



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-170 - Suspended Sections 70 and 195
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

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Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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 March 28, 2003, the Virginia Waste Management Board adopted final regulations governing transportation of solid and medical wastes on state waters and suspended the implementation of two provisions of the regulation in order to receive further public comment. The two provisions are 9 VAC 20-170-70 which contains specific requirements requirements for containers including a performance standard, testing requirements, a manifest system, and stacking restrictions in the loading and off-loading areas and 9 VAC 20-170-195 which establishes a fee system to be paid by vessel owners or operators and collected by off-loading facility owners or operators and remitted to the department.

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 March 28, 2003, the Virginia Waste Management Board adopted final regulations, Transportation of Solid and Medical Wastes on State Waters, (9 VAC 20-170-10, et seq.) 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 Board suspended the implementation of two provisions of the regulation in order to receive further public comment. The two provisions are 9 VAC 20-170-70 and 9 VAC 20-170-195.

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 regulations is § 10.1-1454.1 of the Code of Virginia, which they implement. 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, recyclable construction-demolition debris being transported directly to a processing facility for recycling or reuse 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; 4) To assess fees for the owners and operators of ships, barges, and other vessels; and 5) To require the owners and operators of ships, barges, and other vessels to demonstrate financial responsibility as a condition of operation. Senate Bill 1137 was adopted by the 2003 General Assembly and modified § 10.1-1454.1 of the Code of Virginia to exempt from regulation those waste that are “recyclable construction-demolition debris being transported directly to a processing facility for recycling or reuse.” It also established the current basis for the fees assessed on vessels set out in the regulations.

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 authorizing statutes may be found at:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1454.1>, and
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402>.

The regulations are not mandated by federal law.

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 20-170-10, et seq.), and that they comport with 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 permit-by-rule and permit fee requirement for facilities off-loading solid wastes and regulated medical wastes from a ship, barge or other vessel; and they prescribe specific siting, design/construction, and operational standards for the loading and off-loading facilities. In addition, 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 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. The regulations set out the fee systems authorized by the statute. 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.

New section 9 VAC 20-170-70, Design, Operation and Maintenance of Containers was created as new Part II to segregate container standards. Subsequent parts were renumbered and deferred parts were reassigned to new material. The 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, including new special provision for off-loading of construction or demolition debris waste. Additional performance standards and visual inspections were added to supplement the standing water testing of containers (24 inches of water in the bottom of the container). Provisions were added for construction demolition debris waste to be transport with the covered vessel itself acting as the container.

Part V, Off-Loading Fees Collected by Receiving Facilities (9 VAC 20-170-195, Off-loading fee requirements) was added to specify fees paid by vessel owners or operators to be collected by the off-loading facility owner or operator and remitted to the department.

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, secured, 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 (every six months, the containers must be visually examined and pass a standing water test of 24 inches of water in the bottom of the container); 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.

The fees required by the regulations help fund department programs directly related to these efforts. In addition, the regulations provide guidance on waste handling practices for the regulated community that should result in a safe and sound environmental practice. Some in the regulated entities may consider new regulations where none previously existed and the imposition of new fees as a disadvantage; however, these provisions are required by statute and the statute delayed operations pending finalization of these regulations.

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.

New section 9 VAC 20-170-70, Design, Operation and Maintenance of Containers was created as new Part II to segregate container standards. Subsequent parts were renumbered and deferred parts were reassigned to new material. The 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, including new special provision for off-loading of construction or demolition debris waste. Additional performance standards and visual inspections were added to supplement the standing water testing of containers (24 inches of water in the bottom of the container). Provisions were added for construction demolition debris waste to be transport with the covered vessel itself acting as the container.

Part V, Off-Loading Fees Collected by Receiving Facilities (9 VAC 20-170-195, Off-loading fee requirements) was added to specify fees paid by vessel owners or operators to be collected by the off-loading facility owner or operator and remitted to the department.

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. 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.

The final regulations were adopted by the Virginia Waste Management Board on December 18, 2000, and published in the Virginia Register on January 15, 2001. These regulations were suspended on March 12, 2001, comments from the public were received between March 12 and April 12, 2001, and a public meeting was held on April 10, 2001. The majority of the comments concerned the design and testing standards for containers used to transport waste. Some commenters desired more stringent requirements; others desired less stringent requirements. The board rejected most suggestions as unnecessary or inappropriate. It did substitute a system of testing for the containers (standing water test, visual inspection and other stringent standards) and removed the newer test method (low-pressure air leakage), but it will seek additional public comment on these provisions.

Further, the board established a new fee system to collect funds the department can use to increase its efforts to protect the public health and environment, especially with regard to activities encompassed in these regulations.

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.

- New section 9 VAC 20-170-70, Design, Operation and Maintenance of Containers was created as new Part II. The section contain 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 testing of the containers for leaks. The Board adopted a final regulation on December 18, 2000 containing an item, 9 VAC 20-170-85, that was similar to many items of 9 VAC 20-170-70. There are changes included in this process. Most important is that the 9 VAC 20-170-70 requires a different testing standard, a standing water test (24 inches of water in the bottom of the container), a visual inspection and other stringent standards. The “bubble test” of the former 9 VAC 20-170-85 is no longer required. Also, a requirement to have a pressure relief valves has been removed. A third change is the removal of a requirement that container remain upright if lost overboard. Special circumstances for containerization of construction and demolition debris waste were included.
- New Part V, Off-Loading Fees Collected By Receiving Facilities, contains 9 VAC 20-170-195 that establishes a new system of fees assessed per ton of waste received. The vessel owner or operator must pay the fees and the owner or operator of the receiving facility must collect the

fees and remit them to the department. Provision of financial assurance for funds collected are also required of the receiving facility owner or operator.

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.