 VAC 20-170-270 - 9 VAC 20-170-410) pursuant to Chapter 14 of Title 10.1 and in particular §§ 10.1-1402(11) and 10.1-1454.1 of the Code of Virginia. The Virginia Waste Management Board deferred adoption of 9 VAC 20-170-200 - 9 VAC 20-170-260 to a later date.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The regulations are mandated by state law. The basis for these regulation is § 10.1-1454.1 of the Code of Virginia. Specifically, § 10.1-1454.1 requires the Virginia Waste Management Board to develop regulations governing the commercial transport, loading and off-loading of non-hazardous solid wastes (except scrap metal, dredged material and source-separated recyclables), municipal and industrial sludge, and regulated medical waste by ship, barge or other vessel upon the navigable waters of the Commonwealth. The statutes also require that the regulation include the following provisions: 1)To establish a permits-by-rule requirement for the receiving facilities; 2)To establish specific requirements for the containers holding wastes to prevent the escape of wastes, liquids, and odors, and to prevent spillage in the event of an accident; 3) To assess a permit fee for the owner or operator of a receiving facility; and 4)To require the owners and operators of ships, barges, and other vessels to demonstrate financial responsibility as a condition of operation.

Further, § 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to supervise and control waste management activities in the Commonwealth, promulgate and enforce regulations, and abate hazards and nuisances dangerous to public health, safety and the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances with the jurisdiction of the Board.

The regulations are not mandated by federal law. However, the Shore Protection Act (Act) of 1988, 33 U. S. C. 2601, et seq., requires all vessels transporting municipal or commercial waste in coastal waters to obtain a permit from the Secretary of Transportation, and display a number or other marking on the vessels as prescribed by the Secretary under 46 U. S. C. 12502(b). The Act includes a provision to require that waste sources, receiving facilities, and vessels provide means and facilities to assure that the waste will not be deposited into coastal waters during loading, off-loading, and transport. It also requires the Environmental Protection Agency (EPA) to prescribe waste handling regulations for waste sources, receiving facilities, and vessels handling or transporting municipal or commercial waste in coastal waters. Although a proposed regulation, 40 CFR Part 237, was published in the Federal Register on August 30, 1994, it is not anticipated that EPA will promulgate this regulation any time soon.

The Office of the Attorney General has confirmed that the Virginia Waste Management Board has the statutory authority to promulgate and adopt these final regulations, Transportation of Solid and Medical Wastes on State Waters, (9 VAC 20-170: Parts I, II, III, VI and VII), pursuant to Chapter 14 of Title 10.1 and in particular §§ 10.1-1402(11) and 10.1-1454.1 of the Code of Virginia.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is to adopt regulations for transportation of solid wastes and regulated medical wastes on state waters. The regulations establish a permits-by-rule requirement for facilities loading or receiving solid wastes and regulated medical wastes onto or from a ship, barge or other vessel; and they prescribe specific siting, design/construction, and operational standards for the receiving facilities. In addition, the regulations prescribe specific design/construction standards for the containers holding wastes, and they will establish a financial responsibility requirement for the owners and operators of the vessels. The containers holding wastes are required to be designed, constructed, loaded, operated and maintained so as to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of accident. Therefore, the regulatory action is essential to protect the health, safety and

welfare of the citizens of the Commonwealth. It is also essential to protect the Commonwealth's environment and natural resources from pollution, impairment or destruction.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

Specific requirements for containers include a performance standard, testing requirements, manifest system, and stacking restrictions in the loading and unloading areas. The regulations establish a permits-by-rule requirement, including permit fees, for facilities loading solid wastes and regulated medical wastes onto or from a ship, barge or other vessel; and they prescribe specific siting, design/construction, and operational standards for the receiving facilities. The regulations prescribe specific design/construction standards for the containers holding wastes, and establish a financial responsibility requirement for the owners and operators of the vessels.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.

