

**TENTATIVE AGENDA AND MINIBOOK
VIRGINIA WASTE MANAGEMENT BOARD MEETING
THURSDAY, MAY 12, 2005**

**DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A COX ROAD
GLEN ALLEN, VIRGINIA**

Convene - 9:30 A.M.

- I.** Minutes - June 18, 2004

- II.** Regulations - Proposed
 - 9 VAC 20-85 – Management of Coal Combustion By-Products Amendment 1 Dieter

- III.** Regulations - Final
 - 9 VAC 20-80 - Solid Waste Management Regulations - Amendment 4 – Waste Piles Permit-by-Rule Dieter
 - 9 VAC 20-80 - Solid Waste Management Regulations - Amendment 4A – Radio Advertisements Dieter
 - 9 VAC 20-20, 9 VAC 20-30, 9 VAC 20-40 and 9 VAC 20-50 - Hazardous Waste Facility Siting Regulations – Immediate Final Rule – Conforming to Statute Wickline
 - 9 VAC 20-70 - Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities – Technical Corrections Brockman

- IV.** Public Forum

- V.** Other Business
 - 2005 Legislative Summary Porterfield
 - Report on Significant Noncompliers Davies
 - Future Meetings

- VI.** State Solid Waste Management Planning Brockman

- VII.** Tour of the Henrico County Landfill

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

PUBLIC COMMENTS AT VIRGINIA WASTE MANAGEMENT BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for their consideration.

For **REGULATORY ACTIONS** (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period and one public meeting) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period and one public hearing). Notice of these comment periods is announced in the Virginia Register and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS** (issuance and amendment of permits and consent special orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is a 45-day comment period and one public hearing.

In light of these established procedures, the Board accepts public comment on regulatory actions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who participated in the prior proceeding on the proposal (i.e., those who attended the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the prior proceeding presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration. **NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who participated during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. Should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, an additional public comment period may be announced by the Department in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than pending regulatory actions or pending case decisions. Anyone wishing to speak to the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentation to not exceed 3 minutes.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, phone (804) 698-4378; fax (804) 698-4346; e-mail: cumberlandt@deq.virginia.gov.

Regulation Governing Management of Coal Combustion By-Products, 9 VAC 20-85-10, et seq. – Proposed Regulation – Amendment 1: The Department of Environmental Quality is requesting that the Board approve as a proposed regulation Amendment 1 to the Regulation Governing Management of Coal Combustion By-Products, 9 VAC 20-85-10, et seq. Amendment 1 is needed to incorporate provisions for fossil fuel combustion products that were introduced in the latest revision of the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10, et seq. In addition, compaction specifications have been removed from the regulations, and the regulations have been modified to require placement of fossil fuel combustion products as specified by a registered professional engineer. Finally, the proposal provides clarification that the approval of the department is required prior to placement of the material. In addition, the Department requests that the Waste Management Board solicit public comment regarding the following:

- Whether the compaction specification requirements should be replaced with compaction as specified by a registered professional engineer.
- Whether the regulations should include specific allowable uses for fossil fuel combustion products or whether the general requirement for use, reuse or reclamation of the material is sufficient.
- Whether the regulation should be incorporated in its entirety into the Virginia Solid Waste Management Regulations or whether requirements for fossil fuel combustion products contained in the Virginia Solid Waste Management Regulations should be incorporated into the Regulations Governing Management of Coal Combustion By-Products.

Virginia Solid Waste Management Regulations, 9 VAC 20-80-10, et seq. - Final Regulation - Amendment 4: The Department of Environmental Quality is requesting that the Board approve as a final regulation Amendment 4 to the Virginia Solid Waste Management Regulations (VSWMR), 9 VAC 20-80-10, et seq. Amendment 4 is needed to modify several areas of the regulations that address the storage of wastes in piles. Current regulations require applicants to obtain a full permit from the department for the storage of waste materials in piles. Processing a full permit can be time consuming and costly. This draft final regulation allows certain activities to be exempt from permitting requirements and provides expedited procedures for obtaining a permit for the management of other waste materials in piles. The changes are still protective of human health and the environment.

In the draft final regulations, expedited permitting procedures (a permit by rule, or PBR) have been provided for waste piles in sections 9 VAC 20-80-480, 485, and 400. PBR provides an expedited permitting process for waste piles with fewer burdens on the regulated community while still providing protection for human health and the environment.

Conditional exemptions for some types of waste piles have been provided in section 60 E. Procedures have been included to store waste materials that are not readily putrescible in piles, as long as waste materials are stored in the manner prescribed and no open dump, hazard or nuisance is created. No permit is required for the exempt activity.

