



Fast Track Proposed Regulation Agency Background Document

Agency name	Board for Waste Management Facility Operators
Virginia Administrative Code (VAC) citation	18VAC155-20
Regulation title	Waste Management Facility Operators Regulations
Action title	Remove Bad Check Fee, Update Public Procurement Act, Amend Training References
Date this document prepared	January 12, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The proposed language removes the section outlining the Department's fee for dishonored checks, language which is now covered in § 2.2-614.1 C of the *Code of Virginia*. Additionally, the language which outlines the Department's fees for examination is updated to reflect the current citation to the Virginia *Public Procurement Act* (§2.2-4300 et seq. of the *Code of Virginia*). 18VAC155-20-140 makes two references to training requirements which are improperly cited; the citations are changed to indicate the proper section of the Board's regulations.

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.

(1) The language was adopted on December 18, 2009, by the (2) Board for Waste Management Facility Operators. The language will amend the (3) Board for Waste Management Facility Operators Regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

§ 54.1-201.5 of the *Code of Virginia* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>) states that the Board has the power and duty "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.

§ 54.1-2211 A of the *Code of Virginia* states that, "The Board shall promulgate regulations and standards for the training and licensing of waste management facility operators."

The proposed language removes the section outlining the Department's fee for dishonored checks, language which is now covered in § 2.2-614.1 C of the *Code of Virginia*. Additionally, the language which outlines the Department's fees for examination is updated to reflect the current citation to the Virginia *Public Procurement Act* (§2.2-4300 et seq. of the *Code of Virginia*). The proposed language will make the Board's regulations consistent with the current *Code*.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The amendments are needed to keep the Board's regulations consistent with the *Code of Virginia*. The goal of the proposed language is to cite the proper references to the *Code* which gives the Board and the Department its authority. The language also updates the Board's regulations so as to be consistent with its licensing requirements when making references to training.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-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 (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii)

proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast track process is being used to make amendments to the Board's regulation language for clarity, not to add any substantive changes to its existing regulations. The change to the language of the examination fee reflects the current procedure in compliance with the Virginia *Public Procurement Act* (§2.2-4300 et seq. of the *Code of Virginia*) just as the change in the language to eliminate the bad check fee reflects the current procedure to comply with § 2.2-614.1 C of the *Code of Virginia*. The changes to the improper regulation references will correct those references to make them applicable to the various license types for which the training applies.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

No new substantive provisions or changes are being introduced. The changes are merely updates to the existing language which keeps the substance of the regulations unaltered.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

- 1) The advantage to the public is the clarification offered by updating the language of the regulations to offer a more clear understanding of the authority from which they are derived.
- 2) The primary advantage to the Commonwealth is the consistency of a successful licensure program within its Department that offers greater clarity to its regulants.
- 3) Another pertinent matter of interest is that the proposed changes will result in the consistency of the regulatory language with the current *Code of Virginia*.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

The proposed changes are not relevant to any federal requirements.

Localities 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.

No localities are particularly affected by the proposed language.

Regulatory flexibility analysis

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

No new substantive provisions or changes are being introduced. The proposed changes are merely updates to the existing language which keeps the substance of the regulations unaltered. The absence of any substantive changes and the narrow scope of their applicability preclude any regulatory flexibility in this instance.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>(a) Fund Source: NGF (0900)</p> <p>(b) Expenditures: One-Time: No one-time costs are expected as a result of this regulatory change. Ongoing: No ongoing costs are expected as a result of this regulatory change.</p>
<p>Projected cost of the regulation on localities</p>	<p>No change anticipated.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The revised regulations apply to Waste Management Facility Operators applicants and regulants. The regulations have no substantive affect on this group.</p>

<p>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 (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 1,199 licensed Waste Management Facility Operators. The regulations pertain to licensed individuals only, not businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There is no anticipated cost to the regulants.</p>

Summary:

The current regulations are being revised with some changes and enhancements. This proposed regulation corrects the references to training in the re-examination section, in accordance to the Board’s requirements, removes the bad check fee language since this established in the Code of Virginia, and removes the language that sets the examination fee at \$150. The fee is established under contracts negotiated in compliance with the Public Procurement Act.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

	FY 2010	FY 2011	FY2012	FY2013
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: The revised regulations apply to Waste Management Facility Operators applicants and regulants. The regulations have no substantive affect on this group.

Estimated Number of Regulants: There are approximately 1,199 licensed Waste Management Facility Operators.

Projected Cost to Regulants: There is no anticipated cost to the regulants.

Alternatives

Please describe any viable 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. 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 regulation.

No new substantive provisions or changes are being introduced. The proposed changes are merely updates to the existing language which keeps the substance of the regulations unaltered. The absence of any substantive changes and the narrow scope of their applicability preclude any alternatives.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

No family impact has been identified.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18VAC155-20-40 B 5		Sets the exam fee at \$150 and cites § 11-35 et seq. of the <i>Code of Virginia</i>	The exam fee is determined through competitive negotiation in compliance with the <i>Virginia Public Procurement Act</i> (§2.2-4300 et seq. of the <i>Code of Virginia</i>). Removing the fixed exam fee allows the fee to change as necessary to comply with the <i>Act</i> but will not require a regulation review each time the fee changes. Additionally, the citation to the <i>Act</i> is updated to its current form.
18VAC155-20-40 B 7		Sets the fee for a payment made by a regulant with a dishonored check	The language is removed from the regulation because it is established in § 2.2-614.1 C of the <i>Code of Virginia</i> .
18VAC155-20-140 A 1		Requires all applicants to complete a specific training requirement before taking the examination unless waived from training	No substantive change. The reference within this section is changed from the incorrect reference of basic training to the proper reference of facility-specific training.
18VAC155-20-140 B 2		Requires that any applicant who was previously waived from a specific training requirement, who fails the exam twice, must complete the specific training before retaking the examination	No substantive change. The reference within this section is changed from the incorrect reference of basic training to the proper reference of facility-specific training.