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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC20-81
VAC Chapter title(s)	Solid Waste Management Regulations
Action title	Amendment 9
Date this document prepared	October 18, 2019, amended January 8, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

A periodic review was conducted in 2019 of the Solid Waste Management Regulations and the result of the periodic review was to amend the regulation. Numerous public comments were received concerning the technical requirements of the regulation. As part of this amendment, the comments submitted during the periodic review will be considered for inclusion in the regulation.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

CFR- Code of Federal Regulations

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

A periodic review was conducted in 2019 of the Solid Waste Management Regulations and the result of the periodic review was to amend the regulations. This amendment is being initiated as a result of the periodic review. Additionally, in August 2019, the Office of the Secretary of Natural Resources released a final report to Governor Ralph Northam in response to the Governor’s Executive Order 6 (2018) recommending areas in which this regulation be amended.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Section 10.1-1402 (11) of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate and enforce regulations. Section 10.1-1408.1 of the Code of Virginia requires a permit to be obtained to conduct nonhazardous solid waste disposal, treatment or storage activities. The Virginia Waste Management Board has adopted this regulation under the authority granted by state law.

The corresponding federal authority for the criteria for municipal solid waste landfills is found at 40 CFR Part 257 and 258.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Virginia Solid Waste Management Regulations, 9 VAC 20-81, establish standards and procedures for the siting, design, construction, operation, maintenance, closure, and post-closure care of solid waste facilities in the Commonwealth. It also establishes standards and procedures pertaining to the management of solid wastes. The requirements found in these regulations are protective of human health and the environment.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

As part of this amendment, revisions to the siting, design, and operation requirements of Solid Waste Management Facilities (primarily landfills) and requirements pertaining to the open burning of household trash will be considered.

Minor clarifications or revisions will potentially be made to the regulations in the following areas:

- Financial responsibility requirements
- Public participation
- Groundwater monitoring
- Exemptions and exclusions
- Closure and post closure requirements
- Permitting process
- Recordkeeping requirements

During a recent periodic review the agency received many suggestions for changes to the Virginia Solid Waste Management Regulations pertaining to the siting, design, operation, and monitoring of municipal solid waste landfills, requirements for host agreements, and public notification requirements. Commenters also provided information concerning requirements that are found in other states' regulations and requested similar requirements be placed into Virginia's regulations. Others submitted comments requesting additional regulation of and requirements on landfills larger than a specified size. The comments received during the periodic review comment period will be provided to the Regulatory Advisory Panel members for review and discussion at their meetings for consideration for inclusion in the regulations.

Additional issues that are identified during the NOIRA comment period and the regulatory advisory committee meetings, will be addressed during the development of the proposed regulation.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

One alternative considered was retaining the current regulation. This alternative was rejected. The result of the recent periodic review was to amend the regulation. Public comments were submitted during the periodic review of this regulation suggesting technical changes to the regulation to be more protective of human health and the environment. The agency believes the technical changes to the regulations identified in the comments should be further discussed and overall that potential revisions to the regulations should be evaluated.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

This NOIRA is not being used to announce a periodic review or a small business impact review.

Anyone wishing to submit written comments may do so by mail, email or fax to : Melissa Porterfield, Office of Regulatory Affairs, PO Box 1105, Richmond, Virginia 23218, phone 804-698-4238, fax 804-698-4178 and Melissa.Porterfield@deg.virginia.gov. Comments may also be submitted through the Public Forum feature of the [Virginia Regulatory Town Hall website](http://www.townhall.virginia.gov) (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before midnight on the last day of the public comment period.

Public Hearing at Proposed Stage

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Regulatory Advisory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The Board is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by March 17, 2021, and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.