



Virginia  
Regulatory  
Town Hall

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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Waste Management Facility Operators
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 155-20
<b>Regulation title</b>	Board for Waste Management Facility Operators Regulations
<b>Action title</b>	General Review of the Board for Waste Management Facility Operators Regulations
<b>Date this document prepared</b>	December 5, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The Board for Waste Management Facility Operators proposes amendments to its regulations that will eliminate unnecessary regulations, clarify existing sections, consolidate duplicative sections, and simplify eligibility requirements. The proposed amendments will respond to changes in the industry and address concerns brought to the Board by its licensees, waste management facilities, and board staff.

### 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.*

There are no acronyms, abbreviations, or definitions in the Agency Background Document that are not defined in the referenced section or the "Definitions" section of the regulations.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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§ 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."

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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In the course of performing a general review of the regulations, the Board found several sections that were unnecessary, confusing, or overly burdensome. Additionally, the formatting of some of the sections was inconsistent, often making it difficult to find initial license eligibility criteria information, education requirements for renewal of existing licenses, and identification of conduct elements that, if not followed, could result in disciplinary action. It is imperative that a regulatory board effectively communicate its requirements and expectations in a manner that are consistent, easy to understand, and formatted so that they can be easily located. Making the regulations clear, concise, less burdensome, and easy to follow, results in a more informed base of licensed individuals, which directly affects the health, safety, and welfare of citizens.

## Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

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Section 18 VAC 155-20-10 is amended to clarify definitions, remove unnecessary language, and add language to definitions to read more clearly.

Section 18 VAC 155-20-20 proposed amendments to repeal this section because the requirement is addressed within the statute.

Section 18 VAC 155-20-30 proposed amendments to repeal this section to relocate the language to Section 18 VAC 155-20-120.

Section 18 VAC 155-20-40 proposed amendments to remove the fee for training course approvals.

Section 18 VAC 155-20-100 proposed amendments to repeal this section. Further, the requirement is addressed within the statute.

Section 18 VAC 155-20-120 proposed amendments to remove Subsections A, B(2), B(3), B(4), B(6), B(7), B(8), B(9), C, D, E and F to consolidate the section and make the language clearer.

Section 18 VAC 155-20-130 proposed amendments to remove Subsection B because it is unnecessary.

Section 18 VAC 155-20-140 proposed amendments to repeal Subsection A(2), A(3), A (4), A(5), B(2) and B(3). Further, language is amended to read more clearly for easier understanding of examination requirements.

Section 18 VAC 155-20-150 proposed amendments to repeal this section to allow the Board more flexibility when approving these agreements.

Section 18 VAC 155-20-160 proposed amendments to repeal Subsection E.

Section 18 VAC 155-20-175 proposed to amend language to repeal section to relocate language to Section 18 VAC 155-20-220.

Section 18 VAC 155-20-220 proposed to amend language to read more clearly for easier understanding of training requirements.

Section 18 VAC 155-20-230 proposed to amend language to read more clearly.

Section 18 VAC 155-20-235 proposed to add new section for guidelines on education providers.

Section 18 VAC 155-20-280 proposed to amend language within Subsection B to read more clearly.

Section 18 VAC 155-20-285 proposed to add new section for prohibited acts to be more clearly understood.

## 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.*

- 1) The proposed amendments are implemented as a result of a line-by-line review of the current regulations, identifying those that are overly burdensome, unnecessary, and overly burdensome. Additionally, the existing format of the regulations is confusing, often resulting in difficulties for licensees and the public to locate provisions that are necessary for public protection.

- 2) In amending the regulations, the Board for Waste Management Facility Operators is continuing to provide necessary public protection tasked to them through existing statutes.
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

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### Requirements more restrictive than federal

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.*

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There are no requirements in these proposed amendments to the regulations that are more restrictive than any federal statutes or regulations.

### 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.*

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Only localities that have a municipal waste management facility will be affected as a result of these amendments. Since, however, the proposed changes result in regulations that are easier to understand and are less burdensome, the net affect will be positive.

