



Proposed Regulation Agency Background Document

Agency name	Board for Waste Management Facility Operators
Virginia Administrative Code (VAC) citation	18 VAC 155-20
Regulation title	Board for Waste Management Facility Operators Regulations
Action title	Addition of license class
Date this document prepared	April 9, 2014

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 seeks to review its regulations regarding the classes of licensure, changes in the scope of practice allowed those license classes and, if determined to be necessary, the inclusion of a new license class. The proposed amendments will respond to changes in the industry and address concerns brought to the Board by its licensees, staff, and waste management facilities.

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.

§ 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.

The proposed amendments will consolidate all composting requirements from being separated between Class I and Class II licenses into only the Class I license. Currently a Class II license is for composting municipal solid waste as well as all types of landfills. The Class I license is for composting yard waste in addition to transfer stations. The Board has determined that it would be less burdensome to our regulants for all composting to be put together under the Class I license. These amendments will ensure that operators of those types of facilities are adequately trained and meet the minimum competency requirements, ultimately producing updated regulations that will effectively protect the health, safety, and welfare of the public.

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.)

Section 18 VAC 155-20-10 is amended to clarify definitions of the Class I and II license types.

Section 18 VAC 155-20-110 is amended to clarify license classifications in Subsections A(1) and A(2).

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 to consolidate composting requirements into one license type. The changes would be advantageous to public and to the waste management facilities as they would not need to know the differences between composting types to determine which class of license is required.
- 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.

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.

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.

Only localities that have composting facilities 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.

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: wastemgt@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

Economic and Fiscal Impact of Proposed Regulation

Summary:

The Board for Waste Management Facility Operators regulations are being revised to move composting requirements from the Class II license class to the Class I license class. No 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.

Economic Impact:

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>Applicants for the Waste Management Facility Operator license that perform composting are affected. These individuals currently are required to apply for a Class II license. With the regulation change, applicants would apply for a Class I license.</p>
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<p>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>It is estimated that approximately 10 individual applicants per year perform composting. No businesses or other entities are affected.</p>
<p>Benefits expected as a result of this regulatory proposal.</p>	<p>Applicants that perform composting will not need to take the Class II examination but rather the Class I examination, which covers fewer topics.</p>
<p>Projected cost to localities to implement and enforce this regulatory proposal.</p>	<p>There are no projected to costs to localities as a result of implementing or enforcing the amended regulations.</p>
<p>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>There are no additional costs for the affected individuals. Businesses or other entities are not affected and do not have any additional costs.</p>
<p>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal. See Fiscal Impact by year below:</p>	<p>Any costs to the Department will be minimal and can be fully absorbed by the Board. There may be a small expense from the Examination vendor to make adjustments to the examinations for Class I and Class II licenses.</p>

	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

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 Regulants</u>	
2010-12	87,601	42,095	51,477	78,219	151.9%	694	as of 3/31/2014
2012-14	78,219	42,117	59,246	61,090	103.1%		
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>
Individual Application	200	75
Individual 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.

The Board considered three options when reviewing the composting requirements. Option one was to add a Class V license classification. This option would require a new composting exam to be created that could be quite costly. There also is a way to determine which of the Class I and II license holders would need a Class V, so it may be very burdensome to current regulants. Option two was to add a composting endorsement to the existing license classifications. This option would also require a new exam to be created. Applicants would then need to acquire a Class I, II, III or IV license first and then apply for the composting endorsement as a separate transaction. The Board opted to go with the third option as outlined in this document. This is to move all composting requirements into the Class I license classification. All composting questions currently in the Class II exam will be pulled out and put in the Class I exam. A new exam will not have to be created and current license holders will not be affected. This is the least burdensome alternative that meets the goals of the Board.

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.

- 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.

Commenter	Comment	Agency response
John Collett, City of Newport News	Believes there should be two composting licenses – organic composting and biosolids composting.	After reviewing all public comment received on these regulations, the Board has adopted proposed regulations that will move the composting requirements from the Class II license to be consolidated with the composting requirements in the Class I

		license.
Benjamin Loveday, Spotsylvania County	Recommends that composting operations be covered under the Class I license with CE requirements specific to composting. Class II operators would continue to be covered for composting under their existing license class.	After reviewing all public comment received on these regulations, the Board has adopted proposed regulations that will move the composting requirements from the Class II license to be consolidated with the composting requirements in the Class I license.
Linda Shultz, Department of Environmental Quality	Suggests two possible options. 1) Require a Class I license for all compost facility operators instead of the current composting requirements being split between Class I and Class II. 2) Create a fifth license class for compost facility operators. She recommends option number 1 and states 7 reasons to support this recommendation.	After reviewing all public comment received on these regulations, the Board has adopted proposed regulations that will move the composting requirements from the Class II license to be consolidated with the composting requirements in the Class I license.
Roy Chesson, Newport News Department of Public Works	States that composting operations should require its own specific licensing requirements.	After reviewing all public comment received on these regulations, the Board has adopted proposed regulations that will move the composting requirements from the Class II license to be consolidated with the composting requirements in the Class I license.
Eric Walter, Class II License Holder	Supports a separate license class for compost facilities.	After reviewing all public comment received on these regulations, the Board has adopted proposed regulations that will move the composting requirements from the Class II license to be consolidated with the composting requirements in the Class I license.
Tim Shockley, City of Newport News	Prefers compost licenses to be separate from landfill licenses.	After reviewing all public comment received on these regulations, the Board has adopted proposed regulations that will move the composting requirements from the Class II license to be consolidated with the composting requirements in the Class I license.
Gordon M. Briggs Jr, City of Newport News	In favor of a separate license class for composting operations.	After reviewing all public comment received on these regulations, the Board has adopted proposed regulations that will move the composting

		requirements from the Class II license to be consolidated with the composting requirements in the Class I license.
Terena Meador, PME Compost LLC	In favor of a compost facility being covered under the existing Class I license.	After reviewing all public comment received on these regulations, the Board has adopted proposed regulations that will move the composting requirements from the Class II license to be consolidated with the composting requirements in the Class I license.
Marshall Hall, Natural Organic Process Enterprises	In favor of creating a separate class of license for compost facility operators.	After reviewing all public comment received on these regulations, the Board has adopted proposed regulations that will move the composting requirements from the Class II license to be consolidated with the composting requirements in the Class I license.

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 “receiving yard waste” from the definition of Class I license. The Class I definition will now be for all composting facilities.</p> <p>Deletes “a facility that composts municipal solid waste” from the Class II license definition.</p>
18 VAC 155-20-110			<p>Deletes “receiving yard waste” from A(1). The Class I classification will now be for all composting facilities.</p> <p>Deletes “composts municipal solid waste, or” from the A(2).</p>