A proposed regulation was published in the Virginia Register on November 29, 2004, and a public meeting was held on January 11, 2005. The public comment period closed on January 28, 2005. A summary of the comments received during the public comment period as well as the departments response's follows:

Commenter	Comment	Agency response
VFPA	Opposes the waste pile size that was provided in the proposed regulation. States that change to the pile size may be difficult in the future without additional justification. States that the research done on the potential for fire in piles only deals with one type of waste and may not be applicable to other types. National Fire Code allows larger piles.	The existing regulation does not allow the exempt storage of moderately purestorable waste materials. The existing regulation does not allow permitted storage activities for moderately putrescible wastes under the provisions for waste piles. The regulation has been modified under this amendment to allow both exempt and permitted storage activities for moderately putrescible wastes. DEQ can consider an expansion of the exempt pile size in future regulatory amendments. The proposed pile size for exempt activities is reasonable and is based on research for similar organic waste materials. The new regulation provides for a permit by rule (a quicker permit) for the storage of larger piles of waste material consistent with National Fire Code. The National Fire Code, aside from pile size, recommends other measures including storage on hard surfaced areas, regular wetting of the pile and other measures which are required and can be overseen at a permitted site and not at an exempt activity.
VFPA	Proposes more flexibility with respect to the 90 day period of inactivity when industrial activities cease. Provides justification of some circumstances which would require a longer period of inactivity.	Provided case-by-case determination by the director to allow for longer timeframes.

Virginia Solid Waste Management Regulations, 9 VAC 20-80-10, et seq. - Fast Track - Amendment 4a: The Department of Environmental Quality is requesting that the Board approve as a final regulation Amendment 4a to the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10, et seq. Amendment 4a is needed to eliminate the requirement for a radio advertisement for the tentative approval of a variance application contained in 9 VAC 20-80-790 B 3 c.

The radio broadcast is not required in the Code of Virginia. Other advertising methods are more effective than radio advertisement. Many radio stations will not run this type of advertising other than as a public service announcement. As such, the stations will not guarantee that the radio advertisement will be run at a specific time and will not certify that the advertisement has been run. Many times, it is not clear which radio station would provide the most effective advertisement in a given area. This results in the radio broadcast placing an unnecessary burden on the regulated community and the department.

Print advertisement and announcements on the department's website are more effective methods to advertise variances to the regulations and are consistent with the advertising done for the processing of permits, licenses, or variances in other media. Under the solid waste regulations, the variance process is the only one that requires a radio advertisement.

During the past year DEQ has been working with the regulated community to develop more effective methods of public involvement. DEQ is working with citizen groups to provide information on a project sooner in the permitting process, work more directly with citizen groups, and facilitate the disbursement of information about upcoming projects to the general public. DEQ will continue to work to improve public involvement in DEQ decision making.

~~**Hazardous Waste Siting Regulations, Immediate Final Rules 2005 – 9 VAC 20 – 20, Schedule of Fees for Hazardous Waste Facility Site Certification; 9 VAC 20 – 30, Technical Assistance Fund Administrative Procedures; 9 VAC 20 – 40, Administrative Procedures for Hazardous Waste Facility Site Certification and 9 VAC 20 – 50, Hazardous Waste Facility Siting Criteria:**~~ Article 6 of the Waste Management Act gives the Board the authority to promulgate regulations and procedures for approval of new or expanded facilities for the treatment, storage or disposal of hazardous waste. The article requires that the regulations encourage alternatives to land burial of hazardous waste. Four related regulations have been promulgated under the article, as follows:

1. Schedule of Fees for Hazardous Waste Facility Site Certification, 9 VAC 20-20. These regulations establish fees for processing applications for and certifications of off-site hazardous waste facilities;
2. Technical Assistance Fund Administrative Procedures, 9 VAC 20-30. These regulations establish procedures for a governing body of a community hosting a hazardous waste facility to obtain technical assistance funds;
3. Administrative Procedures for Hazardous Waste Facility Site Certification, 9 VAC 20-40. These regulations establish administrative procedures for the submission and evaluation of applications for certification of hazardous waste facility sites, public notice, application processing, etc.; and
4. Hazardous Waste Facility Siting Criteria, 9 VAC 20-50. These regulations establish criteria for site certification under the Hazardous Waste Facility Siting Act, prohibit construction in environmentally sensitive areas, ensure factors are assessed, etc.

