



townhall.virginia.gov

Final Regulation Agency Background Document

Agency name	Board for Waste Management Facility Operators
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC155-20
VAC Chapter title(s)	Waste Management Facility Operators Regulations
Action title	Fee Amendment
Date this document prepared	November 20, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board for Waste Management Facility Operators (Board) is amending its regulations to increase fees. The Board must establish fees adequate to support the costs of Board operations and a proportionate share of the Department's operations. By close of this fiscal year, the current fee structure will not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money but, instead, is funded almost entirely from revenue collected for license applications, renewal, and other licensing fees. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue.

The Board has no other source of revenue from which to fund its operations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

“DPOR” means Department of Professional and Occupational Regulation.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On November 19, 2024, the Board adopted final amendments to the Waste Management Facility Operators Regulations.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the previously reported information.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The promulgating agency is the Board for Waste Management Facility Operators. Chapter 22.1 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure and training programs for waste management facility operators.

Section 54.1-2211 of the Code of Virginia states, in part:

A. The Board shall promulgate regulations and standards for the training and licensing of waste management facility operators.

In addition, § 54.1-201 of the Code of Virginia provides, in part:

A. The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.

5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The General Assembly has charged the Board with the responsibility for regulating those who engage in the operation of waste management facilities by requiring that such individuals obtain the appropriate licensure and training. Waste management facilities are used for planned treatment, storage, or disposal of nonhazardous solid waste.

The goal of this regulatory change is to adjust the Board’s fees. The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of DPOR’s operations. Current fees do not provide adequate revenue for those costs.

DPOR is funded almost entirely from revenue collected for fees associated with applications for licensure, renewal, examination, and other miscellaneous fees. DPOR does not receive general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various boards is used to fund DPOR’s authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations. As detailed in the “Issues” section, failure to adjust fees may result in several disadvantages to the public, the regulated community, and the Commonwealth.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The Board reviewed the fees listed in 18VAC155-20-40 and, based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the licensee population. The fee adjustments are outlined below:

Fee Type	Current Fee	New Fee	Adjustment
Application Fee	\$75	\$150	+\$75
Renewal Fee	\$50	\$100	+\$50
Late Renewal	\$75	\$150	+\$75

Reinstatement	\$125	\$250	+\$125
---------------	-------	-------	--------

Issues

Identify the issues associated with the regulatory change, including: 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, include a specific statement to that effect.

The Code of Virginia establishes the Board as the state agency that oversees licensure of waste management facility operators providing services in Virginia. The Board’s primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. Further, the Code of Virginia establishes through statute, the Board’s authority to levy and collect fees adequate to cover the Board’s associated expenses.

DPOR’s finance staff analyzed the Board’s financial position and determined that additional funds are needed to ensure the Board has sufficient revenue to cover expenses. The Board is currently operating at a loss of about \$10,000 annually and is expected to exhaust its cash reserve during this fiscal year. The Board’s last fee increase was in 1994 and there has been 110% inflation rate since then. Other major drivers of increased costs are associated with staffing, facility, and information technology related costs, which have all increased.

The following primary advantages of the regulatory change are:

- Continued services. With the change, there will be no delays in processing applications and issuing licenses to applicants who are required to obtain credentials to engage in the operation of waste management facility operators.
- Maintained public protection. DPOR will be effective in ensuring that waste management facility operation services are performed in a manner that protects the public health, safety, and welfare of citizens of the Commonwealth of Virginia.

There are no disadvantages to the public or the Commonwealth in adjusting the Board’s fees as detailed. The adjusted fees allow the Board to meet the requirements of applicable statutes, while being the least burdensome to the Board’s regulant population.

Disadvantages of not allowing this regulatory change are as follows:

- Reduction of services. Reduction in services will result in delays in issuing licenses, creating barriers to applicants’ and licensees’ ability to work, and will decrease DPOR’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety, and welfare. Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative.
- Obtain a Treasury loan to fund operations. Without increased revenue, DPOR may have to request a loan from the general fund to cover the Board’s deficit and supplement its ongoing operations. Obtaining a loan will only provide a short-term solution and will only delay the need for fee increases. When eventually implemented, fee increases will need to be even greater to provide for loan repayment.

- Supplement Board activities with general funds. DPOR does not currently receive general fund revenue and doing so will require a change in the Code of Virginia and the Appropriation Act. DPOR's Boards are intended to be self-funding pursuant to §§ 54.1-113, 54.1-201, 54.1-304(3), and 54.1-308 of the Code of Virginia. Use of general funds to support Board operations does not appear to be an appropriate use of taxpayer dollars.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the previously reported information.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the previously reported information.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No public comments were received following publication of the Proposed stage.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements

20-40	N/A	<p>Increased fee amounts were proposed as follows:</p> <p>Renewal: \$85. Late renewal: \$120. Reinstatement: \$160.</p> <p>There was no proposed fee increase for initial licensure.</p>	<p>The proposed fee adjustments are further increased and now include an increase in the fee for initial licensure.</p>	<p>*The fee for initial licensure is \$150, which is a \$75 increase from the current fee.</p> <p>*The fee for renewal is \$100, which is a \$15 increase from the proposed fee and a \$50 increase from the current fee.</p> <p>*The fee for late renewal is \$150, which is a \$30 increase from the proposed fee and a \$75 increase from the current fee.</p> <p>*The fee for reinstatement is \$250, which is a \$90 increase from the proposed fee and a \$125 increase from the current fee.</p> <p>DPOR's Finance section performed an additional analysis of the Board's financial position and has determined that the fee increases listed above are sufficient to ensure the Board has revenue to cover the Board's operating costs.</p> <p>The fee schedule meets the requirements of the applicable statutes while being the least burdensome to the licensee population.</p>
20-9998	N/A	N/A	<p>Application forms are updated to reflect changes in fees.</p> <p>Application form for Universal License Recognition is added to the Forms section of the regulation.</p>	<p>The forms have been changed to reflect the new fees in the final amended regulation.</p>

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
20-40	N/A	This section outlines applicable fees for initial licensure as well as for renewal, late renewal, and reinstatement of a license.	<p>*The initial application fee is increased from \$75 to \$150.</p> <p>*The renewal fee is increased from \$50 to \$100.</p> <p>*The late renewal fee is increased from \$75 to \$150.</p> <p>*The reinstatement fee is increased from \$125 to \$250.</p>
20-9998	N/A	The section contains application and other forms used in administering the regulation.	<p>Application forms are updated to reflect the increased fees.</p> <p>Application form for Universal License Recognition is added to the Forms section of the regulation.</p>

Fees Under 18VAC155-20-40

Fee Type	Current Fee	New Fee	Adjustment
Application Fee	\$75	\$150	+\$75
Renewal Fee	\$50	\$100	+\$50
Late Renewal	\$75	\$150	+\$75
Reinstatement	\$125	\$250	+\$125