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Exempt Action: Final Regulation 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 (primary)
Action title	Amendment in response to Chapter 503 of the 2023 Virginia Acts of Assembly and Citation Update
Final agency action date	September 6, 2023
Date this document prepared	July 26, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This final exempt regulatory action is necessary to implement Chapter 503 of the 2023 Acts of Assembly (SB 1050). Chapter 503 of the 2023 Acts of Assembly requires the owner or operator of a proposed coal ash landfill in Planning District 8, if the facility boundary is located within one mile of an existing residential area that is not served by municipal water supply, to offer to provide, at its expense, municipal water supply service for such residential areas and any requested service connections for residential properties in existence at the time of permit application. Chapter 503 of the 2023 Acts of Assembly also dictates that DEQ cannot approve the landfill permit application if the owner or operator does not provide written offers and coordinate with the municipal water authority. This action will add a definition for Planning District 8 and amend Section 460 of the Solid Waste Management Regulations (9VAC20-81 et seq.) to

include these new statutory requirements as part of the permit application process for such proposed landfills.

Additionally, Amendment 3 to the Regulated Medical Waste (RMW) Management Regulations, effective March 15, 2023, recodified those regulations from Chapter 120 to Chapter 121. This regulatory action also makes appropriate citation changes within the Solid Waste Management Regulations.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia) and include corrections of technical errors (§ 2.2-4006(A)(3) of the Code of Virginia).

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, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."

SB 1050 was passed during the 2023 Session of the General Assembly. The bill prohibits DEQ from approving a solid waste permit application for a new coal ash landfill in Planning District 8 if the facility boundary is located within one mile of an existing residential area that is not served by municipal water supply, unless the owner or operator has offered to provide, at its expense, municipal water supply and residential connections. The Governor signed the bill into law on March 24, 2023 (SB1050 – Chapter 503 of the 2023 Acts of Assembly) and these changes became effective July 1, 2023. This regulatory action is required to conform the existing regulation to changes in the Code.

Additionally, Amendment 3 to the Regulated Medical Waste Management Regulations, effective March 15, 2023, recodified those regulations from Chapter 120 to Chapter 121. This regulatory action also makes appropriate citation changes within the Solid Waste Management Regulations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

- Board – Virginia Waste Management Board
- CCR – Coal Combustion Residuals
- CFR – Code of Federal Regulations
- FR – Federal Register
- RMW – Regulated Medical Waste
- VAC – Virginia Administrative Code
- VSWMR – Virginia Solid Waste Management Regulations

Statement of Final Agency Action

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.

The Virginia Waste Management Board adopted the amendments at its meeting on September 6, 2023.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006(A)(3) as they are changes in form, style, and technical corrections and are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a)) to conform to Virginia statutory law.

Legal Basis

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

The statutory authority for these regulations is under § 10.1-1402 of the Code of Virginia and the new criteria applicable to siting a coal combustion residual landfill in Planning District 8 is mandated by § 10.1-1402.05 of the Code of Virginia.

Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act [2.2-4006(A)(3) and 2.2-4006(A)(4)(a)].

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this regulatory action is to amend the VSWMR to incorporate changes mandated by the 2023 General Assembly under Chapter 503 of the 2023 Acts of Assembly.

Additionally, this regulatory action includes corrections to the VSWMR to correct citations referencing the RMW Regulations which were recodified from Chapter 120 to Chapter 121 effective March 15, 2023.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This regulatory action will add a definition and amend Section 460 of the Virginia Solid Waste Management Regulations to comport with Chapter 503 of the 2023 Acts of Assembly by adding requirements under § 10.1-1402.05 of the Code of Virginia to the solid waste permit application process. The action requires the owner or operator of a proposed coal ash landfill in Planning District 8, if the facility boundary is located within one mile of an existing residential area that is not served by municipal water supply, to offer to provide, at its expense, municipal water supply service for such residential areas and any requested service connections for residential properties in existence at the time of permit application. Chapter 503 of the 2023 Acts of Assembly also dictates that DEQ cannot approve the landfill permit application if the owner or operator does not provide written offers and coordinate with the municipal water authority.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

Implementation of Chapter 503 of the 2023 Acts of Assembly may provide advantages to residents within one mile of any proposed facility boundary of a new coal combustion residuals landfill within Planning District 8 that is not currently served by municipal water supply. The statute requires that the owner or operator of such a proposed facility must offer to provide, at its expense, municipal water service and connections for residential properties in existence at the time of permit application.