While these regulations have been consulted by several parties contemplating the requirements for new or expanded hazardous waste facilities, no new or expanded hazardous waste facilities have been sited using the procedures in the regulations. The regulations do not apply to pre-existing facilities.

These regulations have not been updated since 1986, and refer to the Hazardous Waste Siting Council, predecessor-in-interest to the Waste Management Board, and other institutions that no longer exist. No substantive changes to the regulations are included. The regulations are written such that the board is cited as the functional element for nearly all tasks under the regulations, most of which can be more appropriately managed by the staff. Therefore, a new section has been added to each body of regulations that includes the following sentence, “The director may perform any act of the board provided under this chapter, except as limited by Sections 10.1-1433 through 10.1-1449 of the Code of Virginia.” This delegation is a confirmation of pre-existing statutory authority under §10.1-1405. The phrase, similar to those in several regulations of the State Water Control Board, will allow for smoother operations and compliance with deadlines established in the law and regulations.

Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10, et seq. - Fast Track - Amendment 3: The Department of Environmental Quality is requesting that the Board approve as a final regulation Amendment 3 to the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10, et seq. The regulations ensure that if a facility for the disposal, transfer, or treatment of solid waste is abandoned, the costs associated with protecting the public health and safety may be recovered from the person abandoning the facility. These changes are consistent with the purpose of the regulations.

Amendment 3 is needed to correct two technical errors in the wording of financial mechanisms contained in the regulations at 9 VAC 20 – 70 – 290 and to assure that the regulation conforms with the statutory purposes. The current text of the chief financial officer’s letter requires a ratio of total liabilities to net worth of 2.0. This figure is inconsistent with the ratio of 1.5 required under the corporate financial test at 9 VAC 20 – 70 – 200.1.a(2). The current text of the chief financial officer’s local government letter requires an affirmative answer to financial ratio questions 8 through 12 for the officer to use the second financial alternative presented. In essence, a negative response to questions 8 or 9 in 290.G Alternative II would mean that an applicant is disqualified from using this financial alternative because an operating deficit may have occurred in either the latest or previous fiscal year. However, this wording is inconsistent with an exception provided at 9 VAC 20 – 70 – 210.1.c.(3). At 210.1.c.(3), the restriction equivalent to 290.G allows an applicant to have operated at a deficit of 5% or less in the last two previous fiscal years while still qualifying for the financial alternative. Therefore, 210.1.c.(3) affords a broader allowance to qualify for the financial alternative. Other conditions in 210 remain protective of financial assurance for the facilities. The most efficient way to reconcile the two sections is to eliminate the requirement for affirmation of questions 8 through 12 in the chief financial officer’s local government letter. The requirements for funding mechanisms in sections 200 and 210 and the format of corresponding financial letters in section 290 will be resolved as set out above.

REPORT ON SIGNIFICANT NONCOMPLIERS

Hazardous Waste: The owners or operators of facilities that generated, stored, transported, or otherwise managed hazardous waste were reported to EPA to be a Significant Non-complier (“SNY”) for the quarters ending December 31, 2004, and March 31, 2005. The designation of Significant Non-complier through the federal tracking system for hazardous waste is denoted with a “Y” for “Yes”. The Significant Non-compliers are reported as follows:

Quarter Ending December 31, 2004:

Waco Chemical USA, City of Richmond
Piedmont Regional Office

Alleged violations of the standards for hazardous waste tanks.

Waco Chemical manufactures absorbent beads used in diaper manufacturing. Waco used an aboveground storage tank to store toluene it used in its manufacturing process. During an inspection conducted by the Department on July 9, 2004, the Department inspector observed large cracks in the tank. In apparent violation of the standards for hazardous waste containers, the Department advised Waco to remove the toluene from the tank. The facility promptly removed the material and properly disposed of both the waste toluene and the tank. On November 16, 2004, Waco entered into a Consent Order with the Department that included a civil charge of \$1,600.

Quarter Ending March 31, 2005:

Couvrette Building Systems, City of Salem
West Central Regional Office

Alleged violations of requirements for the management of hazardous waste

Couvrette Building Systems manufactures automated teller machines at its facility in Salem. Activities that occur at the facility include structural building, priming, and painting. In addition the company owns a fleet to deliver the machines to its customers.

On January 25, 2005, the Department responded to a emergency call from the Salem Fire Department to evaluate an accident that occurred at the facility that day. The Department learned that a water line that had frozen, thawed and burst, causing the water to flood the building, including areas where several drums containing used oil had leaked. Couvrette first attempted to control the spills, however, it later hired a contractor who removed 12 drums from the building. The drums were analyzed and determined to contain hazardous waste.

