

Virginia Regulatory Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-170-10 et seq.
Regulation Title:	Transportation of Solid and Medical Wastes on State Waters
Action Title:	Transportation of Solid and Medical Wastes on State Waters - Adoption
Date:	November 12, 1999

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 et seq. of the Code of Virginia), Executive Order Twenty-Five (98), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Virginia Waste Management Board is proposing to adopt a regulation for transportation of solid and medical wastes on state waters. This proposed regulatory action will set forth guidelines for the permitting of the facilities receiving solid wastes and regulated medical wastes from a ship, barge or other vessel transporting such wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law. It will also include provisions governing the commercial transport, loading and off-loading of solid wastes and regulated medical wastes by ship, barge or other vessel upon the navigable waters of the Commonwealth, to the extent allowable under state law.

The proposed regulation will establish a permits by rule requirement, including permit fees, for facilities receiving solid wastes and regulated medical wastes from a ship, barge or other vessel; and it will prescribe specific siting, design/construction, and operational standards for the receiving facilities. In addition, the proposed regulation will establish a registration requirement, including registration fees, for any ship, barge or other vessel transporting solid wastes or regulated medical wastes upon the navigable

waters of the Commonwealth, to the extent allowable under state law; it will prescribe specific design/construction, and operational standards for these vessels and the containers holding wastes; and it will establish a financial responsibility requirement for the owners and operators of these vessels. Specific requirements for containers include a performance standard, testing requirement, manifest system, and stacking restrictions.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and web site addresses, if available, for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The proposed regulation is mandated by state law. The basis for this regulation is 10.1-1454.1 of the Code of Virginia. Specifically, 10.1-1454.1 requires 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), municipal and industrial sludge, and regulated medical waste by ship, barge or other vessel upon the navigable waters of the Commonwealth. The statutes also require the regulation to include the following provisions: 1) To establish a permit requirement for the receiving facilities; 2) To establish specific requirements for ships, barges or other vessels, and the containers holding wastes 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.

Further, 10.1-1402 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 and the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances with the jurisdiction of the Board.

The proposed regulation is not mandated by federal law. However, the Shore Protection Act (Act) of 1988, 33 U. S. C. 2601 et seq., requires all vessels transporting municipal or commercial waste in coastal waters to obtain a permit from the Secretary of Transportation, and display a number or other marking on the vessels as prescribed by the Secretary under 46 U. S. C. 12502(b). The Act includes a provision to require waste sources, receiving facilities, and vessels provide means and facilities to assure that the waste will not be deposited into coastal waters during loading, off-loading, and transport. It also requires the Environmental Protection Agency (EPA) to prescribe waste handling regulations for waste sources, receiving facilities, and vessels handling or transporting municipal or commercial waste in coastal waters. Although a proposed regulation, 40 CFR Part 237, was published in the Federal

Register on August 30, 1994, it is not anticipated that EPA will promulgate this regulation any time soon.

The Office of the Attorney General has provided a statutory certification letter on the proposal.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this proposed regulatory action is to adopt a regulation for transportation of solid wastes and regulated medical wastes on state waters. The proposed regulation will establish a permits by rule requirement for facilities receiving solid wastes and regulated medical wastes from a ship, barge or other vessel; and it will prescribe specific siting, design/construction, and operational standards for the receiving facilities. In addition, the proposed regulation will establish a registration requirement for any ship, barge or other vessel transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law; it will prescribe specific design/construction, and operational standards for these vessels and the containers holding wastes; and it will establish a financial responsibility requirement for the owners and operators of these vessels. Ships, barges or vessels, and the containers holding wastes are required 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.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The proposed regulation will establish a permits by rule requirement, including permit fees, for facilities receiving solid wastes and regulated medical wastes from a ship, barge or other vessel; and it will prescribe specific siting, design/construction, and operational standards for the receiving facilities. The proposed regulation will establish a registration requirement, including registration fees, for any ship, barge or other vessel transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law; it will prescribe specific design/construction and operational standards for these vessels and the containers holding wastes; and it will establish a financial responsibility

requirement for the owners and operators of these vessels. Specific requirements for containers include a performance standard, testing requirement, manifest system, and stacking restrictions.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public 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. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

In the absence of any federal mandates on waste handling practices for the receiving facilities and vessels transporting solid wastes and regulated medical wastes in coastal waters, the proposed regulatory action will benefit the citizens and environment of the Commonwealth, and the regulated community. The proposed regulation will prescribe specific siting, design/construction, and operational standards for the receiving facilities; it will prescribe specific design/construction, and operational standards for vessels and the containers holding wastes; and it will require the owner or operator of each receiving facility and vessel to prepare and implement a Response and Mitigation Plan (Plan). In the event of a waste deposit into state waters, the owner or operator of the receiving facility or a vessel will immediately take all necessary actions, in accordance with the approved Plan, to contain and remove the wastes. Ships, barges or vessels, and the containers holding wastes are required 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 advantage to the public and the agency is the protection of the health, safety and welfare of the citizens of the Commonwealth and protection of the Commonwealth's environment and natural resources from pollution, impairment or destruction. In addition, the proposed regulation will provide guidelines on waste handling practices for the regulated community to implement a safe and sound environmental practice.

