



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Department of Environmental Quality
VAC Chapter Number:	9 VAC 20-90-10 et seq.
Regulation Title:	Solid Waste Management Facility Permit Application Action Fees
Action Title:	Amendment
Date:	October 25, 2002

This information is required pursuant 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*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary*

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Virginia Waste Management Board's Solid Waste Management Facility Permit Application Fee Regulation, 9 VAC 20-90-10 et seq., establishes the fees for new permits and modifications to permits for solid or regulated medical waste management facilities. This regulatory amendment will replace emergency regulations currently in effect and will adjust fees to account for inflation and program changes since original adoption. This includes requiring the applicant or petitioner to arrange for and bear the costs of publishing and broadcasting notices relating to the processing of permit actions. The department will retain the option of issuing the notices and requiring the applicant to remit the costs incurred with providing the notices.

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 must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Section 10.1-1402(11) of the Code of Virginia provides the Waste Management Board the authority to promulgate regulations to carry out its powers and duties. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402>)

Section 10.1-1402(16) of the Code of Virginia provides the Waste Management Board the authority to collect permit application fees for nonhazardous facilities sufficient only to defray the costs of issuing permits. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402>)

Section 10.1-1402.1 of the Code of Virginia provides governing standards for the development of these regulations. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402.1>)

Federal regulations do not address fees for solid waste permit applications. These regulations have been developed under the authority given the Waste Management Board by Virginia statute. The Office of the Attorney General has certified the agency has the statutory authority to promulgate the proposed regulation.

Purpose*

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed 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 current permit fee schedule has not been updated since June 8, 1992. The purpose of this action is to replace the emergency regulations currently in effect and update permit fees for inflation. In addition, the proposed regulations transfer the costs of advertising permit actions and variances from the taxpayer to the applicant requesting the permit action. While considering these issues it is appropriate to also consider the clarity of the regulations as a whole, statutory changes, and appropriate improvements wherever possible.

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 providing detail of the regulatory action's changes.

Currently emergency regulations are in effect in response to changes made to § 10.1-1402.1 of the Code of Virginia. These statutory changes are effective for two years and allow the tripling of permit fees. The emergency regulations tripled permit fees in effect on June 30, 2002, and new permit fees became effective July 1, 2002. Since the emergency regulations expire prior to the sunset of the statutory changes, these regulations contain a two-part fee schedule. The fee schedule includes tripling permit fees through June 30, 2004, and then establishes a new fee schedule effective July 1, 2004. The fee schedule effective July 1, 2004, adjusts the fees first established in 1992 for inflation to current dollars. Additional fees have been added for the review of permit related documents and will become effective July 1, 2004. In addition, the proposed regulations also transfer the costs of advertising permit actions and variances from the taxpayer to the applicant receiving the permit action.

Issues*

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary 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.

This regulatory amendment will adjust the fee schedule currently in effect and will contain a two-part fee schedule. The proposed changes to the regulations will retain the tripled permit fees until June 30, 2004, and new permit fees will become effective July 1, 2004. The permit fees that will become effective July 1, 2004, will adjust the fees first established in 1992 for inflation to current dollars and will also include fees for additional reviews the department performs. The increased fees are a disadvantage to applicants for permit actions, but these changes benefit general taxpayers since applicants will be bearing a greater portion of the costs associated with permit actions.

Applicants for permit actions will be required to pay for publication and broadcast of public notices required to be advertised. This change transfers the costs of advertising permit actions and variances from the taxpayer to the applicant requesting the permit action. Taxpayers receive the benefit of receiving notification of permit actions without bearing the costs associated with the notices. Applicants for permit actions however will see this change as disadvantageous since applicants previously were not required to pay for these advertisements.

Locality Particularly Affected*

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Localities that choose to operate permitted solid waste management facilities or permitted regulated medical waste facilities are affected in a similar manner by this action and no locality is particularly affected by the proposed regulations.

