



**Virginia
Regulatory
Town Hall**

Proposed Regulation Agency Background Document

Agency Name:	Department of Environmental Quality
VAC Chapter Number:	9 VAC 20-130-10 et seq.
Regulation Title:	Regulations for the Development of Solid Waste Management Plans, Amendment 1
Action Title:	Amendment
Date:	July 24, 2000

This information is required pursuant to the Administrative Process Act (Section 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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.

This amendment of the regulations requires that all cities, counties, and towns in the Commonwealth develop complete, revised solid waste management plans. These plans can be developed individually or as part of a region, if the Governor has approved the region. Substantive changes proposed in this amendment include:

- Submission of completely revised solid waste management plans starting on July 1, 2003
- A revised definition of the recycling rate calculations and inclusion of a minimum 25% recycling rate.
- A required annual report by all permitted solid waste facilities and an annual report on the recycling rate by every city, county, and town, or solid waste management planning region.

- A system requiring the solid waste management plans to be amended if changes occur, and requiring amendments be approved prior to implementation. The amendments are classified as either major or minor depending on their impact. Major amendments require public participation, prior to submission to the Department of Environmental Quality (the department) for approval, while minor amendments can be submitted directly to the department for processing.

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 10.1-1411 of the Virginia Waste Management Act (Chapter 14, Title 10.1, Code of Virginia) 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 goal. The Board is authorized to promulgate regulations specifying requirements for these plans and to review and approve the plans. The local governments may unite with other jurisdictions in a regional plan if the Governor approves the region. Other parts of the Act require that no permit for a solid waste management facility shall be issued until the local or regional applicant has a solid waste management plan approved by the Board in accordance with the regulations. In fulfillment of these responsibilities, the Board adopted Regulations for the Development of Solid Waste Management Plans, 9 VAC 20-130-10 et seq. (1990).

Section 10.1-1413.1.A of the Virginia Waste Management Act requires that the Department of Environmental Quality report by June 30 of each year the amount of solid waste disposed of in the Commonwealth. Section 10.1-1413.1.B requires that all permitted facilities that treat, store or dispose of solid waste shall provide the Department, on an annual basis, the information necessary to complete the report from Section 10.1-1413.1.A.

All states are required under the Resource Conservation and Recovery Act (RCRA) to have a solid waste management planning process. Federal Authority: 42 USC 6946(b) of the Resource Conservation and Recovery Act of 1976. Also 40 Code of Federal Regulations, Parts 255, 256, 257 and 258.

The Office of the Attorney General has certified that the Department of Environmental Quality has the statutory authority to promulgate the regulation and it comports with applicable state and/or federal law.

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 Department of Environmental Quality has undertaken to amend the Regulations for the Development of Solid Waste Management Plans (9 VAC 20-130-10 et seq.) because more than nine years have passed since the adoption of the regulations, there have been three statutory changes since then, and it is necessary to consider what changes are appropriate. It is essential to the public safety that solid waste be managed properly throughout the Commonwealth. Improper solid waste management could cause immediate public health problems due to disease or vector increase plus there could also be long-term problems such as surface water, groundwater, and soil contamination.

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.

The new substantive provisions of this amendment to the regulations include:

- Completely revised solid waste management plans are to be submitted to the department starting on July 1, 2003.
- The recycling rate calculations are newly defined and a standard form for calculating the recycling rate is proposed. Each locality or region must report on their recycling rate by April 30th of each year.
- Permitted facilities must submit a report on solid waste managed in the Commonwealth by March 31st of each year.
- Under Section 10.1-1411, the Virginia Waste Management Act, a provision is made for withholding issuance of permits for solid waste management facilities after July 1, 2000 unless the locality or region has an approved solid waste management plan.
- Replacing the current requirement for a periodic update of solid waste management plans with a system of amendments. These amendments must be approved by the department prior to implementation.

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.

Primary advantages to the public and the Commonwealth are:

- Better planning for the handling and disposal of solid waste;
- Requirement for recycling and the reporting of results;
- Improved tracking of the solid waste handled in the Commonwealth;
- Solid waste management plans that are updated as required rather than on a fixed time schedule.

There are no known disadvantages to the public or the Commonwealth.

Primary advantages to the agency:

- Improved tracking of the solid waste handled in the Commonwealth;
- Improved reporting on the recycling effort;
- Solid waste management plans that are constantly up to date.

