



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 - Sections 70 and 195
Date:	July 28, 2003

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Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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. The Board suspended the implementation of two provisions of the regulations in order to receive further public comment. The two provisions are 9 VAC 20-170-70, Design, Operation and Maintenance of Containers, and 9 VAC 20-170-195, Monthly Fee Requirements. On July 25, 2003, the Board adopted these two parts as final regulations.

Design, Operation and Maintenance of Containers, 9 VAC 20-170-70, contains minimum design requirements; operations standards, including inspection and certification requirements; and continuing performance standards for containers used to transport solid and regulated medical waste by barge or other vessels.

Monthly Fee Requirements, 9 VAC 20-170-195, establishes a fee of one dollar per ton on waste off-loaded at receiving facilities. The fee is paid by the vessel owner upon delivery and collected by the facility for forwarding to the Department of Environmental Quality. This section also describes requirements for a system of record keeping to facilitate oversight and auditing of the fee system.

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, Design, Operation and Maintenance of Containers, and 9 VAC 20-170-195, Monthly Fee Requirements. On July 25, 2003, the Board adopted these two parts as final regulations.

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 statute also requires 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 wastes 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), including 9 VAC 20-170-70 and 9 VAC 20-170-195, 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 prescribe specific design/construction standards for the containers holding wastes. The containers 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 also 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.

Specific requirements for containers include a performance standard and testing requirements. The regulations establish a system of fees to be paid by the owners and operators of ships, barges or other vessels transporting waste. Minor technical adjustments are made to the suspended version of this section. The regulations prescribe specific design/construction standards for the containers holding wastes. The final version of the regulation is changed by limiting the types of waste that may be conveyed with the vessel serving as the container. Also, new requirements for container inspection authorities broadens the pool of inspectors that may make tests and certifications required by the regulations. A new paragraph brings into the regulations the requirements of the statute on how the fees may be used and the purposes to which they may applied.

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.

The two suspended portions of the regulations appear to have raised three main issues of general concern. The first was that the funds raised as fees specified in the regulations should only be spent on directly related programs and projects; many suggestions for funding were offered. The statute itself specifies the uses to be made of the funds. The solution to everyone's advantage is to repeat those uses in the regulations themselves.

The second issue is the standard for testing of the containers. Many who fear that spillage and leakage of the waste from the container will impair the environment indicated that it would be an advantage to have stronger standards, similar to the previous "soap-bubble" or "gas-pressure" test. Industry's interests supported the twenty-four inches of standing-water test, which they felt was more practical to perform and therefore an advantage. The final resolution is a combination of performance standards, the standing-water test, visual inspections and other safeguards that provide robust protection of the environment while remaining practical.

The third issue is alternate container standards for construction demolition waste. No one argued for this provision; however, some felt it was a disadvantage in protecting the environment and should be eliminated. The Board felt it would be advantageous to limit its scope to waste least likely to be an environmental problem while retaining its availability to deal with bulky, oversized waste types.

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.

Part II, Standards for Containers (9 VAC 20-170-70, Design, Operation and Maintenance of Containers) was created to segregate container standards. 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 transporting limited types 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).

Part V, Monthly Fees Collected by Receiving Facilities (9 VAC 20-170-195, Monthly 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.

A public comment period was held from May 19 until June 18, 2003. Two public meetings were held at 7:30 p.m. on June 10, 2003, at the Charles City Government and School Board Administrative Building, Charles City, Virginia, and at 7 p.m. on June 11, 2003, at the Rappahannock Community College, Warsaw, Virginia.

Note: The version of the regulations printed in the *Virginia Register* has a slight change in the numbering of the regulations from other texts available prior to publication. This document refers to the printed version.

Comments Common to a Large Number of Commenters

The Board received more than 2,200 comments from the public. Most of these were letters and e-mails addressing one or more of the following four issues. Many commenters indicated they were members of Campaign Virginia.

Issue 1: All fees from barging trash beyond the direct costs associated with policing actual barge transport, spillage, and enforcement should be dedicated to waste-related purposes as required by SB1137 - as intended and adopted by the General Assembly and signed by the Governor.

