



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Approving authority name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC 20-101-10 et seq.
Regulation title	Vegetative Waste Management & Yard Waste Composting Regulations
Action title	Amendment 2
Document preparation date	July 20, 2005

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Virginia Solid Waste Management Act and other regulations of the Virginia Waste Management Board (board) exempt certain vegetative waste management or yard waste composting facilities from the general requirements for solid waste management facilities. The Act also directs the board to provide reduced permitting requirements for facilities that manage vegetative waste or compost yard waste exclusively. Some facilities are exempt from all regulation, others are limited to relief from the requirement for the operator to obtain a permit, and others are entitled to reduced permitting requirements. The Vegetative Waste Management and Yard Waste Composting Regulations consolidate all of these provisions in one document and specify the conditions under which the exemptions apply. In some cases, to qualify for an exemption, a registration or an annual report must be submitted to the Department of Environmental Quality (department). The forms for reports are included in the regulations.

The regulations prescribe the technical and other standards for vegetative waste management and yard waste composting facilities and address siting, design and construction, operation, and closure. Procedures are set out for obtaining a permit by rule for the operation of vegetative waste management and yard waste composting facilities. The permit-by-rule process minimizes the documentation submitted by the facility operator in order to obtain the permit and reduces the time required to obtain the permit.

This regulatory action is needed to address issues and questions that have arisen since these sections of the regulations were last modified. The regulatory action will address the composting of manure and crop waste with vegetative waste and yard waste. The goal is to make the regulations clear and enforceable and to protect human health and the environment.

Legal Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Article 2 (§10.1-1408.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia contains the laws governing the management of non-hazardous solid wastes. Section 10.1-1408.1 of the Code of Virginia requires all disposal, treatment and storage of non-hazardous solid waste to have a permit from the director of the department. In subsections I, K, and L, the statute mandates exemptions and reduced permitting procedures for vegetative waste management and yard waste composting facilities. The board is authorized by §10.1-1402 of the statute to promulgate regulations concerning the permitting process, and the board has adopted general regulations for non-hazardous solid waste management. Under the same rulemaking authority, the board made separate regulations to provide the exemptions and reduced permitting procedures required of it by the subsections the statutes previously cited.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulation was last modified in 1998. A periodic review of the regulation was conducted in 2001. At that time, no changes to the regulation were recommended. By working with composting organizations within Virginia since the regulations were last amended, the department has identified areas of the regulation that if changed could benefit the regulated community and the public. In addition, the composting portion of the Virginia Solid Waste Management Regulations (VSWMR), 9 VAC 20-80 has been modified since the last revision of this regulation.

Experience with the regulated community and the revisions to the VSWMR can assist the department with clarification and consolidation of this regulation.

Modification to the following areas of the regulation will be considered:

- The “Standards for All Vegetative Waste Management Facilities” in Part IV (9 VAC20-101-110 through 150);
- The “Facility Permit By Rule” requirements in Part V (9 VAC 20-101-160 through 180);
- The “Exemptions for Special Vegetative Waste Management Facilities” in Part III (9 VAC 20-80-60 and 80) (to clarify exempt composting activities and to state that crop waste and manures may be composted with vegetative wastes under the provisions of the exemptions);
- The “Definitions” in Part I associated with the above modifications; and
- The updating of references to other regulations and correction of typographic errors in the regulation.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Manures and crop wastes can be returned to the soil as fertilizers under the provisions of the VSWMR in 9 VAC 20-80-150 F. The Vegetative Waste Management Facility and Yard Waste Composting Facility Regulations (at 9 VAC 20-101-140 A) allow exempt operations to accept manures and crop wastes to produce compost under the exemptions and exclusions in Parts II and III of the regulation (9 VAC 20-101-20- through 90). Permitted vegetative waste management facilities cannot currently accept manures and crop wastes under the provisions of 9 VAC 20-101-10, et seq. Because manures, when combined with the high carbon sources found in vegetative waste and yard waste, can speed the composting of vegetative waste, and because manures, when stabilized through composting, have less of a potential to impact the environment, this amendment will consider allowing the use of manures and crop waste, exempt under the provisions of 9 VAC 20-80-150 F, to be composted with vegetative waste at permitted vegetative waste and yard waste composting facilities.

Clarifications to the provisions for facility standards and permit-by-rule standards that are presented by the technical advisory committee and during public comment periods for the regulation will also be considered.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

Text will be provided to the technical advisory committee (TAC) for discussion. Alternatives will be considered that are presented during TAC meetings or during the public comment periods for the regulation that accomplish the goals of the amendment.

Public Participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this notice or other alternatives and 3) impacts of the regulation on farm and forest land preservation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2)

probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail, email or fax to Michael J. Dieter, Virginia Department of Environmental Quality, P.O. Box 10009, Richmond, VA. 23240, Ph: (804) 698-4146, Fax: (804) 698-4327 and mjdieter@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to assist the agency in the development of a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period. Specifically, persons who want to be on the ad hoc advisory group should notify Michael Dieter in writing by 5:00 p.m., the last day of the comment period and provide their name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. Any persons who want to be in the advisory group are encouraged to attend the public meeting mentioned above. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

The regulations protect the public's health, safety and welfare and the environment from harmful results of the mismanagement of yard waste and vegetative waste. However, the Vegetative Waste Management and Yard Waste Composting Regulations have no other direct impact on the institution of the family.