

Guidance Number 06-2001-20-80

**GUIDANCE ON THE DIRECTOR'S DETERMINATION OF §10.1-1408.1D1  
AND PERMIT BY RULE APPLICATIONS**

**Final Interpretation**

The provisions of §10.1-1408.1.D.1 of the Waste Management Act (the director's determination) do not apply to permits-by-rule (PBR).

**Supporting Information and Basis**

§10.1-1408.1.D.1 states that prior to **issuing** a new permit, an expansion, or an increase in capacity, the director will make a determination after investigation and analysis. A permit-by-rule (PBR) is not an issuance as described in the statute. 9 VAC 20-80-480.E (Virginia Solid Waste Management Regulations, VSWMR), the provisions for a PBR, state that an applicant is **deemed to have** a solid waste permit if certain items have been submitted and certain conditions are met. Since the director does not issue a PBR, and a facility owner or operator is deemed to have a permit when all required items are submitted to the department, the elements of §10.1-1408.1.D.1 do not apply to a PBR.

§10.1-1408.1.D.1 was modified to include new items in the 1999 legislative session. However, the requirements for public hearings when a permit is issued were required prior to the 1999 session. Since public hearings have not been required as part of the PBR process, the interpretation that the director's determination is not required for PBR is consistent with past practice.

In accordance with §10.1-1408.1.E the director has the option to include provisions that are protective of human health and the environment in **any** permit. 9 VAC 20-80-490 VSWMR further clarifies the concept of permit conditions by stating that the director can include conditions that are protective of human health and the environment when a permit is **issued**. Therefore, under the current VSWMR conditions cannot be applied to a permit-by-rule. Although it is assumed that the regulations incorporate provisions to protect human health and the environment consistent with §10.1-1408.1.E in the PBR application process, if it is found that the regulations are not protective, the VSWMR

will be modified in the future to include any items from the director's determination and any other provisions deemed appropriate.

It should be clear that the letter provided as a final response to a PBR submission is not an approval of any kind. The PBR is not **issued**. The letter acknowledges that the facility is **deemed to have** a permit. Since the letter/response is not a permit, but an acknowledgement that the facility is deemed to have a permit, the letter may, for the convenience of the owner/operator, cite requirements of the regulations, requirements of an administrative order or portions of the PBR submission deemed appropriate. Any approved variances to the regulations can also be noted in the letter. No permit conditions can be included in a PBR letter. If requirements are included in the PBR letter beyond those requirements of the regulations, law or administrative order they will not be enforceable. It should be clear that these statements are not conditions in a permit, but are a reemphasis of requirements that already exist.

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[Signed]  
Karen Jackson Sismour, Director  
Division of Waste Program Coordination

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08/09/01  
Date