Response: The regulations include three types of fees, a fee on permit applications to help support the permit program effort, an annual inspection fee from facilities to help support the compliance monitoring effort, and per-ton monthly fee to supplement specific

fees and support other program elements. In regard to the last fee, Senate Bill Number 1137 required the fees be collected for the purpose of funding the administrative and enforcement costs of the article of the statute associated with such operations including, but not limited to, the inspection and monitoring of such ships, barges or other vessels to ensure compliance with this article, and for funding activities authorized by this section to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes. Further, the Bill required that the fees shall only be used for the purposes of the article, and for funding purposes authorized by the article to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes. A new item has been added to the regulations to make the same requirement a part of the regulations.

Issue 2: The strongest possible standards and barge regulations are needed to protect our waterways from pollution. The current standing-water container test is not sufficient to protect the environment from accidents and the Board should adopt the internal gas-pressure test originally required by the final proposed regulations.

Response: Unless otherwise mandated by law, only regulations that are necessary to interpret the law or to protect the public health, safety, or welfare may be promulgated. Formerly, there was a "soap-bubble" or "gas-pressure" test. The Board could, as allowed within Constitutional limits, adopt the soap-bubble test or another test if it had scientific, economic, or other firm information that such a standard were necessary based on the nature of the waste, the likelihood of a release occurring, and the projected consequences of a release should it occur.

The Board has selected a standard that requires the container be subject to a pressure head of twenty-four inches of water standing in the container for 15 minutes without penetration of the container. The current standing-water container test is the most stringent in the nation for the types of waste involved. The test is frequently performed and is combined with several other tests and examinations intended to meet other statutory requirements and establish the integrity of the container. These other tests and examinations include the International Convention of Safe Containers structural integrity standards for ocean shipping, ABS's General Specifications for design and worthiness, complete enclosure in rigid and non-permeable material, and rigorous visual inspection. Further, the containers are subject to absolute standards of performance that apply on a continuous basis whenever the container is in use. Given the nature of the waste, the relative likelihood of a substantial release, and the requirements for planning and implementing a satisfactory mitigation and clean-up effort occurring following any release, no changes to standing-water container standards have been demonstrated to be necessary to protect public health, safety, or welfare.

Issue 3: Mr. Howard Burns, a member of the Board and a Waste Management, Inc. employee, should be required to recuse himself from the decisions that are directly related to the Waste Management's plans to barge waste to Virginia.

Response: This is an issue related to the procedures of the Board and not a part of the regulations. Furthermore, Mr. Burns has recused himself from any action or consideration of the Board involving these regulations.

Issue 4: Many commenters suggested ways to spend the funds collected as a part of the subject regulations, encouraged the Board to proactive waste management activities, encouraged the Board to support House Bill 1123, which is before the U.S. Congress (Congresswoman Jo Ann Davis), or other actions that are not directly related to the substance of the regulations under consideration. (Note: Campaign Virginia, Commenter 9, had an especially long and detailed list of recommended uses for funds.)

Response: The Board appreciates the time and effort of the comments in making the various suggestions; however, this comment and response document can only address issues directly related to the substance of the regulations. As noted above, a new item will be added to the regulations to make the statutory language on the use of the monthly fee a part of the regulations.

Extended Comments

Commenters who provided more extensive comments are listed at the end of this document and associated by numbers with those comments. Some commenters with more specific comments may have also made comments similar to those already responded to above.

General

Commenters discussed the federal and state regulations of vessels and containers with a concentration on the legal and Constitutional issues involved.

Commenters: 1, 6, 7, 8, 21, 28

Response: The regulations have been reviewed by the Office of the Attorney General, and the Board has been advised on its authority to adopt the regulations. The legal and Constitutional issues are outside the scope of this document.

Comments expressing general support for the regulations.

Commenters: 11, 12, 13, 25

Comments expressing general support for Waste Management, Inc. and its project to use vessels to transport waste

Commenters: 11, 12,13, 20, 22, 23, 25

Comments recommending the use of railroads to convey the waste.

Commenter: 24

Response: No response is needed.

9 VAC 20-170-70

The container standard from the Board's final regulation of December 2000 should be used rather than the later version.

The container standard should be the strictest possible.

Commenters: 2, 3, 4, 5, 9, 14, 16, 19, 29

Performance standards are not a workable system to guarantee watertightness.