There are no perceived disadvantages to the public or the Commonwealth.

Supplemental Information

Please supply additional information required by the agency's Public Participation Guidelines, including a statement on localities particularly affected by the proposed regulation and a statement on specific requests for comments from the public on the proposed regulation.

Localities particularly affected: none.

Comments: The Board is requesting comments from the public on:

1. the costs and benefits of the proposal;

2. alternatives to the requirements of the proposal, including the advantages and disadvantages of the alternatives;
3. the social costs of the proposal; including a description of the types of costs (i.e., increased paperwork, duplicative reporting requirements, etc.), potential non-dollar impacts of the proposal (i.e. increased volume of waste transported by trucks due to increased regulation of water transport) and the possible health and environmental consequences associated with such impacts.
4. quantitative information, if possible, regarding incremental benefits of the proposed regulation over existing federal and state regulations, and current industry practices.
5. the relationship of the proposed regulation to federal regulations regarding non-hazardous and medical waste transport, including the identification of redundancy or conflict.
6. whether the Board should make further distinctions between solid wastes and medical wastes which are regulated under the Resource Conservation and Recovery Act and covered by this rulemaking, and hazardous wastes which are covered by the Resource Conservation and Recovery Act and not addressed in this rulemaking.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; and (d) the agency's best estimate of the number of such entities that will be affected.

The Department should not incur additional costs as a result of this action. It is anticipated that the administrative and enforcement costs of this proposed regulation including, but not limited to, permitting, inspection and monitoring will be recovered through the permit fees and registration fees charged to the regulated community.

The proposed regulation does not specifically impact localities, unless a locality chooses to operate a receiving facility or vessel. In that case, the cost would be the same as for any other entity operating a receiving facility or vessel.

There is one existing facility which has received solid wastes transported by barges. Additional sites could be impacted by the permit by rule and the permit fee requirements as they are explored and further developed. Permit fees are based upon the average time to process permits by rule. Inspection fees are designed to cover the compliance and enforcement program costs. An amount of \$6,200 will

be charged to each receiving facility for each initial certification for a permit by rule. Each modification with a closure plan amendment would be charged for \$2,500, and each modification without a closure plan amendment would be charged for \$1,250. An inspection fee of \$10,000 will be collected from the owner or operator of each receiving facility annually. Owners or operators of the vessels transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law, would be impacted by the registration requirements and the registration fee requirement established by the proposed regulation. Registration fees include the costs associated with the registration process, inspections, and compliance and enforcement activities. An amount of \$8,000 will be charged for initial registration. Registration fee for each additional vessel per operator is \$5,500. Registration fee for renewal is \$6,000 per vessel.

Owners and operators of these vessels are required to demonstrate financial responsibility sufficient to comply with the proposed regulation. For each owner and operator of a vessel transporting solid wastes only, the amount of financial responsibility is \$1,000,000 or \$300 per gross ton of such vessel, whichever is larger. For each owner and operator of a vessel transporting regulated medical wastes or a combination of solid wastes and regulated medical wastes, the amount is \$5,000,000 or \$300 per gross ton, whichever is larger. Financial responsibility may be demonstrated through various mechanisms including trust funds, surety bonds, and letters of credit. In addition, owners or operators of these vessels are required to demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or nonsudden accidental occurrences. For occurrences arising from the solid waste deposit, the liability amount is at least \$1 million per occurrence with an annual aggregate of at least \$2 million. For occurrences arising from the deposit of regulated medical wastes, or a combination of solid wastes and regulated medical wastes, the liability amount is at least \$3 million per occurrence with an annual aggregate of at least \$6 million. Liability coverage may be demonstrated through various mechanisms including insurance, trust funds, surety bonds, and letters of credit.

Small businesses are not likely to be impacted by this proposed regulation unless the small business chose to operate a receiving facility of vessel. If that were to occur, the impact on the small business would be the same as for any other owner or operator of a receiving facility or vessel.

Family Impact

In the formation of this regulation, the Department has considered its impact on family formation, stability and autonomy. It is anticipated that the regulation will have an indirect positive impact on families by establishing requirements to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of an accident.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the effect of the proposed changes.

Part I - Definitions

Part II - Standards for Receiving Facilities

Receiving facilities must meet standards for Siting, Design/Construction, Operation, Operation and Maintenance Manual, and Facility Closure.

Design/Construction of containers is also governed in Part II.

