



Periodic Review / Retain Regulation Agency Background Document

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| Agency name | Virginia Waste Management Board |
| Virginia Administrative Code (VAC) citation | 9VAC20-170 |
| Regulation title | Transportation of Solid and Medical Wastes on State Waters |
| Document preparation date | August 27, 2014 |

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 17 (2014) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

§ 10.1-1454.1 of the Code of Virginia directs the Virginia Waste Management Board to adopt regulations governing the commercial transport, loading and off-loading of nonhazardous solid waste, municipal and industrial sludge, and regulated medical waste by ship, barge or other vessel upon the navigable waters of the Commonwealth. The statute excludes the following items from being considered solid waste when transported on state waters: scrap metal, dredged material, recyclable construction demolition debris when they are being transported directly to a processing facility for recycling or reuse, and source-separated recyclables. This regulation was adopted by the Virginia Waste Management Board and became effective on November 19, 2003.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

State law is very specific concerning the requirements the regulation must contain. Containers must be watertight, certified for special service, and be tested every 6 months. The specific testing requirements that must be utilized are listed in statute.

Based on current statute, there are no alternatives to this regulation that are less burdensome that are protective of human health and the environment.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

| Commenter | Comment | Agency response |
|--|---|---|
| Adam Anderson, T. Parker Host, Inc.; Croft Register, Express Marine, Inc. Charles Carter, III, Port Tobacco at Weanack | Requests 9VAC20-170-70 B 5 be modified to include auto-shredder residue (ASR), ash, and construction and demolition debris (CDD) as wastes that can be handled in bulk and that are not required to be containerized. Cargoes of ASR, ash and CDD have no more, and sometimes less, potential for impact than numerous other non-waste cargoes handled in bulk. | 9VAC20-170-70- B 5 allows for waste rock, brick, cement block, uncontaminated dirt, broken concrete or road pavement and that contains no paper, vegetative waste, wallboard or wood waste to be contained in covered barges without other containerization and the barge itself is considered the container if certain requirements are met. These materials are considered inert materials. The commenters requested auto-shredder residue (ASR) waste and ash wastes be included in this provision. ASR is the 20% of a vehicle that cannot be recycled, and may include waste plastics, rubber, wood, paper, fabric, glass, sand, dirt and metals. Ash is the residue from incineration or burning of solid waste or any other fuel combustion. Unlike those material exempted in the regulation, these wastes are not inert and contain various materials and contaminants. For CDD, the statute already addresses CDD being transported for recycling. This exemption is derived from state statute (§10.1-1454.1) which exempts recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse from being regulated by this regulation. At this time, the Agency believes the regulation should be retained without any changes. |

An informal advisory group was not formed for the purpose of assisting in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth, ensuring that owners and operators comply with good hazardous waste management and control practices.

The Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in nontechnical language.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The Department of Environmental Quality is recommending the regulation stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The primary goal of this regulation is to protect the environment from discharges of solid wastes, regulated medical wastes, and municipal and industrial sludge from vessels transporting these wastes on state waters. The regulation contains specific container standards that must be met to transport these wastes. These requirements are continued to be needed to protect the environment from spills of these wastes that may occur during the transportation of these wastes.

During the public comment period for this periodic review commenters requested the regulation be modified to include auto-shredder residue (ASR), ash, and construction and demolition debris (CDD) as wastes that can be handled in bulk and that are not required to be containerized. The commenters stated they believed cargoes of ASR, ash and CDD have no more, and sometimes less, potential for impact than

numerous other non-waste cargoes handled in bulk. The agency does not believe that it would be protective of state waters to allow these wastes to be transported by the barge itself being the container.

Due to the testing requirements for containers, the regulation is very specific concerning standards containers must meet prior to transportation of wastes on state waters. The standards included in the regulation make the regulation appear to be complex and technical; however, the regulated community is accustomed to implementing and using technical container standards in everyday practice.

There are no applicable federal requirements for waste to be containerized to be transported on state waters.

The regulation was originally adopted in November of 2003. The regulation was amended in 2006, 2010, 2011, and 2012.

The agency believes the regulation should not be amended or repealed, to minimize the economic impact of the regulation on small businesses. The standards for transporting solid waste on Virginia waterways are necessary to protect Virginia waterways from the release of waste into state waters.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

This regulation does not impact the institution of the family or family stability.