Commenters: 26

The container standards currently under consideration are more workable than the December 2000 standards, the Board should not return to the December 2000 standards

Commenters: 6, 7, 8, 11, 13, 20, 21, 28

The containers should be leak-proof and watertight at all seams. Additional standards should subject the container to full loading with water or total submergence to make sure they do not allow a release from any part. The containers should not leak or lose waste if they are lost overboard. The containers should prevent release of waste "or leachate during transport, during normal handling" and in the event of an accident. The twenty-four inches water test does not establish that the entire container is watertight.

Commenters: 2

Item 9 VAC 20-170-70.D (incorporating ABS testing and certification, the standing-water container standard, and visual inspection requirements) is excessive and redundant.

Commenter 27

The containers should withstand a spill overboard.

Commenter 15, 29

Response: Unless otherwise mandated by law, only regulations that are necessary to interpret the law or to protect the public health, safety, or welfare may be promulgated. Formerly, there was a "soap-bubble" or "gas-pressure" test. The Board could, as allowed within Constitutional limits, adopt the soap-bubble test or another test if it had scientific, economic, or other firm information that such a standard were necessary based on the nature of the waste, the likelihood of a release occurring, and the projected consequences of a release should it occur.

The Board has selected a standard that requires the container be subject to a pressure head of twenty-four inches of water standing in the container for 15 minutes without penetration of the container. The current standing-water container test is the most stringent in the nation for the types of waste involved. The test is frequently performed and is combined with several other tests and examinations intended to meet other statutory requirements and establish the integrity of the container. These other tests and examinations include the International Convention of Safe Containers structural integrity standards for ocean shipping, ABS's General Specifications for design and worthiness, complete enclosure in rigid and non-permeable material, and rigorous visual inspection. Further, the containers are subject to absolute standards of performance that apply on a continuous basis whenever the container is in use. Given the nature of the waste, the relative likelihood of a substantial release, and the requirements for planning and implementing a satisfactory mitigation and clean-up effort occurring following any release, no changes to standing-water container standards have been demonstrated to be necessary to protect public health, safety, or welfare. The standards are robust and reasonable.

Item 9 VAC 20-170-70.G. (published May 19, 2003) thoroughly addresses the loss; however, the phrase "transportation, holding or storage" is inserted in place of "normal" and before "operations" to clarify that operations do not include filling and dumping operations.

Stacking of containers more than four high on vessels should not be allowed.

Commenters: 2

Response: A limitation on the stacking of containers aboard vessels was challenged in court as properly subject to federal requirements, and it has been removed from the governing statute. Containers must still be secured to barges to prevent accidents during transportation, loading and unloading. Loaded containers may not be stacked more than two high in the loading or unloading areas of receiving facilities.

Only top-loading containers should be allowed (container would not have loading doors).

Commenters: 5

Response: The container standard is considered appropriate. A top-loading container may be a good choice, but it is not the only choice that will provide compliance with the standard.

No protection exists for release of gasses built up, because the requirement for pressure sensing equipment has been removed.

Commenters: 4

Pressure relief devices are essential to prevent gas pressure damage to the container.

Commenters: 5

Response: The previous requirement for pressure relief valves was a safety feature, not a protection from gas release. Such a device is not believed to be necessary given the pressures that might reasonably be expected. The owner or operator may install pressure relief devices if they are needed to meet more specific conditions.

9 VAC 20-170-70.B.5.

These items should apply only to recyclable CDD waste being transported to a recycling facility.

Commenters: 2

Response: Recyclable CDD waste being transported to a recycling facility is excluded from regulations by the statute and needs no exemption in the regulations. In response to comment, the application of 9 VAC 20-170-70 B 5 has been narrowed, and now applies only to rocks, brick, cement block, uncontaminated dirt, broken concrete and road pavement that contains no paper, vegetative waste, wallboard or wood waste, not to all CDD. These wastes are items that appear to pose less of a risk and may not be suitable for relatively small containers. As revised, the section provides an alternative for this narrowly defined type of waste. Performance standards must still be met.

The May 19, 2003 printing of this item contained an error brought about in renumbering of the paragraphs. The citations in 9 VAC 20-170-70.B.5. should have been subdivisions D.1, D.2., D.3.a. and subsection E. As corrected, this item requires compliance with 9 VAC 20-170-70 B 3. "completely enclosed, rigid, and constructed of non-permeable materials."

9 VAC 20-170-70.D.

The regulations require tests and certifications by the American Bureau of Shipping (ABS). The tests and examinations are simple enough that other firms could perform these services. Other qualified firms should be allowed to perform the tests and certifications thus extending the pool of qualified inspectors.