In defining waste handling practices for the loading and receiving facilities the regulatory action benefits the citizens and environment of the Commonwealth, and the regulated community. Containers holding wastes are required to be designed, constructed, loaded, unloaded, operated and maintained so as to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of accident. The regulations prescribe specific siting, design/construction, and operational standards for the facilities; they prescribe specific design/construction standards for the containers holding wastes; and they require the owner or operator of each facility to prepare and implement a Response and Mitigation Plan (Plan). In the event of a waste deposit into state waters, the owner or operator of the receiving facility must immediately take all necessary actions, in accordance with the approved Plan, to contain and remove the wastes. Therefore, the advantage to the public and the agency is the protection of the health, safety and welfare of the citizens of the Commonwealth and protection of the Commonwealth's environment and natural resources from pollution, impairment or destruction. In addition, the regulations provide guidance on waste handling practices for the regulated community that should result in a safe and sound environmental practice.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

A new section; Design, Operation and Maintenance of Containers Used to Transport Solid Waste and Regulated Medical Waste on Virginia Waters (§ 9 VAC 20-170-85) was added. This new section contains a detailed description of the design, certification, and testing required for the containers to be used to transport solid and regulated medical wastes on state waters. Other changes were made to the section on Design and Construction of the Facilities (§ 9 VAC 20-170-90) and the section on Operation (§ 9 VAC 20-170-100). These changes were concerned with the handling of waste at the facility, the handling of empty containers, and the requirement that any containers used be in compliance with § 9 VAC 20-170-85. The section on the Operation and Maintenance Manual (§ 9 VAC 20-170-110) was modified to change the definition of the worst case scenarios for the release of wastes into state waters.

Action on PART IV, STANDARDS FOR VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES and PART V, REGISTRATION OF VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES has been deferred for later consideration. A new section, PART VII, COMPLIANCE OF VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES WITH FEDERAL STATUTES AND REGULATIONS has been added.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Public comments received following the publication of the Notice of Intended Regulatory Action (NOIRA) include: specific provisions should be established for both solid wastes and regulated medical wastes transported by barges; facility siting should specifically address issues regarding traffic patterns on land and waters; stringent requirements are necessary for containers and barges, including container stacking and barge inspections, to ensure no adverse impact on state waters; proper permits and inspections with adequate public notice should be required; permitting for barge facilities should be conducted in a manner consistent with any other solid waste facility; these operations should not be categorized as transfer facilities; the administrative and enforcement costs should be paid for by the waste management industry; and facility operator and barge transporter should demonstrate financial responsibility prior to approval of operation. Adoption of these regulations addresses these concerns.

The proposed regulations were published in the *Virginia Register* on September 11, 2000. The public comment period on the regulations ran from September 11, 2000 until close of business on November 13, 2000. During the written comment period, twelve written comments were received. A public hearing was held on October 18, 2000, at the James City County Government

Center. There were nine people attending the hearing and four of them spoke. The comments received during this period were primarily concerned with the requirements for containers and the operation of the receiving facility. Changes were made to the section on containers and to the section on the operation of the receiving facility in order to address these comments.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The following major changes were made, based on the comments received, to these regulations after they were published in the *Virginia Register* on September 11, 2000:

- The definition of "Surface Waters" was changed to read "any water in the Commonwealth, except groundwater, as defined in § 62.1-255 of the Code of Virginia."
- A new section, Design, Operation and Maintenance of Containers Used to Transport Solid Wastes and Regulated Medical Wastes on Virginia Waters (9 VAC 20-170-85), was added. This section contains detailed descriptions of the specifications and requirements for the containers as well as details of the testing and certification procedure to insure that the containers meet the requirements of being watertight, and leak-proof and are able to prevent the loss or spillage of waste, liquids or odors. The major items in this section include design criteria to prevent leaks into the container and any loss of contents in the event the container is lost overboard, American Bureau of Shipping (ABS) certification, and pressure testing of the containers for leaks
- The section on the Operation and Maintenance Manual (§ 9 VAC 20-170-110.3.h) was changed to define the worst case scenario as "1) the instantaneous release of the contents of the maximum number of containers that may be on-site at any given time and 2) the instantaneous release of the contents of the maximum number of waste handling containers that may be on a barge traveling to the facility which is deposited into state waters."
- Action on PART IV, STANDARDS FOR VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES and PART V, REGISTRATION OF VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES have been deferred for later consideration. A new section, PART VII, COMPLIANCE OF VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES WITH FEDERAL STATUTES AND REGULATIONS has been added. This new part is a requirement that all vessels used to transport solid waste or regulated medical waste on state waters shall be in compliance with all applicable requirements of the U.S. Coast Guard, the U.S. Department of Transportation and any other federal or state agency having jurisdiction.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

In the formation of this regulation, the Department has considered its impact on family formation, stability and autonomy. It is anticipated that the regulation will have an indirect positive impact on families by establishing requirements to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of an accident.