



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-170
Regulation Title:	Transportation of Solid and Medical Wastes on State Waters
Action Title:	Transportation of Solid and Medical Wastes on State Waters - Adoption of Final Regulation

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

On March 28, 2003, the Virginia Waste Management Board adopted final regulations governing transportation of solid and medical wastes on state waters. This regulatory action sets forth guidelines for the permitting (permit-by-rule) of the facilities off-loading solid wastes and regulated medical wastes from a ship, barge or other vessel transporting such wastes upon the navigable waters of the Commonwealth. The regulations include standards for design and operation of both loading and off-loading facilities, but loading facilities are not required to have a permit. A schedule of permit fees is included and procedures for submitting the fees.

The regulations prescribed specific siting, design/construction, and operational standards for the loading and off-loading facilities.

The regulations establish a financial responsibility requirement for the owners and operators of vessels.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On March 28, 2003, the Virginia Waste Management Board approved the promulgation and adoption of final regulations, Transportation of Solid and Medical Wastes on State Waters, (9 VAC 20-170-10, et seq.) pursuant to Chapter 14 of Title 10.1 and in particular §§ 10.1-1402(11) and 10.1-1454.1 of the Code of Virginia. The Board suspended the implementation of two provisions of the regulation in order to receive further public comment. The two provisions are 9 VAC 20-170-70 and 9 VAC 20-170-195 and notice of the suspension and public comment period was published in the Virginia Register of Regulations in 19:18 on May 19, 2003.

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, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The regulations are mandated by state law. The basis for these regulations is § 10.1-1454.1 of the Code of Virginia, which they implement. 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, recyclable construction-demolition debris being transported directly to a processing facility for recycling or reuse 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 that the regulation include the following provisions: 1) To establish a permits-by-rule requirement for the receiving facilities; 2) To establish specific requirements for 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 assess a permit fee for the owner or operator of a receiving facility; 4) To assess fees for the owners and operators of ships, barges, and other vessels; and 5) To require the owners and operators of ships, barges, and other vessels to demonstrate financial responsibility as a condition of operation. Senate Bill 1137 was adopted by the 2003 General Assembly and modified § 10.1-1454.1 of the Code of Virginia to exempt from regulation those waste that are “recyclable construction-demolition debris being transported

directly to a processing facility for recycling or reuse.” It also established the current basis for the fees assessed on vessels set out in the regulations.

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 authorizing statutes may be found at:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1454.1>, and
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1402>.

The regulations are not mandated by federal law.

The Office of the Attorney General has confirmed that the Virginia Waste Management Board has the statutory authority to promulgate and adopt these final regulations, Transportation of Solid and Medical Wastes on State Waters, (9 VAC 20-170-10, et seq.), and that they comport with Chapter 14 of Title 10.1 and in particular §§ 10.1-1402(11) and 10.1-1454.1 of the Code of Virginia.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final 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 regulatory action is to adopt regulations for transportation of solid wastes and regulated medical wastes on state waters. The regulations establish a permit-by-rule and permit fee requirement for facilities off-loading solid wastes and regulated medical wastes from a ship, barge or other vessel; and they prescribe specific siting, design/construction, and operational standards for the loading and off-loading facilities. In addition, the regulations establish a financial responsibility requirement for the owners and operators of the vessels. The regulations set out the fee systems authorized by the statute. Therefore, the 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 of the regulatory action's detail.

Specific requirements for containers include a performance standard, testing requirements, manifest system, and stacking restrictions in the loading and off-loading areas. The regulations establish a permits-by-rule requirement, including permit fees, for facilities off-loading solid wastes and regulated medical wastes from a ship, barge or other vessel; and they prescribe specific siting, design/construction, and operational standards for the loading and off-loading facilities. A system of fees is established to be paid by the owners and operators of ships, barges or other vessels transporting waste. The regulations establish a financial responsibility requirement for the owners and operators of the vessels.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 defining waste handling practices for the loading and receiving facilities the regulatory action benefits the citizens and environment of the Commonwealth, and the regulated community. The regulations prescribe specific siting, design/construction, and operational standards for the facilities and they require the owner or operator of each facility 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 must immediately take all necessary actions, in accordance with the approved Plan, to contain and remove the wastes. 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.