Commenters: 1, 28

Response: The pool will be extended to include any "Approval Authority" currently delegated by the Commandant of the U. S. Coast Guard as defined in 49 CFR 450.3.

9 VAC 20-170-70.D.3

The regulations should specify that containers be tested and certified "before it is placed in service and then once each six months thereafter while it is in service" rather than "once every six months" as stated in the regulations.

Commenters: 1

Response: Although this was implicit in the existing language, a change is being made to the regulations to clarify this requirement.

9 VAC 20-170-70.D.3.a

As drafted, the regulations do not specify where the minimum head of water is to be applied or what is meant by the term "penetration of water".

Commenters: 1

Response: There is no one place where the twenty-four inches of water is to be applied. The minimum depth of water everywhere in the container must be twenty-four inches. Free from the "penetration of water" has its common sense definition; no water shall pass from the inside of the container to the outside of the container during the test.

Testing will produce about 5000 gallons of wastewater per container. The regulations should specify what is meant by "applicable regulations of the State Water Control Board".

Commenters: 1

Response: The SWCB has many rules designed to protect the environment. Some will be applicable to the particular situation under which the testing is performed; all must be obeyed without exception. Within those requirements, the same water may be used to test multiple containers, thereby minimizing the generation of wastewater.

The commenter indicates his understanding that the container will be tested by placing a container into 24 inches of water (external) and no water may leak inward.

Commenters: 5

Response: This is not the test intended by the regulations. For clarification, the wording of 9 VAC 20-170-70.D.3.a. is changed to read "Each container shall have a minimum internal head of 24 inches of water applied for at least fifteen minutes."

9 VAC 20-170-70.D.3.b

The regulations should exclude minor dents and dings from being considered "structural damage" and distinguish holes and gaps resulting from damage, from those integral to container design.

Commenters: 1, 28

Response: The regulations mean precisely what they say - there can be no hole, gaps or structural damage to the container. Hatches and vents must be sealed during transport and holding. Venting of odors through openings is prohibited until the container is

unloaded. The sentence will be modified to read; "Each container shall be visually inspected for damage on all sides, plus the top and bottom, and must have no visible holes, gaps or structural damage affecting its integrity or performance."

9 VAC 20-170-70.E.

This item may repeat 9 VAC 20-170-70.D and "ABS certification" should be: "owner certification".

Commenters: 1

Response: The Delegated Approval Authority conducts the Certification in Item D; however, an ABS test method and seal is a requirement in Item D.2.

9 VAC 20-170-70.F.

Three years of testing records is excessive given that certification is current and evident.

Commenters: 1

Response: Three years of record keeping is normal at waste management facilities. Inspectors can compare the last few inspection records to help detect inspection errors and spot patterns of declining viability.

The records should be simply "available to DEQ upon request" not necessarily kept at the facility.

Commenters: 1

Response: An inspector will conduct a record review as part of the inspection, and the records need to be immediately available for scrutiny collaterally with the inspection.

The requirement that container owners provide copies of the log and certification to persons who lease or handle the container is unclear and unnecessary. Three years of inspection results is excessive and unnecessary. Centralized records held by the owner of the containers should be sufficient.

Commenters: 1

Response: The words "those records to any persons" will replace "the log and certification to persons." The records must be available at the facilities so that an adequate audit of testing can be completed by staff or agents of VDEQ. The container owners must provide those records to current holders in order for them to be available. It is possible that electronic media may be used if the records comport with all laws and rules for electronic signatures and documents.

9 VAC 20-170-70.G.

The phrase "during normal operation" should be replaced with "in transit" for clarity.

Commenters: 1, 28

Response: The phrase "transportation, holding or storage" is inserted in place of "normal" and before "operations" to clarify that operations do not include filling and dumping operations.

9 VAC 20-170-195

Labeling fees as "off-loading fee" and conditioning the operation of off-loading facilities on payment of such fees may risk invalidation of the regulations as an unlawful tonnage duty or charge to navigation.

Commenters: 1

The collection of fees by the off-loading facility is overly burdensome.

Commenters: 28

Requiring off-loading facilities to collect and remit the fees is not supported by the statute.

