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

<b>Agency name</b>	Virginia Waste Management Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC20-81
<b>VAC Chapter title(s)</b>	Solid Waste Management Regulations
<b>Action title</b>	Amendment in response to Chapter 235 of the 2024 Virginia Acts of Assembly
<b>Date this document prepared</b>	August 8, 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

Chapter 235 of the 2024 Acts of Assembly (SB 342) directs the Virginia Waste Management Board to amend the Virginia Solid Waste Management Regulations (VSWMR, 9VAC20-81 et seq.) “to allow for vegetative waste to be transported to another location for open burning if it is impractical or unsafe to destroy such waste on the premises of private property.” The existing regulations, 9VAC20-81-95, only allow for the onsite open burning of vegetative waste or the open burning of vegetative waste at permitted solid waste landfills. Pursuant to Chapter 235, the intent is to amend the current open burning allowances found within Section 95, Subsection D, of the VSWMR to provide conditions allowing the offsite open burning of vegetative waste when it is impractical or unsafe to destroy such waste at the site of generation or at a permitted solid waste landfill. Additional definitions for “impractical or unsafe” and other terms to further clarify new regulatory conditions may be developed and added to Section 10 of the VSWMR for clarity.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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VAC – Virginia Administrative Code  
RAP – Regulatory Advisory Panel  
SB – Senate Bill  
VSWMR – Virginia Solid Waste Management Regulations

## Mandate and Impetus

*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, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”*

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Chapter 235 of the 2024 Acts of Assembly directs the Virginia Waste Management Board to amend the Virginia Solid Waste Management Regulations (VSWMR, 9VAC20-81 et seq.) “to allow for vegetative waste to be transported to another location for open burning if it is impractical or unsafe to destroy such waste on the premises of private property.” This act became effective July 1, 2024. This regulatory action is required to develop regulatory conditions applicable to the offsite open burning of vegetative waste pursuant to Chapter 235 of the 2024 Acts of Assembly.

## 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.*

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Section 10.1-1402 (11) of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate and enforce regulations.

The corresponding federal authority for the criteria for classification of solid waste disposal facilities and activities is found at 40 CFR 257. Subpart A, Section 257.3-7 allows for the “infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land-clearing debris, diseased trees, debris from emergency clean-up operations, and ordnance.”

## Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

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The Virginia Solid Waste Management Regulations, 9 VAC 20-81, establish standards and procedures pertaining to the management of solid wastes. The requirements found in these regulations are protective of human health and the environment.

Virginia’s Regulation for Open Burning, 9VAC5-130, promulgated by the State Air Pollution Control Board, also regulates open burning. The regulation contains similar open burning prohibitions and allowances to the VSWMR, as well as a template model ordinance for local governments wishing to adopt an ordinance relating to air pollution and governing open burning within its jurisdiction. Regulatory conditions developed with this action may need corresponding amendments to 9VAC5-130. Local ordinances specifically prohibiting offsite open burning may also need to be revised should a locality wish to allow offsite open burning of vegetative waste in accordance with the conditions developed during this regulatory process.

**Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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As directed by Chapter 235 of the 2024 Acts of Assembly (SB 342), this amendment will revise the current open burning allowances found within Section 95, Subsection D, of the VSWMR to provide conditions allowing the offsite open burning of vegetative waste when it is impractical or unsafe to destroy such waste at the site of generation. Current open burning allowances for vegetative waste only apply to the onsite destruction or open burning at a permitted solid waste landfill.

Chapter 235 only applies to open burning of vegetative waste and does not apply to open burning of other types of waste. The VSWMR already contains a definition for vegetative waste which means “decomposable materials generated by yard and lawn care or land-clearing activities and includes leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.” Additional definitions for “impractical or unsafe” and other terms to further clarify new regulatory conditions may be developed and added to Section 10 of the VSWMR for clarity.

Additional issues related to open burning that are identified during the NOIRA comment period and the regulatory advisory panel meetings, will be addressed during the development of the proposed regulation.

**Alternatives to Regulation**

*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.*

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There are no viable alternatives to the regulatory change, as it was mandated by the 2024 Acts of Assembly.

**Periodic Review and  
Small Business Impact Review Announcement**

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

This NOIRA is not being used to announce a periodic review or a small business impact review.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation. 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Rebecca Rathe, 1111 East Main Street, Richmond, Virginia 23219, (540) 830-7241, [rebecca.rathe@deq.virginia.gov](mailto:rebecca.rathe@deq.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Public Hearing at Proposed Stage

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

### Regulatory Advisory Panel

*Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.*

The Board is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department’s contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel 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. Notification of the composition of the panel will be sent to all applicants.