



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation(s)	9VAC20-70
Regulation title(s)	Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities
Action title	Technical corrections- 2018 revision
Date this document prepared	October 4, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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.

This amendment contains technical corrections. A previous amendment to this regulation removed requirements for local governments to provide additional financial assurance if their closure cost obligations were between 20% and 43% of their total annual revenue. Corrections are being made to remove obsolete language pertaining to the removal of the requirement for additional financial assurance to be provided when the locality's closure cost obligations were between 20% and 43% of their total annual revenue. This amendment does not change any financial assurance requirements for local governments.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

No acronyms are used in this document.

Statement of Final Agency Action

Please 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.

At its meeting on December 17, 2018, the Virginia Waste Management Board authorized the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization also constituted its amendment of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

This amendment contains technical corrections. A previous amendment to this regulation removed requirements for local governments to provide additional financial assurance if their closure cost obligations were between 20% and 43% of their total annual revenue. Corrections are being made to remove obsolete language pertaining to the removal of the requirement for additional financial assurance to be provided when the locality's closure cost obligations were between 20% and 43% of their total annual revenue. This amendment does not change any financial assurance requirements for local governments and is being made to avoid confusion concerning the applicable regulatory requirements.

This regulatory action is expected to be noncontroversial since it deletes obsolete language. It does not change any requirements of the local government financial test. An informal comment period was held on the proposed changes and no comments were received on the changes.

Legal Basis

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

Section 10.1-1402 of the Code of Virginia, authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law. Specifically, §10.1-1410 authorizes the Board to promulgate regulations which ensure that, if a solid waste treatment, transfer or disposal facility is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility. The Virginia Waste Management Board has previously adopted a regulation requiring Solid Waste Disposal, Transfer and Treatment Facilities to demonstrate financial assurance.

Purpose

Please 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's intended to solve.

This amendment removes language that is no longer applicable. Removing the obsolete language will avoid confusion concerning the requirements applicable to local governments using the local government financial test.

Substance

Please 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.

Corrections are being made to remove obsolete language related to the local government financial test that is no longer applicable. This amendment does not change any requirements of the local government financial test.

Issues

Please 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 primary advantage to this amendment is the removal of obsolete language. This will make the requirements related to the local government financial test easier to understand. This change benefits the regulated community and the agency. There are no disadvantages to the public, agency or regulated community.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

Corrections are being made to remove obsolete language related to the local government financial test that is no longer applicable. This amendment does not change any requirements of the local government financial test. The amendments do not make this regulation more stringent than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

No state agency is particularly affected by this regulation or the amendment of this regulation.

Localities Particularly Affected:

No locality is particularly affected by this regulation or the amendment of this regulation.

Other Entities Particularly Affected:

No other entity is particularly affected by this regulation or the amendment of this regulation.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>The amendments correct technical errors in the regulation and there is no change to the costs to implement and enforce the regulation as a result of these changes.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>The amendments correct technical errors in the regulation and there is no change to the costs to implement and enforce the regulation as a result of these changes.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The technical corrections remove references to local government closure cost obligations being between 20% and 43% of the local government's total annual revenue. Local governments are allowed to use the local government financial test if their closure cost obligations do not exceed 43% of their total annual revenue and are not required to provide additional financial assurance if their closure cost obligations are between 20% and 43% of their total annual revenue. Removing the obsolete language will reduce confusion concerning the requirements of the regulation.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>The amendments correct technical errors in the regulation and there is no change to the costs to implement and enforce the regulation as a result of these changes.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The technical corrections remove references to local government closure cost obligations being between 20% and 43% of the local government's total annual revenue. Local governments are allowed to use the local government financial test if their closure cost obligations do not exceed 43% of their total annual revenue and are not required to provide additional financial assurance if their closure cost obligations are between 20% and 43% of their total annual revenue. Removing the obsolete language will reduce confusion concerning the requirements of the regulation.</p>