Commenters: 1, 8, 28

Response: The amount of the fee is very low and is clearly for administration and support of the programs needed to protect public health and the environment. The fees are so low that no reasonable person can construe them to interfere with interstate commerce or navigation. For clarity, it has been renamed a "monthly fee." The effect of non-payment of the monthly fees has been clarified and made consistent with other portions of the regulations.

The regulations have been reviewed by the Office of the Attorney General, and the Board has been advised on its authority to adopt the regulations. Receiving facilities are necessarily engaged in commerce with the vessels. It is believed that they can most economically and efficiently collect these fees. If VDEQ had to establish an independent system for the collections, there would be greater cost and more intrusion into the workings of commerce. The Board has selected the mechanism it feels is the cheapest, most efficient, most flexible, least intrusive and least onerous means of collecting these fees.

The off-loading fees create a conflict of interest between the regulatory function and financial issues.

Commenters: 3, 9

Response: It was clearly the intention of the General Assembly that the fees be collected and used for program support. This would indicate the General Assembly's confidence in the Board's ability to avoid such conflict.

Vessels and container should be inspected by Virginia staff or agents prior to leaving port or shortly after entering state waters.

Commenters: 5

Response: The Board sees no practical and legal means of accomplishing this goal and its effectiveness is speculative.

9 VAC 20-170-195 B.1.

When the off-loading and disposal facility has the same owner/operator, the weighing and collections of fees should be allowed to occur at the disposal facility.

Commenters: 1, 8

Response: The regulations conceive of the situation as one where waste is brought to a facility by various parties for eventual disposal in multiple disposal facilities. In some cases, a more efficient scheme could be developed for special circumstances. These situations can be considered through the variance process and the process can tailor a solution for each unique situation.

9 VAC 20-170-195 B.2.

The filing of a monthly tonnage fee report is overly burdensome.

Commenters: 1

Response: The Board expects that the fee system will represent a substantial amount of public funds that will require accounting and auditing functions that are above reproach. The regulations are intended to require all the information and good records anticipated to carry out those functions and to assess personal responsibility if there is a failure. The empty container weight was included so that "tare weight" calculations can be audited. Other aspects of the records and reporting are designed to help maintain the integrity of the process. This is not viewed as onerous, rather it is thought to be in everyone's best interest.

Electronic filing and transfer should be allowed.

Commenters: 1

Response: Subject to the laws and rules for electronic signature and other electronic commerce issues, electronic transfers and reports will be possible.

The industry standard for scale accuracy is 40 pounds or 0.04 percent not 10 pounds.

Commenters: 1, 27, 28

Response: If a container weighs 50 tons, then a one tenth of one percent error is 100 pounds; therefore, scale accuracy of 40 pounds seems reasonable. The regulations are changed to require accuracy of plus or minus 40 pounds.

Inspection of scales every thirty days is excessive. The normal weights and measures inspection cycle should be sufficient.

Commenters: 1

Response: The Board does not wish to impose unreasonable inspection requirement; however, it does believe a specific interval must be established to support the audit of the financial system. The requirement is changed to require scale calibration every 180 days, following consultation with the Virginia Department of Agriculture and Consumer Services, rather than monthly.

9 VAC 20-170-195 B.4.

The fee should be higher (\$2, \$5, \$7, \$10, etc. per ton) to cover projected costs of the programs.

A significantly higher fee will be needed.

Fees should not be assessed until it is clear how the money will be spent.

Commenters: 2, 9, 18, 26, 29

Fee amount should cover the full cost of regulation, enforcement, monitoring, and clean up.

Commenters: 17, 18

Excessively high fees are patently unconstitutional.

Commenters: 21

Fees collected are intended for uses for projects and programs directly related to transport of waste on state waters.

Commenters: 2, 3, 4, 5, 9, 10, 19

Response: The amount of the fee is low and is clearly for administration and support of the programs needed to protect public health and the environment. The fees are such that no reasonable person can construe them to interfere with interstate commerce or navigation. The extent that they raise all necessary funds is not and cannot be clearly

determined at this time. If future experience shows the funds to be insufficient, the Board has the option to reconsider the issues through the regulatory process.

The expenditure of the funds is not being considered at this time; however, a new item has been added to make the provisions for fund expenditure in the regulations that are currently in the statute.

It is not clear that the fee is imposed on the contents of containers, not the container itself.

