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## Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is" Agency Background Document

<b>Agency name</b>	Virginia Waste Management Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC20-190
<b>Regulation title</b>	Litter Receptacle Regulations
<b>Date</b>	September 12, 2016

This information is required pursuant to Executive Order 17 (2014) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.*

Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate regulations to supervise, coordinate, and control waste management activities in order to protect human health and the environment.

Section 10.1-1419 of the Code of Virginia directs the Virginia Waste Management Board to adopt regulations containing guidelines for the use of litter receptacles in public places. It also establishes a \$25 per day penalty for violations of the regulation. Section 10.1-1414 of the Code of Virginia defines the term "litter" as "all waste material disposable packages or containers but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing." Section 10.1-1421 of the Code of Virginia establishes the entity responsible for removing litter from receptacles.

The Virginia Waste Management Board previously adopted this regulation as directed by state statute. The regulation establishes which places must be provided with litter receptacles, the standards for the receptacles, and the requirements for removal of the litter from the receptacles. There is no corresponding federal legal authority for this regulation.

## Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

The department considered alternatives to this regulation. The department rejected repealing this regulation since state law specifically directs the Virginia Waste Management Board to adopt this regulation.

The department considered the requirements for litter receptacles and considered if the regulation should contain more requirements concerning the number of litter receptacles required, and frequency of removal of litter from those receptacles. The department rejected this alternative since those required to place the litter receptacles have more knowledge concerning the amount of litter collected, the frequency litter needs to be removed from the receptacle, and the number of litter receptacles needed to collect litter in each location to prevent receptacles from overflowing. Designating a minimum frequency for receptacles to be emptied would not necessarily prevent receptacles from overflowing. These additional requirements would be more burdensome to the regulated community and would not necessarily provide more protection to human health and the environment.

The department has determined that retention of the regulation is appropriate, as it is the least burdensome and least intrusive alternative that fully meets statutory requirements and the purpose of the regulation.

## Public comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

A public comment period was held July 11, 2016 through August 1, 2016. An informal advisory group was not formed to assist with the periodic review.

Commenter	Comment	Agency response
Kensett Teller, James City Clean County Commission	Cigarette butts are the number one litter problem in the world. Requests cigarette butt disposal containers be required in the same locations the regulations require litter receptacles.	Cigarette butts are considered a specific type of litter. The regulations require litter receptacles to be placed and maintained in certain locations. This may include additional receptacles that are specifically designed to collect a specific type of material such as cigarette butts or to collect recyclable materials for recycling. The need for receptacles for a specific type of waste is best determined by the entity responsible for placing the litter receptacle and maintaining the receptacle. This regulation does not prohibit specific types of additional litter receptacles from being placed for use for collection of litter.

<p>Kensett Teller, James City Clean County Commission</p>	<p>In James City County we often see receptacles in commuter parking lots, convenience stores, and public high traffic areas overflowing with litter. As you know, this overflow on the ground often ends up being blown to other property and roads causing more maintenance problems and cost to our communities. We are also concerned with the probability that the number of required receptacles has not kept pace with the population growth and should be reevaluated.</p>	<p>Section 10.1-1421 of the Code of Virginia states the “removal of litter from litter receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies now performing litter removal services.” Removal of litter from receptacles on private property is the responsibility of the owner or operator of the private property. The entity required to place the litter receptacle is required to service the receptacle with a frequency sufficient to prevent spillage from overflow (9VAC20-190-60 1 e). The entity responsible for maintaining the receptacles has more knowledge concerning the amount of litter collected, the frequency litter needs to be removed from the receptacle, and the number of litter receptacles needed to collect litter in each location to prevent receptacles from overflowing between emptying of the receptacles. The regulation states minimum numbers of receptacles that must be placed and allows entities to independently determine the need for additional litter receptacles. This evaluation should be made on a case by case basis by considering the volume of litter collected and the frequency the receptacles are emptied. Revising the regulation to require additional litter receptacles to be placed at locations would not prevent litter from overflowing from receptacles. The issue to be addressed is periodic removal of litter from receptacles which is already required in the regulation.</p>
<p>Kensett Teller, James City Clean County Commission</p>	<p>Construction sites almost always have large trailer waste containers for construction materials but rarely do we see the required personal garbage/litter receptacles at construction sites. We would suggest that you work closely with builders, construction companies and even landscapers to have litter receptacles on site or on vehicles for personal litter and cig butt disposal. We would like to see three items at all construction sites: Port- a- toilet; litter disposal containers; and cigarette butt disposal containers.</p>	<p>9VAC 20-190-50 A 7 requires construction sites to have “receptacles sufficient to contain workers’ litter, plus those construction wastes capable of being spread by wind or water; the wind and water from hurricanes, tornadoes, and floods excepted. The primary contractor shall determine the number of receptacles and the size, except that no less than one receptacle shall be placed at each site.” Construction sites are required to have litter disposal containers. The regulation under review addresses litter receptacles and the requirement for portable toilets at construction sites is outside the scope of the regulation being reviewed. Cigarette butts are a specific type of litter and should be managed as a waste and not discarded on the ground.</p>
<p>Kensett Teller, James City Clean County Commission</p>	<p>Requests that whenever possible you support and encourage enforcement of litter penalties (\$250.00 to \$2,500.00) in Virginia.</p>	<p>Section 10.1-1419 C of the Code of Virginia states the fine is \$25 for each day of violation. The fine listed in the regulation cannot be increased. Section 10.1-1417 of the Code of</p>

