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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>	9 VAC 20-70
<b>Regulation title</b>	Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities
<b>Date</b>	May 24, 2018

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.*

Federal regulations (40 CFR Part 258) require owners and operators of Municipal Solid Waste Landfill units to provide financial assurance.

Section 10.1-1402 of the Code of Virginia, authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law. Specifically, §10.1-1410 authorizes the Board to promulgate regulations which ensure that, if a solid waste treatment, transfer or disposal facility is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility.

The Virginia Waste Management Board previously amended these regulations in 2001, 2005, 2011, 2012, and 2013.

### 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.*

One alternative considered was the repeal of this regulation and the adoption of regulations that are identical to 40 CFR 258 Subpart G. This alternative has been rejected since it is inconsistent with state law. Federal regulations require owners and operators of Municipal Solid Waste Landfill units to provide financial assurance. Virginia statute is broader in scope and requires solid waste treatment, transfer or disposal facilities to provide financial assurance.

### 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.*

An informal advisory group was not formed as part of this review.

Commenter	Comment	Agency response
Ken Newman, Royal Oak Farm	Royal Oak Farm is the largest solid waste composting facility in Virginia and is an owner-occupied facility providing financial assurance for the facility through the use of an irrevocable trust agreement. He is charged 3% of \$105,325 by the financial institution to maintain the irrevocable trust agreement. Mr. Newman urges Virginia to recognize that owner-occupied solid waste management facilities are unique and should not have to bear the expense of financial assurance in the same manner as non-owner-occupied facilities.	Section 10.1-1410 A. of the Code of Virginia states, "The Board shall promulgate regulations which ensure that if a facility for the disposal, transfer, or treatment of solid waste is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility." This statute protects the citizens of the Commonwealth from paying costs associated with proper closure of a facility for the disposal, transfer or treatment of solid waste should the facility be abandoned. The amount of financial assurance required to be provided is based on factors such as the facility size and the amount of solid waste managed at the facility. The amount of financial assurance required is based on the estimated costs related to properly close the facility. Multiple options for providing financial assurance are allowed by the regulation, which provides flexibility to the regulated community concerning the type of financial assurance mechanism used to demonstrate financial responsibility.

### 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 for the protection of public health, safety and welfare and is clearly written and easily understandable.

### Result

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

The agency is recommending the regulation stay in effect without change. The regulation is beneficial to residents of the Commonwealth.

### 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.*

The current regulation continues to be needed. If a facility for the disposal, transfer, or treatment of solid waste is abandoned, the facility will need to be closed in a manner to minimize impacts to human health and the environment. This regulation requires owners and operators to provide funding to properly close the facility prior to operation of the facility. These requirements protect citizens of the Commonwealth from having to pay for the closure of these facilities if they are abandoned.

During the public comment period, an owner of a permitted composting facility requested the agency consider reducing the regulatory requirements for owner-occupied facilities. The amount of financial assurance required to be provided is based on factors such as the facility size and the amount of solid waste managed at the facility. The amount of financial assurance required is based on the estimated costs related to properly close the facility. Owner-occupied facilities are required to meet the same standards as non-owner occupied facilities.

The regulations contain many different ways to demonstrate financial assurance. These options may make the regulation appear to be complex to some readers, but the multiple financial assurance mechanisms included in the regulation provide additional flexibility to the regulated community, including small businesses.

Federal regulations (40 CFR Part 258) require owners and operators of Municipal Solid Waste Landfill units to provide financial assurance. Virginia law requires solid waste treatment, transfer or disposal

facilities to demonstrate financial assurance. Virginia's regulations do not conflict with federal law or regulations or with state law.

This regulation was last amended in 2013. Financial mechanisms used to demonstrate financial assurance have not changed since that time. The regulations continue to meet the requirements of state law and are being retained. The regulation includes multiple mechanisms for the regulated community to use to demonstrate financial assurance. The inclusion of multiple mechanisms is beneficial to 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.