The fees required by the regulations help fund department programs directly related to these efforts. In addition, the regulations provide guidance on waste handling practices for the regulated community that should result in a safe and sound environmental practice. Some in the regulated entities may consider new regulations where none previously existed and the imposition of new fees as a disadvantage; however, these provisions are required by statute and the statute delayed operations pending finalization of these regulations.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The definition of “solid waste” was amended to include exemptions to the waste under these regulations as incorporated by Senate Bill 1137 and a new definition, “construction demolition debris waste,” was included to accommodate this amendment. The definition of “receiving facility” was amended to clarify that both loading and off-loading facilities could be receiving facilities.

Section 9 VAC 20-170-30 and 9 VAC 20-170-40 were combined to form new 9 VAC 20-170-30. Sections 9 VAC 20-170-50 through 9 VAC 20-170-70 were renumbered one decade lower. New sections 9 VAC 20-170-70, Design, Operation and Maintenance of Containers was created as new Part II to segregate container standards. Subsequent parts were renumbered and deferred parts were reassigned to new material.

Other changes were made to the section on Design and Construction of the Facilities (9 VAC 20-170-90) and the section on Operation (9 VAC 20-170-100). These changes were concerned with the handling of waste at the facility, the handling of empty containers, and the requirement that any containers used be in compliance with 9 VAC 20-170-70. A requirement was added for the maximum volumetric capacity and empty weight of each container to be listed on the manifest. The section on the Operation and Maintenance Manual (9 VAC 20-170-110) was modified to change the definition of the worst case scenarios for the release of wastes into state waters. Changes were made throughout Part IV and elsewhere as necessary to make clear that the permitting of facilities applied to off-loading facilities and not loading facilities.

Many small changes were made to Part VI and its appendixes for the purpose of correction, conformance between text at other sites in these regulations, conformance with other financial assurance regulations of the board or conformance with the statutes. New parts, Part VII, Compliance Of Vessels Transporting Solid Wastes Or Regulated Medical Wastes With Federal Statutes And Regulations and State Spill Response Requirements (9 VAC 20-170-410, General provisions) and Part VIII, Variance (9 VAC 20-170-420, Petitioning for Variance or Exemption) have been added to provide correlation with federal rules and to establish procedure for petitioning for and receiving variances from the regulations. Other clarification of the relationship of the regulations with federal rules were inserted in other section as necessary.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Public comments received following the publication of the Notice of Intended Regulatory Action (NOIRA) 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 these regulations addresses these concerns.

The proposed regulations were published in the *Virginia Register* on September 11, 2000. The public comment period on the regulations ran from September 11, 2000 until close of business on November 13, 2000. During the written comment period, twelve written comments were received. A public hearing was held on October 18, 2000, at the James City County Government Center. The comments received during this period were primarily concerned with the requirements for containers and the operation of the receiving facility. Changes were made to the section on containers and to the section on the operation of the receiving facility in order to address these comments.

The final regulations were adopted by the Virginia Waste Management Board on December 18, 2000, and published in the *Virginia Register* on January 15, 2001. These regulations were suspended on March 12, 2001, comments from the public were received between March 12 and April 12, 2001, and a public meeting was held on April 10, 2001. The majority of the comments concerned the design and testing standards for containers used to transport waste. Some commenters desired more stringent requirements; others desired less stringent requirements. The board rejected most suggestions as unnecessary or inappropriate. It did substitute a system of testing for the containers (standing water test, visual inspection and other stringent standards) and removed the newer test method (low-pressure air leakage), but it will seek additional public comment on these provisions. The board also declined a suggestion to develop a detailed odor standard and will rely on odor control planning and general performance standards. It also removed the requirement for a pressure relief valve as suggested. The petition which resulted in the 2002 suspension and additional comment period asked that some consideration be given to specific types of solid waste. In this regard, a provision was included to allow the vessel itself to act as the container, under certain circumstances, for construction demolition debris waste.

One commenter requested expanded offset distance between receiving facility and various types of structures. The board did not find justification existed for the increases, the off-sets are similar to those for solid waste management facilities.

Many commenters expressed an opinion on whether Tangier Island should be exempted from any or all of the regulations. Comments for and against the concept were received. The board decided not to exempt the island, but to include a part establishing a procedure to receive a petition for a variance from the regulations in an extraordinary circumstance. Further, the board established a new fee system to collect funds the department can use to increase its efforts to protect the public health and environment, especially with regard to activities encompassed in these regulations.

