



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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### **9 VAC 20-90 – Solid Waste Management Facility Permit Fees**

#### **Virginia Waste Management Board**

December 17, 2002

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

### **Summary of the Proposed Regulation**

The General Assembly mandates in §10.1-1402 and of the Code of Virginia that the Virginia Waste Management Board promulgate regulations establishing a fee assessment and collection system to recover a portion of the Virginia Waste Management Board's costs associated with the processing of an application to issue, reissue, amend, or modify any permit which the Virginia Waste Management Board has authority to issue.. §10.1-1402.1 of the Code of Virginia requires that fees reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions.

The regulation proposes the following changes: (1) Chapter 822 of the Acts of Assembly for 2002 allowed the maximum individual permit fees to be increased by 300% for all applications received between July 1, 2002 and June 30, 2004, subject to the condition that the fee schedule cover no more than 20% of the direct cost of the solid waste management program (based on allocations made to these programs in the 2002 Appropriation Act). While the Act of

Assembly allows fees to be increased by 300% or quadrupled, the Department of Environmental Quality (DEQ) chose raise fees by 200%, tripling them from their existing level. The proposed regulation is intended to replace the emergency regulation to this effect passed earlier this year and to reflect the new fee schedule in effect between July 1, 2002 and June 30, 2004. (2) Following the expiration of the provisions of the Act of Assembly on June 30, 2004, the regulation proposes to introduce a new fee schedule that will adjust all pre-2002 fees for inflation since 1992, when fees were last updated. (3) New fees are introduced, starting July 1, 2004, for some permit issuances and permit actions that previously required no fees. (4) The costs of advertising permit actions and variances, part of public notification requirements associated with the processing of some types of permits and permit actions, will be transferred from DEQ to the applicant. (5) Permits for facilities falling under the solid and regulated waste management program consist of a number of modules. While some of the modules deal with general requirements for all solid and regulated medical waste facilities, others are specific to the type of facility. The new regulation proposes to introduce two new modules concerning facilities storing and/or treating regulated medical waste and to charge fees for permit actions related to these modules.

The regulation deletes a number of definitions and incorporates them by reference. It also adds clarifying language, removes redundant language, and updates definitions and terms to reflect current practice.

### **Estimated Economic Impact**

(1) In Chapter 822 of the Acts of Assembly for 2002, the general assembly increased the maximum allowable fees for new permits and for modifications to existing permits issued by the Virginia Waste Management Board to non-hazardous solid or regulated medical waste management facilities. The Act of Assembly allowed individual permit fees to be raised up to 300%, subject to the condition that the fees cover no more than 20% of the direct costs of running the program. The new maximum fee schedule is to apply to all relevant permit and certificate applications received between July 1, 2002 and June 30, 2004. Even though the Act of Assembly allowed for a 300% increase in fees, DEQ chose to raise existing fees by 200%. The proposed regulation reflects this change. It triples fees for all existing permits and certificates over the next two years. Despite a tripling of the fees, projected permit fee revenues remain well below the 20% limit.

According to DEQ, the direct costs associated with running the permitting program was a little over \$3.8 million and permit fee revenues were a little under \$400,000 in fiscal year 1999 (permit fee revenues were approximately 10.5% of direct program costs). Moreover, DEQ's budget for the next two years has been cut by approximately \$3 million per year. The higher fees for permits and certificates are intended to make up for the budget cut and cover some of the costs of running the permitting program.

The fee increases will affect all localities, businesses, and individuals seeking to get a non-hazardous solid or regulated medical waste management permit from the Virginia Waste Management Board. At the beginning of the fiscal year, DEQ estimated that the new fees would generate revenues of \$438,600 in fiscal 2003 and \$463,800 in fiscal 2004. However, the fiscal 2003 figure was revised down to \$165,000 due to a lower-than-anticipated volume of permit requests being received. A combination of factors appears to have contributed to the sharp drop in applications since the new fee schedule was put in place. First, these permits, unlike those issued by the State Water Control Board, are issued for the life of the facility and do not have to be renewed every few years. Moreover, modifications to existing permits are not required to be made unless in the event of a regulatory change. Second, the provisions of the 2002 Act of Assembly expire on June 30, 2004 and the new fee schedule being proposed thereafter is significantly lower than the tripled fee schedule. As a result, plans for setting up new facilities and plans to make modifications to existing facilities are likely to be postponed until after June 30, 2004, causing permit applications to drop sharply in the next two years.

