



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Virginia Department of Environmental Quality
VAC Chapter Number:	9 VAC 20-80-10 <i>et seq.</i>
Regulation Title:	Virginia Solid Waste Management Regulations
Action Title:	Amendment 3
Date:	08/08/2000

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose*

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

SUMMARY OF AMENDMENT 3 TO THE
VIRGINIA SOLID WASTE MANAGEMENT REGULATIONS

The Virginia Solid Waste Management Regulations are designed to provide clear and appropriate standards for the management of non-hazardous solid waste, to prevent open dumping and to prescribe substantive and procedural requirements for the issuance of permits. The Virginia Solid Waste Management Regulations were first adopted in December 1988 as a complete revision of the 1971 regulations that governed disposal of solid wastes in the Commonwealth prior to that time. Responding to the promulgation of federal RCRA Subtitle D regulations in October 1991, the Virginia Waste Management Board amended the regulations in March 1993 to reflect the federal requirements contained in Part 258, Title 40, Code of Federal Regulations. As a result of a regulatory review conducted by the department, and in response to the petition for rulemaking submitted by the Municipal Landfill Group, an organization of about 40 municipalities, Amendment 2 was proposed to clarify and streamline the regulations and to take into account experience gained by the department since the inception of the modern program. Amendment 2

is repropoed and released for public comment with final adoption of the amendment anticipated in early 2001.

During the recent sessions of the General Assembly, numerous new laws were passed addressing the regulation of solid waste. This amendment is intended to incorporate and address statutory changes enacted by the General Assembly since Amendment 2 of the Virginia Solid Waste Management Regulations. These remaining statutes to be addressed in the regulations include at least the following:

- 1) The disposal capacity guarantee as required by 10.1-1408.1.B.6.
- 2) Host community agreements as required by 10.1-1408.1.B.7.
- 3) Reporting requirements for locally owned facilities as required by 10.1-1408.1.B.8.
- 4) director's determinations as required by 10.1-1408.1.D.1 and 2.
- 5) Permit condition for capacity guarantee as required by 10.1-1408.1.P.

In addition the regulation will be updated to correct any errors or omissions resulting from previous amendments and any outdated material.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

40 CFR Part 258 provides the federal authority for the criteria for municipal solid waste landfills. The web site address for Part 258 is:

<http://www.epa.gov/epahome/rules.html#codified>

The presently proposed amendment deals with the portions of the regulations that are not affected by the federal requirements and that are not subject to the federal program approval. Therefore, the state regulations are no more restrictive than the federal regulations.

The Virginia Waste Management Act authorizes the Waste Management Board to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties. Article 2 of the Act prohibits the ownership or operation of an open dump, which is defined in §10.1-1400 to be any:

?...site on which solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to create a nuisance or present a threat of a release of harmful substances into environment or present a hazard to human health.”

The Act further prohibits any person from operating a facility for the disposal, treatment, or storage of non-hazardous solid waste without a permit from the director of the Department of Environmental Quality (§10.1-1408.1 A). The Act requires the permit to contain such conditions or requirements that would prevent a substantial present or potential danger to human health and the environment (§10.1-1408.1 E). Virginia code §10.1-1402(1), and (11) state:

“The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth. “

...”11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable. “

The Virginia Waste Management Act is codified as chapter 14 sections 10.1-1400 through 10.1-1457 of the 1950 Code of Virginia, as amended. The web site address for the full text is:

<http://leg1.state.va.us/000/cod/code9935.htm#109135>

Need*

Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied

The disposal capacity guarantee as well as the permit condition for the disposal capacity guarantee will ensure that localities can contract for disposal space at new, or expanding municipal solid waste landfills in order that they may comply with the solid waste management plan for the locality.

Host community agreements ensure that municipalities (including the 2000 General Assembly addition for public service authorities) hosting new or expanding municipal solid waste landfills have agreements, which are required to contain detailed provisions providing terms and

conditions for the operation of the landfill. For locally owned facilities new provisions will ensure specific operational details will be addressed.

The director's determination provides for the evaluation and determination of a number of explicit safety related provisions. The proposal must protect human health, safety and the environment; there must be a need for any additional capacity; there must be sufficient infrastructure to safely handle the waste flow; that any increase is consistent with any state or local disposal limits; that the public interest must be served. The requirements of the director's determination provide specific areas where the director must determine if health and safety issues have been adequately addressed.

The above items will provide for the proper operation of landfills and for the safe disposal of waste from the localities. The modification of the regulations is needed to further protect the health and safety of the residents of Virginia.

Substance*

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.

Amendment 2 addressed some of the 1999 and 2000 legislation including the provisions for municipal solid waste landfill siting required under Virginia Code §10.1-1408.4, and the provisions for post closure monitoring and maintenance required by Virginia Code §10.1-1410.2. In addition, Appendix 2.1 of the regulation was updated to reflect the updated language of Virginia Code §10.1-1455, which sets out penalties. Amendment 3 will address remaining legislation from 1999 and 2000 as well as any additional legislation that can be reasonably incorporated from any future legislative sessions that occur during the regulatory development process. In addition, Amendment 3 will incorporate any corrections or clarifications of the regulations that the department finds necessary or are brought forward during the public comment period.