Public Participation*

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest lands. The Board intends to adjust fees listed in tables 3.1-1, 3.1-2, 3.1-3, and 3.1-4 using the most recently available inflation factor using the consumer price index for urban consumers (CPI-U) prior to finalizing the regulations and is seeking comments on these fees.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered, the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; (e) the projected cost of the regulation for affected individuals, businesses, or other entities; and (f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

Since solid waste permit fee regulations have been in place since 1992, the department has had many years of experience with the collection of permit fees and does not anticipate any new costs associated with the implementation or enforcement of these regulations. Since facilities will be paying for the cost of advertisements, the department will not be expending as much revenue on advertising costs associated with permit actions.

Localities and corporations that choose to operate a permitted solid waste or regulated medical waste facility will be subject to higher fees, however these fees have not increased since 1992.

The fees in effect after July 1, 2004, are the result of adjusting fees to current dollars using an inflation factor.

The fee schedule included in the regulations retains the tripled fees through June 30, 2004. On July 1, 2004, the permit fees are adjusted to current dollars using the consumer price index for urban consumers. The fees effective July 1, 2004 (adjusted to current dollars) will be lesser than the tripled fees in effect July 1, 2002 through June 30, 2004. Some facilities seeking permit actions may delay submitting requests for permit actions to the department until the tripled fee schedule expires.

The regulations now contain requirements for the facility to arrange for and bear the burden of the cost for the newspaper advertisement and the radio announcement. However, the department may arrange for the newspaper publication and radio broadcast, and require the applicant to remit the cost of such publication and broadcast. The fees associated with newspaper advertisements and radio broadcasts will vary, depending on the location of the facility requesting the permit action. In the past the department has expended from \$36 to \$526 per newspaper advertisement and the fees associated with radio broadcasts have ranged from no charge (as a public service announcement) to \$350. These fees would now be paid by the facility requesting the permit action, and the fees for these advertisements would be dependent upon the location of the facility.

The department does not believe small businesses would be adversely affected by these regulatory changes.

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 cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Changes have been made throughout the regulations to replace the term infectious waste with regulated medical waste. Fees previously listed as permit application fees are now called permit action fees. This change was made since the term application fee may create confusion over the fees assessed for actions other than the original permit issuance.

9 VAC 20-90-10. Definitions.

The definition section is being revised to incorporate statutory and regulatory definitions from the Waste Management Act 10.1-1400 et seq., the Solid Waste Management Regulations 9 VAC 20-80-10 et seq. and the Regulated Medical Waste 9 VAC 20-120-10 et seq. Since these definitions are being incorporated into the regulations, many of the definitions currently included in the regulations are being removed since they are duplicative.

9 VAC 20-90-20. Authority of Regulation (Repealed)

This section is being repealed since the authority for the regulation is not required to be part of the regulatory text.

9 VAC 20-90-30. Purpose of regulation.

The regulations are being amended to establish fees for the review of other permit-related documents required to be reviewed by the department.

9 VAC 20-90-50. Applicability of regulations.

The regulations have been clarified concerning the submittal of fees to be paid when the director determines to amend, modify, or revoke and re-issue a permit in accordance with §10.1-1408.1 or §10.1-1409 of the Code of Virginia. The exemption section has also been removed since the facilities previously listed as exempt from permit fees will be required to submit permit fees. The regulations now include the Vegetative Waste Management and Yard Waste Composting Regulations since permit by rules are issued for these facilities and appropriate fees are to be submitted to the department with the request for the permit by rule. In addition, the regulations now state requests for variances from the Regulation Governing Management of Coal Combustion By-Products (9 VAC 20-85-10 et seq.) will be subject to these regulations.

9 VAC 20-90-60. Payment, deposit, and use of fees.

This section clarifies when fees are to be submitted for Part A, Part B and emergency permit applications. This section also clarifies processing of a permit action (excluding emergency permits) will not take place until fees have been paid. Text addressing applications submitted prior to the effective date of the original fee regulations is no longer applicable and is being removed.

The section has also been revised to eliminate confusion concerning the termination of permits. If the director is amending, or revoking and re-issuing a permit for cause, nonpayment of fees may lead to termination of the permit.