### 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 and the impacts of the regulated community.*

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In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the board is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Eric Olson, Executive Director,

Board for Waste Management Facility Operators, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, email: [eric.olson@dpor.virginia.gov](mailto:eric.olson@dpor.virginia.gov), fax: (866) 430-1033. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

**Board for Waste Management Facility Operators**

**Fiscal Impact of Proposed Regulation**

**Summary:**

The Board for Waste Management Facility Operators regulations are being revised to eliminate some unnecessary sections, make clarifications to definitions, and to consolidate some duplicate sections. The revision also eliminates the fee for education provider applicants. No training providers have applied in the past 5 years so there is negligible impact on revenue as a result of regulation update. No other fiscal impact to the Board is expected as a result of the amendments.

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 2014	FY 2015	FY2016	FY2017
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:** This regulation change will minimally affect waste management facility operator applicants and licensed waste management facility operators.

**Estimated Number of Regulators:** There are approximately 700 licensed waste management facility operators.

**Projected Cost to Regulators:** No financial impact to regulators or applicants is expected as a result of the proposed regulation amendment.

**Board for Waste Management Facility Operators**

**Financial Status and Projections  
Current Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulators</u>	
2010-12	87,601	42,095	51,477	78,219	151.9%	675	as of
2012-14	78,219	42,117	59,246	61,090	103.1%		10/31/2013
2014-16	61,090	41,973	68,013	35,050	51.5%		
2016-18	35,050	41,973	71,613	5,410	7.6%		

**Fee History \$**

<u>Major Fee Type</u>	<u>1996</u>	<u>1999</u>
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Application	200	75
Renewal	150	50

### 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.*

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No viable alternative has been identified.

### 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) 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.*

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- 1.) These proposed regulations establish compliance or reporting requirements equal to or less stringent than those already in places.
- 2.) There are no deadlines or reporting requirements required by these proposed regulations.
- 3.) There are no reporting requirements proposed by these regulations.
- 4.) There are no performance standards proposed by these regulations.
- 5.) The waste management facilities where the licensees of the Board for Waste Management Facility Operators are employed are licensed and monitored by the Virginia Waste Management Board, housed at the Department of Environmental Quality and most would not likely be considered small businesses. The Board for Waste Management Facility Operators licenses and regulates the individuals responsible for supervising the operation of the facilities licensed by the Virginia Waste Management Board. The environmental impact of these facilities, if not operated and maintained properly, could cause both immediate and long-term adverse health consequences to the citizens of Virginia. Exempting any individual from these requirements would be ill advised.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

There were no comments received during the NOIRA public comment period.

**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.*

These amendments will have no impact on the institution of the family or family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

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

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18 VAC 155-20-10			<p>Deletes the definitions for “Board,” “Person,” “Waste management facility,” and “Waste management facility operator,” as these terms are already defined in § 54.1-2209 of the Code of Virginia.</p> <p>Deletes the definition of “Closed facility” and “Closure” which are terms defined in 9 VAC 20-18-10 of the Board for Waste Management Facility Solid Waste Management Regulations and are not</p>



			<p>relevant to these regulations.</p> <p>Deletes the definition of “Continuing professional education/training” as it is unnecessary</p>
18 VAC 155-20-20			<p>Repeals this section of the regulations as the necessity for licensure is already made in § 54.1-2212 of the Code of Virginia.</p>
18 VAC 155-20-30			<p>Repeals this section and moves the application disclosure requirements to 18 VAC 155-20-120.</p>
18 VAC 155-20-40			<p>Removes the application fee for training courses. There has not been a new training course application received by the Board in nearly a decade. Often, small providers, which could include local governments, have wanted to hold courses just for their own employees or other individuals in their locality. These courses would require the submission of the application fee, which may deter them from holding the class, especially if the original intent was to offer the course free of charge.</p>
18 VAC 155-20-100			<p>Repeals this section as the necessity for licensure is already made in § 54.1-2212 and this particular reference to 1995 is now obsolete and unnecessary.</p>
18 VAC 155-20-120			<p>This section was amended to simplify the requirements and provide the Board with flexibility in determining the qualifications for licensure. The current regulations provide several different ways of meeting the eligibility criteria, including the identification of alternatives to the basic requirements. These can be confusing and may be difficult to complete. For example currently an individual who does not have a high school diploma, college degree or GED may meet the education requirements by having seven years of experience with at least three years in one of eight different categories. Additionally, current regulations provide a different section for each of the class of licenses that are basically identical, for example, the Class III has its own section which states that the applicant must complete a training course approved for Class III, the Class IV, in its own section, states that the</p>