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 - or crosswalk - of changes implemented by the

proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The following major changes were made, based on the comments received, to these regulations after they were published in the *Virginia Register* on September 11, 2000:

- Restructuring changes were made for clarity. Section 9 VAC 20-170-30 and 9 VAC 20-170-40 were combined to form new 9 VAC 20-170-30. Sections 9 VAC 20-170-50 through 9 VAC 20-170-70 were renumbered one decade lower. New sections 9 VAC 20-170-70, Design, Operation and Maintenance of Containers was created as new Part II to segregate container standards. Subsequent Parts II and III were renumbered as Parts III and IV with deferred parts were reassigned, including new material as Part V., Off-Loading Fees Collected By Receiving Facilities. Two new sections were added as Part VII, Compliance Of Vessels Transporting Solid Wastes Or Regulated Medical Wastes With Federal Statutes And Regulations and State Spill Response Requirements and Part VIII, Variance.
- The definition of "Surface Waters" was changed to read "any water in the Commonwealth, except groundwater, as defined in § 62.1-255 of the Code of Virginia."
- The definition of "Solid waste" was changed to read "means, for purposes of this chapter, any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) materials regulated as hazardous wastes under the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.), (ii) scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables, (iii) solid or dissolved material in domestic sewage, (iv) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (v) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended." This change exempts recyclable construction-demolition debris being transported directly to a processing facility for recycling or reuse from these regulations and reflect a similar change to the statute.
- The definition for "receiving facility" was changed to clarify that they can be either loading or off-loading facilities. This change is necessary to correlate with later requirements that are different for the two types of receiving facilities.
- In 9 VAC 20-170-50 and later in new Part VII, new language makes it clear that U. S. Department of Transportation and U. S. Coast Guard regulations are enforced by those agencies and not by the department. Throughout the regulations, federal regulations are cited as applying to specific situations; however, the department's efforts related to these citations will be limited to informing and assisting the federal agencies and will not be to enforce federal regulations.

- Several minor clarifications and corrections are made in 9 VAC 20-170-100. In 9 VAC 20-170-100.D.1., a change requires that the volumetric capacity and empty weight of each container appear on the manifest. This information will facilitate the assessment of fees collected by the receiving facilities and is available to the owner or leaser of the container who, at the loading facility, prepares the manifest.
- The section on the Operation and Maintenance Manual (9 VAC 20-170-110.3.h) was changed to define the worst case scenario as "1) the instantaneous release of the contents of the maximum number of containers that may be on-site at any given time and 2) the instantaneous release of the contents of the maximum number of waste handling containers that may be on a barge traveling to the facility which is deposited into state waters."
- While all receiving facilities are required to comply with standards for siting, design and operation, those that off-load waste must have a permit and collect fees from barge owners or operators. In addition to minor clarifications and corrections, Part IV has been changed to reflect that it applies to the off-loading facilities. The changes in 9 VAC 20-170-180.F. make continuation of a permit contingent upon payment of all fees.
- Many small changes were made to Part VI and its appendixes for the purpose of correction, conformance between text at two sites in these regulations, conformance with other financial assurance regulations of the board or conformance with the statutes.
- A new part, Part VII, Compliance of Vessels Transporting Solid Wastes or Regulated Medical Wastes with Federal Statutes and Regulations and State Spill Response Requirements (and a new item, 9 VAC 20-170-410) has been added. This new part makes the reader aware that all vessels used to transport solid waste or regulated medical waste on state waters must be in compliance with all applicable requirements of the U.S. Coast Guard, the U.S. Department of Transportation. It also requires vessel owners to report any spillage or loss to state waters of wastes and immediately take actions to contain and remove such wastes from state waters.
- A new part, Part VIII, Variance (and a new item, 9 VAC 20-170-420) establishes a procedure whereby a person may petition and receive relief from any of the regulations if he can support the need for and merits of a variance.
- Throughout the regulations, wherever minor errors were found or a clarification was needed, these changes were included. One global change was made. Wherever the regulations directed that documents be sent to the "director," a change was made to direct submittals to the "department." The change allows for direct submittal of documents to the appropriate element of the department and will help increase the efficiency of department's response..

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

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.