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory changes to correct regulatory citations associated with the recodification of the RMW regulations.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

In 2015 EPA promulgated a new rule titled, "Disposal of Coal Combustion Residuals From Electric Utilities" establishing, for the first time, national requirements for the location, design, operation, monitoring, and closure of coal combustion residuals (CCR) landfills and surface impoundments (80 FR 21302). The rule has been subsequently amended and currently includes location criteria for new CCR landfills, requiring that they "must be constructed with a base that is located no less than 1.52 meters (five feet) above the upper limit of the uppermost aquifer" (40 CFR 257.60(a)). Additionally, the rule requires routine groundwater monitoring of the uppermost aquifer and initiation of corrective action(s) if concentrations of constituents are found above established groundwater protection standards (set at drinking water maximum contaminant levels (MCLs), facility background concentration, or approved alternate risk-based standard) within the groundwater monitoring network (40 CFR 257.90 through 257.98).

The 2015 federal CCR rule and 2016 amendment were previously incorporated by reference into Virginia's Solid Waste Management Regulations to address solid waste permitting of CCR landfills and CCR surface impoundments as defined by the rule. This final exempt regulatory action is necessary to conform to changes in Virginia statutory law. Thus, in addition to the federal requirements outlined above, the owner or operator of a proposed CCR landfill in Planning District 8, if the facility boundary is located within one mile of an existing residential area that is not served by municipal water supply, is required to offer to provide, at its expense, municipal water supply service for such residential areas and any requested service connections for residential properties in existence at the time of permit application. The law states that DEQ cannot approve a landfill permit application for such a CCR landfill if the owner or operator does not provide written offers and coordinate with the municipal water authority regarding connections to the municipal water supply. These requirements are in addition to the above federal requirements and being incorporated into the solid waste permit process with this regulatory action.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

There are no other state agencies particularly affected by this regulatory amendment.

Localities Particularly Affected:

Chapter 503 of the 2023 Acts of Assembly only impacts Planning District 8 which consists of the Counties of Arlington, Fairfax, Loudoun, and Prince William; Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and Town of Dumfries, Herndon, Leesburg, and Vienna.

Other Entities Particularly Affected:

Chapter 503 of the 2023 Acts of Assembly only impacts the owner or operator of a proposed new coal combustion residuals landfill within Planning District 8.

Details of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC20-81-10	N/A	Definitions	Add a definition for Planning District 8 to correspond with new requirement incorporating Chapter 503 of the 2023 Acts of Assembly: <i>"Planning district 8" means the contiguous area within the boundaries of region 8 established by the Department of Housing and Community Development pursuant to the Regional Cooperation Act (Code of Virginia, Title 15.2, Chapter 42).</i> Update reference to the Regulated Medical Waste Management Regulations from 9VAC20-120 to 9VAC20-121
9VAC20-81-90	N/A	Relationship with other regulations promulgated by the Virginia Waste Management Board	Update reference to the Regulated Medical Waste Management Regulations from 9VAC20-120 to 9VAC20-121
9VAC20-81-140	N/A	Operation requirements	Update reference to the Regulated Medical Waste Management Regulations from 9VAC20-120 to 9VAC20-121

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC20-81-460	9VAC20-81-460.M.	N/A (NEW)	Add new requirement incorporating Chapter 503 of the 2023 Acts of Assembly: <i>M. For new CCR landfills to be located in Planning District 8, a map identifying existing residential area and properties located within one mile of the facility boundary that are not served by municipal water supply and copies of documentation to satisfy the conditions of § 10.1- 1402.05.</i>

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This is an amendment to conform to new statutory requirements and correct regulatory citations only. There are no alternative regulatory methods for incorporating the mandated amendments adopted by the General Assembly.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential 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.

There is no impact on the institution of the family or family stability.