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The amendments correct technical errors in the regulation and no entities will be affected by this amendment.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The amendments correct technical errors in the regulation and there is no change to the costs to implement and enforce the regulation as a result of these changes.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	The amendments correct technical errors in the regulation and there is no change to the costs to implement and enforce the regulation as a result of these changes.
Benefits the regulatory change is designed to produce.	Removing the obsolete language will reduce confusion concerning the requirements of the regulation.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

One alternative considered was retaining the references to closure cost obligations between 20% and 43% of the locality's total annual revenue and the requirement for a portion of the financial assurance to be provided as a cash mechanism. This alternative was rejected. The changes to the regulation are needed to reduce confusion concerning the requirements that must be met when demonstrating financial assurance through use of the local government financial test.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

Section 10.1-1410 of the Code of Virginia authorizes the Board to promulgate regulations to ensure that, if a solid waste treatment, transfer or disposal facility is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility. The Virginia Waste Management Board has previously adopted a regulation requiring Solid Waste Disposal, Transfer and Treatment Facilities to demonstrate financial assurance. The current regulation is based on federal regulations (Subpart G of 40 CFR 258) concerning requirements for municipal solid waste landfills. This amendment include corrections to remove obsolete language related to the local government financial test that is no longer applicable. Alternative regulatory methods such as less stringent compliance and reporting requirements, or exemption of small businesses would not be consistent with federal regulations and state law.

Since the changes in this amendment are technical corrections, the regulation does not place any additional regulatory burdens on the regulated community including those that may be small businesses.

Public Participation

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
210 3. a. (6)		If local government is required to fund restricted sinking fund, escrow account, or letter of credit, wording must be identical to 290 I.	This language is being stricken. Local governments using the local government financial test are not required to fund a restricted sinking fund, escrow account or obtain a letter of credit. Local governments with closure cost obligations between 20% and 43% of the local government's total annual revenue are no longer required to have a cash mechanism as part of their financial assurance. The removal of this language is a technical correction.
290 G Alternative I Bond Rating Test- line (8)		Is (line 1+ line 4e) <= (line 3a x .20)? If the answer to line 7 is yes and the answer to line 8 is no, please attach documentation from the	This line previously calculated if the closure cost obligations were between 20% and 43%. This line is being removed since there is no requirement for a cash financial assurance mechanism to be provided if this criteria

		agent/trustee /issuing institution stating the current balance of the account/fund /irrevocable letter of credit as of the latest fiscal reporting year to this form as required by 9VAC20-70-210.	is met. The removal of this language is a technical correction.
290 G Alternative II Financial Ratio Test- lines (12) and (13)		12) Is (line 7 / line 6) <= 0.20? 13) Is (line 1 + line 4e) <= (line 3a x.20) If the answer to line 13 is no, please attach documentation from the agent/trustee/issuing institution stating the current balance of the account/fund/irrevocable letter of credit as of the latest fiscal reporting year to this form as required by 9VAC20-70-210.	This line previously calculated if the closure cost obligations were between 20% and 43%. This line is being removed since there is no requirement for a cash financial assurance mechanism to be provided if this criteria is met. The removal of this language is a technical correction.
290 I		Certification of Escrow/Sinking Fund Balance or Amount of Irrevocable Letter of Credit balance	This language has been removed since there is no requirement for an escrow account, sinking fund, or letter of credit to be funded. The removal of this language is a technical correction.
290 J	290 I	Wording of Corporate Guarantee	Subsection has been renumbered as a result of removal of Subsection I Certification of Escrow/Sinking Fund Balance or Amount of Irrevocable Letter of Credit balance. Citation changed to 9VAC20-70-290 I as a result of renumbering of subsections in section 290.
290 K	290 J	Wording of Local Government Guarantee	Subsection has been renumbered as a result of removal of Subsection I Certification of Escrow/Sinking Fund Balance or Amount of Irrevocable Letter of Credit balance. Citation changed to 9VAC20-70-290 J as a result of renumbering of subsections in section 290.

All amendments are technical corrections and do not change the requirements of the regulation.