The disadvantage to the agency will be the increased resources necessary to administer the plans.

Matters of particular interest to the regulated community are:

- Efforts needed to prepare the complete, revised plans required by this amendment;
- Increased reporting requirements for solid waste tracking and recycling;
- The requirement to have plan amendments approved before they are implemented.

In addition, the Virginia Waste Management Board and the Department of Environmental Quality are seeking comments on three items:

- Consideration for adopting the non-mandatory method developed by the EPA, or some other method, to calculate the recycling rate as opposed to the method agreed to in the Technical Advisory Committee meetings and proposed in these amendments.
- Section 9 VAC 20-130-110.A calls for the Solid Waste Management Planning units to be "divided into four groups per Schedule 1." Comments are being sought on how best to divide the planning units into four equitable groups.
- Consideration of whether the last sentence in Section 9 VAC 20-130-120.C.6 should be removed. This sentence concerns credits to the recycling rate, to be granted by the director, for the source reduction of any municipal solid waste or reuse of a principal recyclable material. The last sentence is: "The director shall not grant the credit if the minimum recycling rate of 25% is being achieved." The question is, if a locality has achieved the 25% recycling rate, should they be prevented from increasing that rate by the methods above?

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.

These regulations apply equally to each city, county, and town in the Commonwealth.

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 particular, the Virginia Waste Management Board and the Department of Environmental Quality are seeking comments on three items:

- Consideration for adopting the non-mandatory method developed by the EPA, or some other method, to calculate the recycling rate as opposed to the method agreed to in the Technical Advisory Committee meetings and proposed in these amendments.
- Section 9 VAC 20-130-110.A calls for the Solid Waste Management Planning units to be "divided into four groups per Schedule 1." Comments are being sought on how best to divide the planning units into four equitable groups.
- Consideration of whether the last sentence in Section 9 VAC 20-130-120.C.6 should be removed. This sentence concerns credits to the recycling rate, to be granted by the director, for the source reduction of any municipal solid waste or reuse of a principal recyclable material. The last sentence is: "The director shall not grant the credit if the minimum recycling rate of 25% is being achieved." The question is, if a locality has achieved the 25% recycling rate, should they be prevented from increasing that rate by the methods above?

In addition to these comments, or any others, the Virginia Waste Management Board and the Department of Environmental Quality are seeking comments on the costs and benefits of the proposal.

Anyone wishing to submit written comments for the public comment file may do at the public hearing or by mail. Written comments must include the name, address and phone number 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 Section 9-199 of the Code of Virginia or organizations in Virginia.

The projected cost to the state for these amended regulations include the cost of department staff to review and approve the plans and amendments, when submitted (ongoing). The source is state funds as there are no grants or projects involved.

The cost to localities will vary depending on whether the local government staff prepares the plan or an outside consultant is hired. It is estimated that it will cost between \$10,000 and \$20,000 to prepare a complete revised plan, depending on the size of the planning unit. Since there are some 80 plans in existence the total cost could be 80 x \$20,000 or \$1,600,000. The initial cost to prepare the new, revised plan would be a one-time cost and, as the plans are amended, there would also be some on-going costs to the localities.

This planning regulation will affect every city, county and town in the state whether they submit their own individual plan or are part on a regional unit.

These amended regulations will not cause a direct fiscal impact on small businesses.

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 to the regulations include the following:

Section 9 VAC 20-130-10. Definitions:

- Many of the definitions were changed to bring them into compliance with current statutes and regulations.

Section 9 VAC 20-130-40. Purpose of Regulations:

- In item 3, the language was changed to reflect that the recycling rate is to be maintained at 25%.
- Under Virginia Code Section 10.1-1411, a provision is made for withholding issuance of permits for solid waste management facilities after July 1, 2000 unless the local or regional authority has an approved solid waste management plan.

Section 9 VAC 20-130-70. Enforcement and Appeal:

- Changes were made to the language in order to conform with the Virginia Administrative Process Act (9-6.14:11 et seq. of the Code of Virginia).

Section 9 VAC 20-130-80. Severability:

- The entire section was deleted since it is no longer needed

Section 9 VAC 20-130-110. Schedule for Plan Development:

- Complete revised plans must be submitted to the Department of Environmental Quality starting on July 1, 2003.