Commenters: 28

Response: Item 9 VAC 20-170-195.B.4. states that the fee is based on the waste off-loaded. The waste is the contents; however, a minor change will make this point clearer.

Number	Commenters Providing Extended Comments
1	<p>Tim Webb Environmental, Health and Safety Director Delaware, Maryland, Virginia Kentucky and Ohio Market Areas Waste Management, Inc. 8305 Quarry Road Manassas, Virginia 20110</p>
2	<p>Patricia A. Jackson, Executive Director James River Association Post Office Box 909 Mechanicsville, Virginia 23111</p>
3	<p>Conway Moy Sierra Club, Virginia Chapter Post Office Box 1318 Dahlgren, Virginia 22448</p>
4	<p>Diana C. Parker, Conservation Chair Falls of the James Group of the Virginia Sierra Club 10700 Chalkley Road Richmond, Virginia 23237-4048</p>
5	<p>Sterling E. Rives, III 14265 Riverside Drive Ashland, Virginia 23005</p>

6	Charles H. Carter, III Port Tobacco at Weanack Weanack Land Limited Partners
7	J. J. Keever, Executive Vice President Hampton Roads Maritime Association 228-236 East Plume Street Post Office Box 3487 Norfolk, Virginia 23514-3487
8	Keith A. Catucci American Stevedoring Incorporated 138 Marsh Street Port Newark, New Jersey 07114
9	Michael Town, Program Director Campaign Virginia 1531A West Main Street Richmond, Virginia 23220
10	Hon. Allen L. Louderback, Delegate Virginia House of Delegates 1131 Old Farms Road Luray, Virginia 22835
11	Stephen R. Adkins Member of Charles City County Board of Supervisors
12	Michael Holmes Chairman of Charles City County Board of Supervisors
13	Gary Stotz, Vice President of Manufacturing Accurate Industries Erial, New Jersey
14	Nancy Nichols Resident of Prince George County
15	George McCabe Resident of Charles City County
16	Fred S. Fisher

	Resident of Charles City County
17	O. J. Peterson 936 Shirley Plantation Road Charles City, Virginia
18	Roger Diedrich Resident of Fairfax County
19	Tyler Mateson Resident of Chesterfield County Representing Virginia Chapter of the Sierra Club
20	Tim Webb Resident of Prince George County
21	B. Randolph Boyd, Esq., County Attorney Charles City County
22	Jason Asbell Resident of York County
23	Wayne Andrews Chester, Virginia
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29	Billy Mills, Executive Director The Mattaaponi and Pamunkey River Association billy@mpra.ort
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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.

Based on the comments received, the following major changes were made to these regulations after they were published in the *Virginia Register* on May 19 , 2003:

- 9 VAC 20-170-70 B.5 is modified by changing the type of waste to which it may be applied. Previously, construction and demolition debris waste was specified. Now, waste that is rocks, brick, cement block, uncontaminated dirt, broken concrete and road pavement and contains no paper, vegetative waste, wallboard or wood waste is specified.
- 9 VAC 20-170-70 D and E are modified to allow certification by an “approval authority” delegated by the U. S. Coast Guard Commandant in accordance with 49 CFR 450-453.
- 9 VAC 20-170-70 D.3. is modified to clarify that the container must be tested when placed in service and every six months thereafter while it remains in service. Language in item “a” clarifies that internal head is intended as the test standard. Language in item ‘b’ makes a clarification that allows minor damage to exist if it does not affect the container integrity or performance.
- In 9 VAC 20-170-70 F “records” is substituted for “log and certification.”
- In 9 VAC 20-170-70 F “transportation, holding and storage operations” is substituted for “normal operation.”
- Throughout 9 VAC 20-170-195 the terms “off-loading fee” and “off-loading fees” are replaced with “monthly fee” and “monthly fees.”
- In 9 VAC 20-170-195 B.2.c. the required accuracy of scales is changed from 10 pounds to 40 pounds, and the calibration frequency is changed from 30 days to 180 days.
- In 9 VAC 20-170-195 B.3 the language concerning the consequences of fees that fail to be received when due is changed to coordinate with similar language 9 VAC 20-170-180.
- In 9 VAC 20-170-195 B.4 added language clarifies that the weight to which the fee applies does not include the weight of the empty container itself.
- In 9 VAC 20-170-195 B.5 a new item restates the requirements of the enabling statute that specify how the funds collected may be used.

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.