



Fast Track Proposed Regulation Agency Background Document

| | |
|----------------------------------------------------|-------------------------------------------------|
| Agency name | Virginia Waste Management Board |
| Virginia Administrative Code (VAC) citation | 9VAC20-60 |
| Regulation title | Virginia Hazardous Waste Management Regulations |
| Action title | Clarification of Accumulation Area Notification |
| Date this document prepared | November 14, 2013 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

This regulatory action will amend the Virginia Hazardous Waste Management Regulations, 9VAC20-60, by clarifying the accumulation area notification requirements under 9VAC20-60-262. The notification requirement applies to large quantity generators; however, as currently drafted, this requirement could be incorrectly applied to Small Quantity Generators as well. In order to clarify this requirement and bring it in line with the original intent of the regulation and the historical application, this section has been revised.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At their meeting on December 13, 2013, the Virginia Waste Management Board approved the following:

- The Board authorized the Department to promulgate the proposed amendment of 9VAC20-60 for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial.
- The Board's authorization also constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more members of the public, or any member of the applicable standing committee of either house of the General Assembly or the Joint Commission on Administrative Rules, and (ii) the

Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

- The Board authorized the Department to set an effective date 15 days after close of the public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. The identification should include a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary

Section 10.1-1402 of the Virginia Waste Management Act, Chapter 14 (Section 10.1-1400 et seq.) of Title 10.1 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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This amendment provides clarification to the accumulation area notification requirement in that it only applies to large quantity generators. This was the original intent of the regulation as well as the historical application. This amendment leads to the regulation being in line with the approach while providing clarity to the regulated community since as written it could be applied to Small Quantity Generators, which is not the intent of the regulation.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If either an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the Department shall (i) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The proposed amendment is expected to be non-controversial, and therefore using the fast-track process is justified.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. Note, more detail about all provisions or changes is provided in the "Detail of changes" section.

The accumulation notification requirements have been clarified to insure proper application to large quantity generators only.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, 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 indicate.

There is no disadvantage to the public or the Commonwealth that will result from the adoption of these amendments to 9VAC20-60.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The amendment does not include any requirements more restrictive than applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no impacts to localities as any locality that is currently a large quantity generator is all ready required to submit these notifications. This amendment does not include any additional requirements.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1.B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No flexibility analysis is necessary as this action does not implement any additional requirements on large quantity generators.

Public Participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Debra Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218; phone (804)698-4209; FAX (804) 698-4234; email to Debra.Harris@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board | All LQGs of hazardous waste are all ready affected by this regulatory requirement. This action just clarifies that only LQGs are affected and not any other class of generators. |
| Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million. | There are 318 affected entities of which approximately half are small businesses. Please note, these business already are required to adhere to this regulatory requirement for their accumulation areas. There is no new burden added by this action. |
| Benefits expected as a result of this regulatory proposal. | Clarification of the application of the accumulation area notification requirements. |
| Projected cost to the state to implement and enforce this regulatory proposal. | No net increase in the costs associated with implementing and enforcing. |
| Projected cost to localities to implement and enforce this regulatory proposal. | No net increase in costs to localities is anticipated. |
| All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development. | There is no projected cost increase for implementation of this amendment. |

Alternatives

Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation

There are no viable alternatives to this proposal. The rationale for this regulatory action is to clarify the accumulation area notification requirements.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The Department does not anticipate that the proposed changes to the regulations will erode the authority and rights of parents in the education, nurturing and supervision of their children; encourage or discourage economic self-sufficiency, self pride and the assumption of responsibility for oneself, one's spouse and one's children and/or elderly parents; strengthen or erode the marital commitment; or increase/decrease disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
|-------------------------------|---------------------------------------------------|-------------------------------------------|---------------------------------------------------------------------------------------------------------|
| 262 | | Adoption of 40 CFR Part 262 by reference. | Clarified that the accumulation area notification requirements apply to large quantity generators only. |

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

CFR – Code of Federal Regulations

EPA – Environmental Protection Agency

LQG – Large Quantity Generator of hazardous waste