			<p>applicant must complete a training course approved for a Class IV. This repetitive language is not necessary as a single section with broader language that covers all classes.</p> <p>The section also requires that individual licenses report criminal convictions, per the requirements of § 54.1-204, and any other information regarding past disciplinary action.</p>
18 VAC 155-20- 130			<p>Removes language that is not necessary regarding the requirement that an individual wanting to add another classification to their license must apply and meet the requirements of an eligibility section. A separate application will be available for any individual wishing to add another classification to an existing license.</p>
18 VAC 155-20- 140			<p>Paragraph A of this section was condensed and clarified to indicate that all requirements must be met prior to the application for examination being approved.</p> <p>Paragraph B of this section eliminated the requirement that an individual complete the full training course again if they have failed the examination twice, and added language regarding the conduct of the applicant at the examination site.</p>
18 VAC 155-120- 150			<p>This section of the regulations is repealed as agreements of reciprocity or licensing agreements with other regulatory boards have detailed provisions outlining the provisions of the agreement and may vary widely from one agreement to another. Part of the determination of whether or not to enter into an agreement is for the board to determine if the requirements of the other licensing authority are equivalent enough to ensure that individuals coming into Virginia meet the minimum qualifications for licensure. Since this is done as a part of the development of the agreement, it is unnecessary for the applicant to take the basic training course within one year of the granting of the license.</p>
18 VAC 155-20- 160			<p>This section of the regulations was restructured and simplified to make it easier to understand. Amended language used in this section is consistent with language used by other regulatory boards housed at the Department of Professional</p>

			and Occupational Regulation.
18 VAC 155-20- 175			This section is repealed as the requirement for continuing education have been moved to the previous section (18 VAC 155-20-160) and information requirements regarding the course and course provider have been moved to (18 VAC 155-20-220).
18 VAC 155-20- 220			<p>This section has been amended in order to clarify and simplify the training requirements listed in Part IV of the regulations.</p> <p>The proposed amendments expand training and continuing education courses to include accredited colleges, universities, junior and community colleges, DOLI approved apprenticeship programs and other schools approved by DOE, in addition to those that are approved by the Board.</p> <p>The proposed amendments also simplify the content requirement of basic training and continuing education programs that must be met in order to be approved by the Board. The current regulations listed several dozen different subjects that were required to be covered in the courses. Locking education providers into a list of subject matter that must be covered for a particular type of license can be a distinct disadvantage in ensuring that applicants are exposed to the minimum amount of knowledge necessary to ensure adequate competency to hold a license or to ensure that a licensed individual is given sufficient current information to maintain ongoing competency. Changes in the industry occur at a much faster rate than can be matched by amending the regulatory education requirements. By allowing the expertise of the board to determine, on an individual basis, that a provider and/or course meet the requirements to ensure a competent base of licensees, which provides sufficient public protection, is prudent.</p> <p>The proposed amendments to this section also make the application process for providers consistent, regardless of the type of program they are offering. This simplification will allow for a much more efficient method of reviewing applications for courses and providers.</p>
18 VAC			This section is amended to remove

155-20-230			information that has been consolidated and moved to section 18 VAC 155-20-220, but to leave the section that requires training providers to maintain records for a period of ten years.
	18 VAC 50-20-235		This proposed new section of the regulations provides a mechanism for the Board to deny an application for approval or to withdraw the current approval of a course/provider and provides a list of the grounds for that denial/withdrawal.
18 VAC 155-20-280			This proposed amendment segregates the authority of the board to deny an application, renewal, or to discipline a licensee from the actual prohibited acts, which have been moved to a new section (18 VAC 50-20-285).
	18 VAC 155-20-285		This proposed new section is a list of those acts which are prohibited and may result in disciplinary action or the denial of an application for licensure or renewal of a current license.