		<p>Virginia authorizes law enforcement officers in the Commonwealth to enforce the litter receptacle regulations. The fines referenced by the commenter are found in §33.2-802 of the Code of Virginia, which relates to the dumping of trash near highways and are not related to the requirement for litter receptacles to be placed and maintained for use by the public.</p>
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### Effectiveness

*Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

This regulation is necessary to meet the requirements of the Code of Virginia and to protect human health and the environment. This regulation assists with the prevention of litter by providing requirements for litter receptacles to be placed and maintained for use by the public.

The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

### Result

*Please state that the agency is recommending that the regulation should stay in effect without change and provide the reason why.*

This regulation satisfies the provisions of the law and is effective in meeting its goals; therefore, the Director of the Department of Environmental Quality, on behalf of the Virginia Waste Management Board, recommends that this regulation be retained.

### Small business impact

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and 5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the basis for the agency’s determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

This regulation continues to be needed to protect human health and the environment. This regulation requires litter receptacles to be placed and maintained for the public to use. These receptacles are a critical component of the prevention of litter in the Commonwealth. Without these receptacles, the public would not have receptacles to deposit their trash in while they are in public. This would potentially lead to

an increase in littering in the Commonwealth and the associated negative impacts to human health and the environment.

Comments received during the public comment period for the periodic review of this regulation were only received from the James City Clean County Commission. The commission was concerned with three key issues, cigarette butt disposal containers, the need for additional litter receptacles due to receptacles being full, and additional requirements for litter containers and a portable toilet at construction sites. The regulations address the minimum requirements for litter receptacles, including placement and maintenance of these receptacles. Enforcement of this regulation is conducted by local law enforcement. The Code of Virginia directs the Waste Management Board to adopt regulations containing guidelines for the use of litter receptacles in public places. Virginia is a diverse state and this regulation provides minimum standards for the placement of litter receptacles. Some localities may experience more challenges with preventing litter than others. Localities may choose to impose requirements that are more stringent than these requirements to address local issues with litter. Enforcement of this regulation is conducted by local law enforcement and localities are able to implement additional measures to address specific litter issues in their communities.

This regulation is not complex. It requires placement of litter receptacles at certain places throughout the Commonwealth. In most cases the regulation requires a minimum of one litter receptacle to be placed at locations where litter needs to be deposited to prevent it from being improperly discarded. The regulation allows the entity that is required to provide and maintain litter receptacles the ability to decide the appropriate number of litter receptacles needed to collect the litter, and the frequency for them to be emptied.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

A periodic review was last conducted on this regulation in 2012. Since that time, changes to technology and economic conditions have not impacted this regulation.

The Director of the Department of Environmental Quality, on behalf of the Virginia Waste Management Board, recommends that this regulation be retained. As currently written, the regulation meets the requirements of state law while minimizing the impacts on small businesses.

## Family impact

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

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It is not anticipated that this regulation will have a direct impact on families or family stability.