The improper operation of facilities that deal with the disposal, treatment, or storage of non-hazardous solid and regulated medical waste could create serious public health and environmental hazards. The aim of the permitting mechanism is to ensure that these activities are conducted in a manner that is protective of both public health and the environment. The cost of a permit can be viewed as the cost incurred by DEQ in ensuring the safe use of an environmental resource. In this case, the cost of the permit is the cost of ensuring the management and disposal of non-hazardous solid wastes in a manner that is protective of the air, water, and soil quality and of public health in Virginia. As mentioned above, current permit fees fall well short of the cost incurred by DEQ in ensuring adequate protection to the environment and mitigating some of the risk posed by the activities of solid or regulated medical waste management facilities. Increasing the fees will transfer some or all of this cost to facilities that are engaged in these activities.

Transferring the cost will have a positive economic impact and result in the more efficient use of resources. With some of the cost being subsidized by taxpayers, localities, businesses, and individuals operating these facilities are not paying costs commensurate with the risk posed to the environment from their activities. This could potentially result in the overuse of environmental resources. For example, the lower costs may result in a larger number of such facilities operating in the state than if permit costs were higher and reflected the cost to DEQ in ensuring that some of the risk to the environment from these activities is mitigated. Permit fees that better reflect these costs will reduce the potential for overuse, leading to the more efficient use of Virginia's resources. On the other hand, raising permit fees could have a negative economic impact by causing some localities, businesses, or individuals to postpone or abandon voluntary new projects and modifications to existing projects that could be beneficial to the Commonwealth. For example, the higher permit costs could discourage some facilities from undertaking modifications (such as upgrading to a safer and more reliable technology) that would benefit the state as a whole.

(2) The proposed regulation also establishes a new fee schedule following the expiration of the provisions of the 2002 Act of Assembly. Fees have not been updated since they were introduced in June 1992. The fee schedule being proposed adjusts the fees established in 1992 to account for inflation in the intervening years. The consumer price index for all urban consumers (CPI-U), issued monthly by the U.S. Bureau of Labor Statistics, is used to update the fees. The CPI-U was 140.2 in June 1992 and 180.7 in August 2002, reflecting the inflation in the intervening decade. The old fees are adjusted for inflation using the following formula:

$$^{180.7}/_{140.2} * \text{old fee}$$

The value so calculated is then rounded up or down to the nearest \$10.

The new fee schedule being proposed is significantly lower than the fee schedule due to expire on June 30, 2004. Under the inflation-adjusted fee schedule, DEQ estimates that permit fee revenues are expected to cover well below 10% of the direct costs of running the program. The new fee schedule will affect all applications for new permits and for modifications (major and minor) to existing permits. In 1999, there were five applications for new permits and 50 applications for amendments to existing permits.

In order to induce the most efficient use of resources, permit fees should reflect the actual cost to DEQ of ensuring that a resource is used in a safe manner. The higher fees are simply transferring part of the cost of safely operating solid and regulated medical waste management facilities from DEQ and hence the taxpayer to the facilities themselves. To the extent the higher fees better reflect the cost to DEQ of ensuring that these activities are conducted in a safe manner, the proposed change will have a positive economic impact and result in the more efficient use of resources. On the other hand, the proposed change could have a negative economic impact by discouraging certain new waste management projects and upgrades to existing projects that might have been beneficial to the state.

(3) Starting July 1, 2004, the proposed regulation introduces new fees for certain categories of permits and permit actions that previously required no fee. Fees will be assessed for the following: (a) In order to obtain an emergency permit, applicants will now need to submit permit fees within 60 days of submitting an application. (b) Owners and operators of facilities applying for a new permit-by-rule or modifications to an existing permit-by-rule will now be charged a fee for the review and confirmation of the permit-by-rule. Facilities are deemed to be permitted-by-rule when they certify to DEQ that they are constructed and operated in accordance with the appropriate and relevant regulations. (c) All requests for variances from an existing permit or regulation will now be assessed a base fee and a supplemental fee based on the type of variance requested. (d) Fees will now be charged for the review of some permit-related documents such as the review of gas management plans that are submitted with an application for a major or minor modification to an existing permit. (e) Fees will also be assessed for permit modifications such as equipment changes on landfills and compost facilities and for changes in the handling of leachates.