- Planning units will be split into four groups and these groups will have staggered submission dates.
- All plans to be submitted by April 1, 2004.

Section 9 VAC 20-130-120. Mandatory Plan Objectives:

- Item B states that the minimum recycling rate is to be maintained at 25%.
- Item C specifies the calculation methodology for the recycling rate and the focus is on the amount of Municipal Solid Waste recycled.
- Used oil and automobile bodies were moved from "Principal Recyclable Materials" to "Supplemental Recyclable Materials".

Section 9 VAC 20-130-165. Waste Information and Assessment Program

- Item A states the reporting requirements for the Solid Waste Assessment Program – Form DEQ 50-25.
- Under Virginia Code Section 10.1-1413.1, permitted facilities must submit a report on solid waste managed in the Commonwealth.
- This information is integral to the planning process, and, therefore the regulations require a report be submitted by March 31st from all permitted facilities that treat, store or dispose of solid waste.
- Item D states that every city, county and town, or solid waste management planning region must submit a report on their recycling rate by April 30th of each year. This is the Locality Recycling Rate Report – Form DEQ 50-30.

Section 9 VAC 20-130-175. Amendments to Plans:

- Rather than have a periodic update of the plan, a system of amendments is proposed.
- Major amendments require the same public participation (public hearing etc.) as required when the original plan was proposed.
- Minor amendments can be submitted directly to the department for approval.
- All amendments must be approved by the department prior to implementation.
- The two types of amendments are defined in Item B of this section.

Section 9 VAC 20-130-240. Administrative Procedures.

- The pertinent parts of this section were moved into Section 9 VAC 20-130-230 and then the section was repealed.

Form DEQ 50-25, Solid Waste Information and Assessment Program-Reporting Table, dated 6/6/00.

Form DEQ 50-30, Virginia Locality Recycling Rate Report, dated 6/15/00.

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.

All of the alternatives to these proposed regulations were discussed by the Technical Advisory Committee which consisted of representatives from local government, members of various recycling groups, the waste management industry, and environmental groups.

Some of the alternatives discussed were:

- Including affirmative procurement of materials made from recycled components. It was decided not to include this as the state already has purchasing guidelines in place for materials made from recycled components.
- Periodic updates to the plans rather than requiring amendments as changes are made. It was decided to use the amendments in order to keep the plans more up to date.
- Excluding various items from the list of recyclable materials. Two items: automobile bodies and used oil were moved from the category of "principal recyclable" to that of "supplemental recyclable". Supplemental items may be reported on the recycling report but are not required.
- Excluding localities from the recycling requirement based on population density. It was decided that the state should have a uniform required recycling rate plus there is a provision for a variance should a locality need one.
- Changing the planning timeline to 10 years instead of 20. It was decided that the longer term planning was preferred.

The proposed amended regulations are the best alternatives available based on the data and resources available to the waste management community.

Public Comment

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

Public comment during the NOIRA comment period consisted of requests from organizations that they be included on the Technical Advisory Committee plus a comment that the amended regulations specify the use of the Environmental Protection Agency's (EPA) Methodology for calculating recycling rates. The Technical Advisory Committee discussed the EPA Methodology and it was decided to adopt a recycling rate calculation form similar to the EPA form but not to adopt the complete methodology as the EPA Methodology was very extensive and would require a large amount of local government resources to complete.

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.

The Department of Environmental Quality has determined, through examination, public comment and Technical Advisory Committee (TAC) reviews that the regulations are clearly written and easily understandable by the individuals and entities affected.

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.

The periodic review of these regulations is required under Executive Order No. 25 (98) and will be performed as required under the executive order. According to Executive Order No. 25 (98), the next review of these regulations should be initiated in 2003.

Specific goals are:

- To protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.
- To establish a consistent program for local government planning for solid waste management needs, allowing maximum flexibility for local governments to plan in a manner compatible with community goals and local traditions.
- To provide a mechanism for monitoring local government efforts to reach statutory goals of solid waste recycling.
- To provide a mechanism to encourage local governments to adopt environmentally sound waste management practices within their jurisdictions.

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.

The proposed amendments to these regulations will have a positive indirect impact on family life in the Commonwealth by providing comprehensive and integrated solid waste management plans for every locality. These plans will help insure that inadequate solid waste management does not compromise public safety, health and the environment.