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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Approving authority name</b>	Virginia Waste Management Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 20-130-10 <i>et seq.</i>
<b>Regulation title</b>	Regulations for the Development of Solid Waste Management Plans, Amendment 2
<b>Action title</b>	Amendment
<b>Document preparation date</b>	July 20, 2005

This information is required for executive review ([www.townhall.state.va.us/dbppages/apaintro.htm#execreview](http://www.townhall.state.va.us/dbppages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dbppages/dpb\\_apa.htm](http://www.townhall.state.va.us/dbppages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://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](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 goal of these regulations is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

These regulations establish a consistent program framework for local governmental planning for solid waste management needs, while allowing maximum flexibility for planning in accordance with community goals and local traditions. In addition, these regulations promote planning that provides for environmentally sound and compatible solid waste management with the most effective and efficient use of available resources.

Procedures and rules for designation of regional boundaries for solid waste management plans are established. Also, these regulations provide a mechanism for tracking local government efforts to achieve statutory goals for solid waste recycling. These regulations not only specify the statutory requirement that local governments are responsible for recycling 25% of solid waste, but also the requirements for plan contents.

These regulations confirm the statutory requirements for withholding issuance of solid waste management facility permits if the locality or region's plan has not been approved. The regulations provide for variances and exemptions, when reasonable. Finally, these regulations provide for the reporting and assessment of solid waste management and recycling in the Commonwealth.

## 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.*

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At § 10.1-1411, the Virginia Waste Management Act contained in Chapter 14, Title 10.1, Code of Virginia (1950), as amended, requires that cities, counties and towns of the Commonwealth develop solid waste management plans for their jurisdiction and include provisions to achieve the statutory recycling rate. Several other parts of the Act require the Department of Environmental Quality to consider the plans when issuing permits for solid waste management facilities and in making other specific decisions. Local governments may join with other jurisdictions in a regional plan, if the jurisdictions approve. The Waste Management Board is authorized to promulgate and maintain regulations to establish structure for the plans and is further authorized to review and approve the plans. In fulfillment of these responsibilities, the Board adopted Regulations for the Development of Solid Waste Management Plans, 9 VAC 20-130-10 et seq., Amendment 1 (2001).

## 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.*

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The Waste Management Board has determined that comprehensive and integrated solid waste management planning is essential to protect the health, safety, or welfare of the citizens of the Commonwealth. Without such planning to direct sound management of solid waste activities and regulation, the public could be exposed to open dumps or mismanaged waste facilities. Potential issues with the second amendment of this regulation include the calculation of the mandatory recycling rate for localities and regions, procedures for formation and dissolution of regions, clear specification of qualifications for variances, the requirements for plan approval, and duplicative language on the Waste Information and Assessment Program.

After changes to these regulations in 2001, different views have emerged about their effectiveness. Some parties have suggested that in addition to the municipal solid waste categories used currently to calculate the recycling rate, other categories should be addressed. Therefore, the department will accept and address comments on expanding the waste total to include the annual generation of industrial and construction, demolition, and debris waste, for determination of the 25% recycling rate. Other issues which require review are the use of principal recyclable materials, supplemental recyclable materials, and the definitions and calculation process for material reuse. In addition, the department will accept comments on how the recycling rate calculation should be applied to regions or to local subcategories.

The department will accept comments on restructuring the regulation for internal consistency, whether the regulation is effective in promoting the Commonwealth's waste management hierarchy, and the addition of a procedure for processing variances.

## 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.*

Specifically, the department will propose that 9 VAC 20-130-120.B be reworded to seek ways to redefine how the mandatory minimum recycling rate of 25% is to be calculated. Such redefinition would conform with current recycling practices in the localities and regions. Further, the department will propose that 9 VAC 20-130-165 (Waste Information and Assessment Program) be extracted from the planning regulations, because the provision is duplicated elsewhere in the VSWMR at 9 VAC 20-80-115. The Waste Information Assessment Program focuses on permitted facilities while this regulation focuses on Solid Waste Planning Regions.

"Mandatory plan contents" in 9 VAC 20-130-120 and mandatory plan elements required elsewhere throughout 9 VAC 20-130 will be clarified. The department proposes rewording these sections to define which plan elements are mandatory, and which, if any, are optional, as consistent with the Virginia Code section and Board policy. The department will develop procedures for formation and dissolution of regions, requirements for calculating regional recycling rates, and specifications for variance qualifications.

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

Although the potential adoption of a new planning document for solid waste could result in less extensive delegation of planning decisions to the local level as an alternative to the existing planning regulations, the department views this alternative as contrary to the requirements of Va. Code § 10.1-1411. The existing policy requires each region, city, county, or town to develop comprehensive and integrated solid waste management plans. Pursuit of a statewide plan where solid waste management planning is not conducted by the localities would require significant statutory and regulatory modifications. Therefore it is anticipated that this alternative course would be less cost-effective than allowing localities to continue to conduct waste planning activities as provided in the current regulations.

In contrast, the alternative not to amend the regulations at this time is considered inappropriate, because there are adjustments to the regulations that need to be made.

Other alternatives, as may be mentioned in the technical advisory committee meeting or public comments will be addressed as these arise.

## 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 Allen R. Brockman, P.O. Box 10009, Richmond, Virginia 23240-0009, telephone (804)698-4468, fax (804)698-4327 and [arbrockman@deq.virginia.gov](mailto:arbrockman@deq.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered and addressed, 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 Allen Brockman 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.*

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The regulations protect the public's health, safety and welfare and the environment from harmful results of the unplanned disposal of solid waste. However, the Regulations for Solid Waste Management Planning have no other direct impact on the institution of the family.