Each container must meet U.S. DOT specifications and be certified by the American Bureau of Shipping.

In addition, containers must be watertight, and designed and constructed to prevent the escape of waste and odors. The watertightness test includes filling the container with at least 24 inches of water to detect leaks. The test must be performed at least every six months on each container.

The receiving facility may not receive containers of waste without a manifest. The manifest requires certification by the generator as to the contents and packaging of the waste.

Containers may not be kept at the receiving facility more than 72 hours under normal circumstances or for a maximum of seven days.

Loaded containers may not be stacked more than two high in the loading or unloading areas. (The statute and injunction pertain to stacking on barges.)

Releases of wastes must be cleaned up and notification must be given.

At closure of the receiving facility, all wastes and waste residue must be removed.

Part III - Permitting of Receiving Facilities

By statute, the permit is a permit by rule, *i.e.*, upon compliance with certification procedures and payment of permit fees the owner or operator is deemed to have a solid waste management facility

permit .

The certification for a permit-by-rule comprises a notice of intent, plans and specifications, an operations and maintenance manual, local government certification, a disclosure statement, the results of public participation, and a closure plan. All elements must be certified to meet statutory and regulatory requirements.

The initial fee for permit-by-rule is \$6,200. Permit modifications require a fee of \$1,250 or \$2,500, depending on whether the closure plan is amended. The annual inspection fee is \$10,000.

Part IV - Standards for Vessels Transporting Wastes

Containers used on vessels must meet the same requirements as those for receiving facilities.

The vessel itself must be designed and constructed in accordance with federal requirements (46 CFR Part 42).

The vessels must have an appropriate Coast Guard permit or license.

Owners and operators of vessels are subject to inspection and recordkeeping requirements.

Releases of wastes must be cleaned up and notification must be given.

The Department is to inspect moored vessels and containers to verify that the requirements are met.

Part V - Registration of Vessels Transporting Wastes

Prior to transporting any solid wastes or RMW within the navigable waters of the Commonwealth, the owner or operator of the vessel must submit a registration and a fee.

The registration fee is \$8,000 initially and \$5,500 for each additional vessel for the operator. The renewal fee is \$6,000.

Part VI - Financial Assurance for Vessels Transporting Wastes

Owners or operators of vessels must demonstrate financial responsibility to comply with the regulatory provisions (*e.g.*, clean-up or closure).

For each owner or operator of a vessel transporting solid waste only, the amount of financial responsibility is \$1M or \$300 per gross ton of the vessel, whichever is greater.

For each owner or operator of a vessel transporting RMW or in part RMW, the amount of financial

responsibility is \$5M or \$300 per gross ton of the vessel, whichever is greater.

Various mechanisms may be use to demonstrate financial responsibility for compliance, including trust funds, surety bonds, and letters of credit.

Owners or operators of vessels are also required to demonstrate financial responsibility for bodily injury or property damage to third parties cause by sudden or nonsudden accidental occurrences. For solid waste only, the liability amount is \$1M per occurrence, \$2M annual aggregate. For RMW or part RMW, the liability amount is \$3M per occurrence, \$6M annual aggregate.

Various mechanisms may be used to demonstrate liability coverage, including insurance, trust funds, surety bonds, and letters of credit.

Alternatives

Please describe the specific 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.

In order to comply with the statutory mandates, the Department has determined that the only alternative is to adopt the proposed regulation. However, the Department recognizes that additional alternatives exist among various aspects of siting, design/construction, and operational standards for the receiving facilities; design/construction and operational standards for vessels, or containers; inspections of the receiving facilities, containers, and vessels; and assessment of fees and financial responsibilities.

Considerations have been 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.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

Public comments received following the publication of the Notice of Intended Regulatory Action include: specific provisions should be established for both solid wastes and regulated medical wastes transported by barges; facility siting should specifically address issues regarding traffic patterns on land and waters; stringent requirements are necessary for containers and barges, including container stacking and barge inspections, to ensure no adverse impact on state waters; proper permits and inspections with adequate public notice should be required; permitting for barge facilities should be conducted in a manner consistent with any other solid waste facility; these operations should not be categorized as transfer facilities; the administrative and enforcement costs should be paid for by the waste management industry; and facility operator and barge transporter should demonstrate financial responsibility prior to approval of operation. Adoption of this regulation will address these concerns.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation was kept as simple as possible while clearly conveying its intent and requirements. The language is consistent with that used in other regulations issued by the Board and other existing statutes and federal and state regulations.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department will review the regulation at least once every three years with the first review to occur no later than 3 years after the effective date of the regulation.

The review will be based on the following goals of the regulation:

1. To protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.
2. To establish standards and procedures for commercial transport, loading and off-loading of solid waste and regulated medical waste upon state waters to protect the health, safety and welfare of the citizens of the Commonwealth and to protect natural resources from pollution, impairment or destruction.