9 VAC 20-90-70. General.

The regulations explain the adjustment of fees in Column 3 of tables included in the regulations. The fees have been adjusted to current dollar values using the Consumer Price Index for All Urban Consumers (CPI-U, 1982-84 = 100) and have been rounded to the nearest \$10 increment. The requirement for an annual review of the fees has been removed and fees will be reviewed in accordance with Section 10.1-1402.1.

This section now requires the applicant to arrange for and bear the cost of any newspaper publication and radio broadcast for permit actions and variances requiring public notification. The department will provide to the applicant the text of the notice and a list of acceptable newspapers and radio stations for the advertisement. The department retains the option of arranging for the publication and broadcast and requiring the applicant to reimburse the department for the costs associated with the publication and broadcast.

9 VAC 20-90-80. New facility ~~permits~~ permit issuance or action.

In the case of an emergency permit, the director has the option of determining a fee lesser than the fee listed in table 3.1-1 would be more appropriate at the time the permit is issued.

9 VAC 20-90-90. Applications for permit actions, amendment or modification.

Gas management plans, closure plans, and post-closure plans will be assessed a fee for review. The regulations clarify when the schedule for compliance for corrective action (Module XIV) is required. The regulated medical waste storage module (Module XVI) and regulated medical waste treatment module (Module XVII) have been developed for facilities storing and/or treating regulated medical waste, so these modules are now listed in this section. Specific fees for these modules have been added to the regulations.

9 VAC 20-90-100. Minor action, amendments or modifications.

The section has been revised to clarify permit action fees are included in table 3.1-3.

9 VAC 20-90-110. Review of Variance requests

The regulations now include a fee for the processing of variance requests. Applicants requesting variances from the Virginia Solid Waste Management Regulations, the Regulated Medical Waste Management Regulations, or the Regulation Governing Management of Coal Combustion By-Products will be assessed a fee as shown in Table 3.1-4. All variance requests will be subject to base fees. Additional fees will be assessed for reviews of specific types of variance requests and are to be submitted in addition to base fees. Variance requests will not be assessed the public participation fees listed in Table 3.1-2.

Table 3.1-1, Table 3.1-2, and Table 3.1-3

These tables have been revised to include a two-part fee schedule. The table continues for 2003-2004 the tripling of the former permit fee schedule that was effected by emergency regulations for 2002-2003. Effective July 1, 2004, permit fees established in 1992 will be adjusted to current dollars using the consumer price index for urban consumers (CPI-U). Additional fees will also become effective July 1, 2004. These fees include fees for: permit by rule reviews; emergency permits; landfill gas management plan reviews; landfill equipment reviews; and compost facility equipment reviews.

Table 3.1-4

This table lists fees to be paid for the processing of variance requests.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The department considered performing a detailed review of the effort expended by the department to process each individual permit action and to revise the fees accordingly. The department believes this approach would yielded fees considerably higher than the tripled fees currently being charged.

Due to the short amount of time the department had to meet deadlines in the statute, the department chose to use a streamlined approach when revising the fees. In following this

streamlined process, the department considered permit actions currently being reviewed that were not currently subject to fees, and developed fees for some of these actions. These actions include closure plan reviews, post-closure plan reviews, permit by rule reviews, variance requests, and emergency permits. The fees associated with these actions are consistent with other fees currently assessed by the department for similar actions. The fees were also adjusted for inflation using the consumer price index for urban consumers since inflationary adjustments had not been made since fees were first established in 1992.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

With the assistance of the technical advisory committee, the department has examined the regulations to determine the proposed regulations are clearly written and easily understandable. During the Technical Committee Meeting, committee members offered suggested changes to the regulations to make them more easily understood.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

In accordance with the Governor's Executive Order 21 (2002), a periodic review will be performed on these regulations no later than four years after the effective date of the regulations. It is anticipated the next periodic review will take place in 2007.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential 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.

There is no direct impact on the institution of the family and family stability. However, it is anticipated that owners or operators of affected facilities may attempt to recoup the increased cost by increasing connection and user fees, or the costs of goods and/or services. Should this occur, disposable family income may be decreased for those families affected by the increase.