According to DEQ, for some categories of permits and permit actions, the new fees were determined based on the average amount of time and resources expended in reviewing and issuing that permit or permit action. For others, DEQ based the new fees on fees charged for other similar permits and permit actions. In fiscal 1999, 14 emergency permits, 19 new permits-by-rule, and 7 amendments to existing permits-by-rule were reviewed and/or issued. In the year-to-date, DEQ has issued approximately 34 variances to the solid waste regulations. The number of applications for other categories of permits and permit actions for which fees are being

introduced is not available. Based on available data and assuming the same number of permit actions being undertaken, the new fees would generate at least \$73,000 per year in revenues.

As discussed in (1) and (2), transferring more of the permitting costs (i.e., cost incurred in managing the permitting program) to facilities managing and disposing solid and regulated medical waste has positive and negative economic consequences. While it would result in efficiency gains in the use of resources, it could also result in some beneficial projects being abandoned or postponed.

(4) The proposed regulation transfers the costs of advertising permit actions and variances to the applicant receiving the permit action or making the variance request. Some categories of permits and permit actions require the publication and broadcast of public notices. Under current policy, DEQ incurs the cost of public notification, but applicants will now be required to bear the cost. DEQ will send notification to the applicant when publication and broadcast are required. The notification will include the text of the notice, acceptable newspapers and radio stations, and the dates of publication and broadcast. DEQ could also arrange for the publication and broadcast of the notice, but the cost of doing so would be charged to the applicant.

According to DEQ, the department published and broadcast 62 public notices relating to solid waste permit actions in 2001. Newspaper advertisements cost between \$36 and \$526 and radio broadcasts cost between \$0 and \$350. Assuming the same number of public notices, the proposed the regulation could save DEQ up to \$54,000 a year.

As discussed in (1), (2), and (3), transferring more of the permitting cost to the solid and regulated medical waste management facilities would result in efficiency gains in the use of resources, but could also result in some beneficial projects being abandoned or postponed. However, given that the proposed change imposes a relatively small additional cost on these facilities, the net economic impact of this change is not likely to be significant.

(5) The regulation proposes to introduce two new modules relating to the permitting of facilities storing and/or treating regulated medical waste. Permits falling under the solid or regulated waste management program consist of a number of modules. Some modules address general requirements for all solid or regulated waste facilities and others address requirements specific to the type of facility. DEQ has developed modules that create specific requirements to

be met by facilities storing and/or treating regulated medical waste. Moreover, the regulation proposes to charge a fee for permits and permit actions related to these modules.

According to DEQ, the fees were determined based on the average amount of time and resources expended in reviewing and issuing the permit or permit action. In determining the fee, DEQ also took into consideration fees charged for other similar permits and permit actions.

The net economic impact of introducing the additional modules will depend on whether the additional cost of compliance introduced by the these modules is greater or less than the additional protection to public health and the environment provided by them. Moreover, as mentioned above, to the extent that the permit fees reflect DEQ's cost of ensuring that these facilities do not create a serious health or environmental hazard, they will result in efficiency gains. However, the additional fees could also reduce the incentive for such facilities to undertake projects that are beneficial to the state.

## **Businesses and Entities Affected**

The proposed regulation will increase costs for all individuals and businesses seeking to get permits or modify existing permits issued by the Virginia Waste Management Board to facilities that treat, dispose, or store non-hazardous solid or regulated medical waste. Fees have tripled for all permits and permit actions issued between July 1, 2002 and June 30, 2004. The fee schedule effective July 1, 2004, adjusts the pre-2002 fees, established in 1992, for inflation. The regulation introduces additional fees to be charged for permits and permit actions that previously did not require a fee. Applicants, rather than DEQ, are now required to bear the costs of publication and broadcast of public notices. The regulation also introduces additional requirements for facilities storing and/or treating regulated medical waste and establishes fees to be paid for permit or permit actions related to these requirements.

## **Localities Particularly Affected**

The proposed regulation will affect all localities in the Commonwealth. Localities that have a large number of projects requiring permits from the Virginia Waste Management Board are likely to be especially affected.

## **Projected Impact on Employment**

The proposed regulation is not expected to have a significant impact on employment.

## **Effects on the Use and Value of Private Property**

The proposed regulation triples the cost of obtaining a solid or regulated waste management permit between July 1, 2002 and June 30, 2004 from the Virginia Waste Management Board. Effective July 1, 2004, the regulation proposes a fee schedule that adjusts pre-2002 fees for inflation since the time they were established in 1992. The regulation also proposes additional fees for certain permits and permit actions that did not previously require a fee and transfers the cost of meeting public notification requirements to businesses applying for the permit. The higher fees are likely to increase the cost of operation for individuals and businesses required to obtain a new or modify an existing permit.