Ultimately, the Department inspected the building and identified the following alleged hazardous waste violations: failure to identify hazardous waste; transporting hazardous waste without a manifest; failure to properly label containers of hazardous waste showing that the containers contained hazardous waste along with the date that the waste was first stored; failure to have a permit to store the hazardous waste; failure to properly store the hazardous waste so that it doesn't leak; failure to post emergency response phone numbers; failure to notify federal officials after a release of hazardous waste; failure to maintain records of analytical test results; and failure to properly dispose hazardous waste.

As a result of this inspection the Department issued a Notice of Violation dated February 22, 2005. Couvrette has provided the Department with information detailing its efforts to comply with the regulations since the flooding incident. The region is negotiating a consent order with Couvrette to resolve the violations.

Solid Waste: During this reporting period, the Department has identified one owner and operator of a solid waste landfill as a "Significant Non-complier" as follows:

Rockbridge County Landfill, City of Buena Vista
Valley Regional Office

Alleged Violations of the Solid Waste Act and Solid Waste Management Regulations

Rockbridge County owns and operates a municipal waste landfill in Buena Vista, Virginia. Rockbridge County operates this landfill under a permit issued in 1972. Since Rockbridge County was issued this permit, federal and state regulations were promulgated that require landfills to have mechanisms to control, among other things, leachate. Under the Solid Waste Act, landfills may continue to accept waste without these controls under certain conditions. One of the conditions is that landfills were prohibited from accepting waste in unlined areas unless they certified that they had received waste in these areas before October 9, 1993, and intended to continue to do so.

Since December 11, 2003, the Department has issued three Notices of Violation to Rockbridge County alleging various violations relating to the operations of the landfill, including failure to control leachate, failure to provide adequate soil cover, and disposing waste in a 10 acre, unlined area that the landfill had designated as a disposal area that was closed before October 9, 1993, or is in "inactive."

In response to the Notices of Violation, Rockbridge County asked the Department to consider allowing it to continue to dispose waste in the "inactive" area based on various portions of federal and state law. The Department responded in a letter dated June 7, 2004. Through this correspondence, the Department again informed Rockbridge that disposing waste in an unlined area, not identified as "active," as alleged by the Department, is in apparent violation of the Solid Waste Act and Solid Waste Management Regulations.

Based on the June correspondence, Rockbridge County filed a Notice of Appeal challenging the Department's allegations that Rockbridge violated the law by disposing waste in an area that the Department alleges has been closed before October 9, 1993. The Department has submitted the administrative record to the Circuit Court of Rockbridge County. The Department anticipates a hearing on this appeal within the next two or three months.

Solid Waste Management Planning – Elements of Virginia's Solid Waste Management Program:

CHAPTER 1: INTRODUCTION

- Background
- Goals & Objectives for this Plan

CHAPTER 2: EXISTING PLANNING & MANAGEMENT STRUCTURE

- General (Laws, Regulations, Guidance)
- Identification of Solid Wastes Generated
- Integrated Waste Management Plan & Hierarchy
- Local and Regional Solid Waste Management Plans
- Recycling (VA Recycling Rate Report)
- SW Treatment, Storage, & Disposal Facilities & Disposal Capacity (SWIA)

CHAPTER 3: EXISTING DEQ SOLID WASTE PROGRAMS

- General
- EPA approval
- Permits
- Facilities
- Compliance
- Enforcement
- Regulations and Guidance Development
- Information Management
- Coordination w/ other Programs

CHAPTER 4: EXISTING PUBLIC PARTICIPATION

- Permits, Compliance, Enforcement
- Regulation Development
- Planning Outreach
- Public Notices

CHAPTER 5: PLANNING FOR FUTURE & IMPLEMENTATION

- Goals & Objectives for Solid Waste Management – for next 20 years
 - Improve Public Participation & Community Involvement
 - Continue to Promote Upper-Hierarchy Management Programs
 - p2 example
 - Continue Oversight for Perpetual Care (Post-Closure Guidance)
 - Develop Plan to Amend Permits in Response to Ten-Year Permit Review
 - Promote Brownfields Redevelopment
 - Pre-1988 Landfill Assessment & Clean Up
 - Potential Open Dump Investigation & Clean Up
 - Assess Abandoned Waste Sites Identified in Ogden Report

Update 1979 Solid Waste Plan (also see Appendix C)

APPENDICES:

- A. Links to Core Program Reports and Regulations
- B. 1979 Virginia Plan
- C. Info Available to Meet 40 CFR 256 requirements
- D. Reference Documents