

**PRELIMINARY DETERMINATION REVIEW DOCUMENT
FOR
PROPOSED REGULATION FOR TRANSPORTATION OF
SOLID AND MEDICAL WASTES ON STATE WATERS**

9 VAC 20 Chapter 170

PROVISIONS AFFECTED (TENTATIVE DETERMINATION)

Regulation for Transportation of Solid and Medical Wastes on State Waters, 9 VAC 20-170-10 et seq.

REASON FOR PROPOSED REGULATION

This regulation is being proposed to satisfy the provisions of the state law in the Code of Virginia, Title 10.1, Chapter 14, Article 7.1, Section 10.1-1454.1, Transportation of Solid and Medical Wastes on State Waters. The cited provision is an amendment to the statutes as a result of the House Bill No. 816 passed by the 1998 General Assembly.

STATEMENT OF LEGAL AUTHORITY

Section 10.1-1402 of the Virginia Waste Management Act (Title 10.1, Chapter 14 of the Code of Virginia) authorizes the Virginia Waste Management Board to supervise and control waste management activities in the Commonwealth, promulgate and enforce regulations, and abate hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances with the jurisdiction of the Board.

STATEMENT OF STATUTORY MANDATES

The contemplated regulation is mandated by state law. Specifically, Title 10.1, Chapter 14, Article 7.1, Section 10.1-1454.1 charges the Virginia Waste Management Board to develop regulations governing the commercial transport, loading and off-loading of non-hazardous solid wastes (except scrap metal, dredged material and source-separated recyclables) and regulated medical waste by ship, barge or other vessel upon navigable waters of the Commonwealth. The statutes also require the regulation to include the following provisions: 1) To establish a permits by rule requirement for the receiving facilities; 2) To establish specific requirements for ships, barges or other vessels, and containers to prevent the escape of wastes, liquids, and odors, and to prevent spillage in the event of an accident; 3) To establish a fee, payable by the owner or operator of any ship, barge or other vessel, to recover the administrative and enforcement costs, and to assess a permit fee for the owner or

operator of a receiving facility; and 4) To require the owners and operators of ships, barges, and other vessels to demonstrate financial responsibility as a condition of operation. A copy of all cited legal provisions is attached.

STATEMENT OF CONCLUSIONS

The proposed regulation will establish a permits by rule requirement for facilities receiving non-hazardous solid wastes and regulated medical waste from a ship, barge or other vessel. It will also establish specific requirements governing the commercial transport of non-hazardous solid wastes and regulated medical waste upon the navigable waters of the Commonwealth and the loading and off-loading of ships, barges and other vessels transporting such wastes. Ships, barges or vessels, and the containers holding wastes have to be designed, constructed, loaded, operated and maintained so as to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of accident.

Therefore, the proposed regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth. It is also essential to protect the Commonwealth's environment and natural resources from pollution, impairment or destruction.

STATEMENT OF PROCESS FOR CONSIDERING ALTERNATIVES

In response to the recently amended statutes, the following alternatives have been considered by the Department:

1. Adopt the proposed regulation. This option is being selected because it will satisfy the statutory mandates.
2. Take no action to adopt the regulation. Consequently, in the absence of the permitting program as required by the law, it could prohibit any solid waste management facilities to receive non-hazardous solid wastes or regulated medical waste from a ship, barge and other vessel transporting such wastes upon the navigable waters of the Commonwealth. Further, in the absence of any specific requirements as mandated by the statutes, it could prohibit the commercial transport of non-hazardous solid wastes and regulated medical waste upon the navigable waters of the Commonwealth. This option is not being selected because it would not be constitutional and the statutory mandates would not be fulfilled.

The Department has tentatively determined that alternative 1 is

the most appropriate alternative available that will satisfy the statutory mandates. Additional alternatives exist among various aspects of inspections, siting of the receiving facilities, specifications of the containers, ships, barges, or other vessels, and assessment of the fees and financial responsibilities. Consideration will be given to the aforementioned factors during the development of the regulation to ensure that the least burdensome and least intrusive alternative will be incorporated into the proposed regulation.

In compliance with the Virginia Waste Management Board's Public Participation Guidelines, the Department will, during the Notice of Intended Regulatory Action and the Notice of Public Comment, continue to receive comments on this proposal including the costs and benefits of the proposed alternatives or other alternatives the public may wish to provide.

STATEMENT OF IMPACT ON FAMILY FORMATION, STABILITY AND AUTONOMY

In the formulation of this regulation, the Department will consider the impact of the regulation on family formation, stability and autonomy. It is anticipated that this regulation will have an indirect positive impact on families.

CONTACT PERSON

Questions on the proposal should be referred to:

Lily Choi
Office of Program Development
Department of Environmental Quality
P. O. Box 10009
Richmond, Virginia 23240-0009
Phone: (804)698-4054