



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC 20-80-10 et seq. - Repeal 9 VAC 20-81-10 et seq. - Adopt
Regulation title	Virginia Solid Waste Management Regulations
Action title	Consolidation of 9 VAC 20 – 80 – 10 et seq. under new codification “Amendment 7”
Date this document prepared	October 1, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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 Regulations, 9 VAC 20-80, establish standards and procedures for the siting, design, construction, operation, maintenance, closure, and post-closure care of solid waste facilities in the Commonwealth. It also establishes standards and procedures pertaining to the management of solid wastes. The purpose of this amendment is to review each of these sections for clarity and complexity in order to transform it into a standard that is easier for the public and regulated community both to read and to follow. The goals of this amendment are to focus on results oriented requirements where feasible and to provide less burdensome requirements for those types of facilities that divert waste from landfills while still protecting the public health, public safety, the environment, and natural resources. The amendment will repeal Chapter 80 and adopt Chapter 81 concurrently.

Legal basis

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

The legal basis for the Virginia Solid Waste Management Regulations (9 VAC 20-80) is the Virginia Waste Management Act (Chapter 14 of the Code of Virginia). Specifically §10.1 1402 authorizes the Board to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties. The corresponding federal authority for the criteria for municipal solid waste landfills is found at 40 CFR Part 257 and 258. The federal authority for municipal solid waste landfills is mandatory and the state legal authority for all other types of facilities is also mandatory.

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 current solid waste regulation is cumbersome as the result of several recent amendments which were not able to address the cohesiveness of the regulation as a whole. This amendment is intended to concentrate on clarity and conciseness of writing and efficiency of the entire structure of the regulation, while retaining compatibility with EPA program approval and statutory requirements. In addition, the agency's focus is results-oriented and will concentrate on providing less burdensome requirements for those types of facilities that divert waste from landfills. One potential issue that will most likely arise during this amendment will include the education and training of staff and the regulated community to deal with the re-codification of the current regulation from 9 VAC 20-80 to 9 VAC 20-81. Another potential issue is the revision of permits, guidance and forms to incorporate the re-codification. An annotated reference document will be provided for this purpose.

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.

Consolidation of related topics throughout the regulation and assurance of consistency
Changes will be made generally throughout the regulation to eliminate redundancies and thereby ensure a more concise regulation. Also, ordering of provisions will be changed, as needed to group like provisions with their own kinds—more redundancies will be eliminated in this process. Finally, minor grammatical changes and clarifications will be performed as needed to maintain (or establish, as needed) the integrity and cohesiveness of the regulation.

Regulation details consistent with statutes
Revisions throughout the regulation will be made to conform to existing statutes, as well as with changes made elsewhere in this and closely associated regulation(s).

Consolidation of details about exemptions
Exemptions from the solid waste regulation, in Parts II and III, will be condensed and reinserted into the regulation with like kinds of exemptions in Part II.

Consolidation of unauthorized waste control program details
The unauthorized waste control program in Part II will be moved to Part V of this regulation, to ensure uniformity among the unified disposal management facilities. The unauthorized waste control program will be moved to the operation section of each type of solid waste facility.

Citation to the Federal Solid Waste Regulations for exclusions

Solid waste regulation exclusions will remain in Part III, but will be condensed to a citation to those exclusions listed in the Federal regulations (40 CFR 261 and 266). Any select exclusion that was unique to the Virginia regulations will remain in Part III in uncited form.

Consolidation of details about beneficial use determinations for waste

Beneficial Use Determinations (9 VAC 20-80-150) will be moved to Part IX.

Citation to the Federal Solid Waste Regulations for open dump provisions

The original open dump wording from Part IV will be revised and the majority of it will be replaced with a new citation to the federal solid waste provision for open dumps at 40 CFR 257.

Consolidation of details and specifications for all three types of landfills

All Sanitary, Industrial, and Construction-Demolition-Debris (CDD) disposal facility standards will be consolidated in Part V, where feasible.

Consolidation of details about leachate seeps

Existing leachate seep information will be consolidated into one section (new 9 VAC 20-81-290) in Part V.

Consolidation of details and specifications for all the types of solid waste storage and treatment facilities

Solid Waste Storage and Treatment facility standards will be consolidated into Part VI, where feasible.

Incorporation of standards for Centralized sludge treatment facilities

New standards for Centralized sludge treatment facilities may be incorporated into Part VI to conform to possible new statutory provision.

Unification of solid waste management facility permitting standards and concise permits

Unified facility permitting standards will be established in Part VII, where feasible. In general, the regulations will be revised to reflect future "shorter" permits supplemented by more easily updated separate plan documents (operations, etc.). Guidance will be developed to facilitate this conversion to shorter permits.

Incorporation of registration standards for qualified upper-waste hierarchy and small transfer facilities

Standards for Registrations (rather than permit or permit-by-rule) will be added to Part VII for qualified upper-waste hierarchy and small transfer facilities.

Consolidation of table of standards for major permit amendments

Table 7.2 will be revised in Part VII, limiting the table to a listing of major permit amendments that require public notice and hearing. The permit amendments not in the new Table 7.2 will be designated "minor amendments" and will be addressed through changes in the operations and other plans. Guidance will be developed to address the new procedure for such minor amendments.

Permit-By-Rule status for captive industrial landfills and construction/demolition/debris (CDD) landfills

Permit-By-Rule status will be considered for captive industrial landfills and CDD landfills in Part VII.

Variances for necessity

Variances, in Part IX, will be reviewed for necessity (9 VAC 20-80-760 (Groundwater Protection Standards) and 9 VAC 20-80-780 (Liner Design)).

Incorporation of the Coal Combustion Byproducts (9 VAC 20-85) and Vegetative Waste (9 VAC 20-101) regulations

The Coal Combustion Byproducts (9 VAC 20-85) and Vegetative Waste (9 VAC 20-101) regulations, both of which were developed from separate solid waste exemptions in Part II of 9 VAC 20-80, will be condensed and reinserted into this regulation in Part II. Unnecessary redundant sections from these two regulations will be eliminated before their incorporation in the main solid waste regulation.

Additional issues that are identified during the NOIRA comment period, the technical advisory committee meetings, and during the public comment period will be addressed during the development of the proposed regulation.

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, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

One alternative is to keep the current regulations as they are; in which case the existing regulation will continue to be cumbersome and disjointed. However, if other alternatives are identified during the participatory process, they will be considered and developed as appropriate. The process will involve the use of an advisory committee that will include members of the regulated community and the public in an effort to elicit cost effective ideas for developing the necessary provisions.

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 hearing is to be held to receive comments on this notice.

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 background document or other alternatives, 3) potential impacts of the regulation and 4) 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 may do so at the public meeting or by mail, email or fax to Allen R. Brockman, Post Office Box 1105, Richmond, VA 23218, 804-698-4468, fax: 804-698-4237, arbrockman@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public meeting will be held and notice of the meeting may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov). Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved 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 develop 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 and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee 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. Notification of the composition of the advisory committee will be sent to all applicants.

Family impact

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.

No impact on the institution of the family and family stability is anticipated with this amendment.