At least the following sections of the Code of Virginia will require modifications to the regulations as follows:

§10.1-1408.1.B.6

Summary of the code section:

Adds a new subsection requiring applicants for a new or expanding municipal solid waste landfill to guarantee that sufficient disposal capacity will be available for localities in the Commonwealth to comply with their solid waste management plans. The applicant must certify that localities will be able to contract for and reserve disposal capacity in the landfill. The subsection exempts locally owned landfills from these provisions. (HB2557/SB1309/SB865)

Implementation:

The department has developed guidance dated July 23, 1999 to address the provisions of this section. This guidance will be used as the starting point for the modification of the regulation.

Modification to the regulations:

The regulation will need to outline the content of the capacity guarantee certification, and administrative procedures for submission of the certification during the permitting process.

§10.1-1408.1.B.7

Summary of the code section:

Adds a new subsection requiring applicants for new or expanding municipal solid waste landfill to provide certification from the host community that an agreement has been reached addressing financial compensation to the locality, daily travel routes and traffic volumes, daily disposal limits, and the anticipated service area of the facility.

In addition, the new subsection states that when requested by the host community, the applicant shall pay the full cost of at least one full-time employee to monitor and inspect waste transportation and disposal practices. Also, when requested by the host locality, the applicant shall split air and water samples with the permit applicant and the applicant shall pay the costs associated with the testing. (HB2557/SB1309/SB865)

Year 2000 legislation (HB959) recognizes public service authorities as municipalities for the purposes of this code section.

Implementation:

The department has developed guidance dated July 23, 1999 to address the provisions of this section. This guidance will be used as the starting point of the modification to the regulations.

Modification to the regulations:

The regulation will need to outline the content of the host community certification, and the administrative procedures for submission of the certification during the permitting process. In addition, the regulation will recognize public service authorities as municipalities for the purpose the host community agreement.

§ 10.1-1408.1.B.8

Summary of the code section:

Adds a new subsection providing that if an applicant is a locally owned and operated landfill, rather than meeting the provisions above, the application must include information on the anticipated daily travel routes and traffic volumes, daily disposal limit and service area of the facility. (HB2557/SB1309/SB865)

Implementation:

The department has developed guidance dated July 23, 1999 to address the provisions of this section. This guidance will be used as the starting point of the modification to the regulations.

Modification to the regulations:

The regulation will need to outline the format of, and administrative procedures for, submission of the travel route, traffic volume, daily disposal limit and service area information during the permitting process.

§10.1-1408.1.D.1 & 2**Summary of the code section:**

Updates the existing section to require the director, prior to approving a permit for new or expanded solid waste management facility, to make a series of determinations. The director must determine the following: that the proposed expansion protects human health, safety and the environment; that there is a need for the additional capacity; there is sufficient infrastructure to safely handle the waste flow; that the increase is consistent with any state or local disposal limits; that the public interest will be served by the permit; and that the additional capacity is consistent with local solid waste management plans. These provisions must also be considered when the director evaluates requests for increases in the facility capacity

Also this updates the section to require the director, when evaluating an application for non-hazardous industrial waste facilities that accept only waste generated by the owner of the facility, to determine that the proposed facility poses no substantial danger to human health or the environment. (The updated provisions for industrial facilities are consistent with current requirements for all facilities). (HB2557/ SB1309/SB865 and HB2555/SB 1201)

Implementation:

The department has developed guidance dated July 23, 1999 to address the provisions of this section. This guidance will provide the starting point for the modification to the regulation.

Modification to the regulations:

The regulation will need to outline the information required for the director to conduct the required investigation and make the required determination. In addition, administrative procedures will be provided for the submissions to be made by the applicant and procedures for the director to make the required determination during the permitting process.

§10.1-1408.1.P**Summary of the code section:**

Adds a new section requiring permits for new or expanding municipal solid waste landfills to include provisions guaranteeing capacity to localities that choose to contract with the facility. (HB 2557/ SB1309/SB865)

Implementation:

The department has developed guidance dated July 23, 1999 to address the provisions of this section. This guidance will be used as the starting point for the modification of the regulation.

Modification to the regulation:

The regulation will need to outline the language to be included in the permit guaranteeing capacity to localities.

§10.1-1408.4

Summary of the code section:

Adds a new section requiring the director, prior to granting a permit approving site suitability for a new municipal solid waste landfill, to determine in writing that a proposed site is suitable. The director must consider: (i) a site-specific report prepared by VDOT addressing the adequacy of transportation infrastructure and the impact on local traffic and safety; (ii) the potential impact on parks and recreational areas, public water supplies, marine resources, wetlands, historic sites, fish & wildlife, water quality and tourism, and; (iii) the geologic suitability of the site. Applicants are to provide information to assist the director in making this determination.

In addition, this adds requirements prohibiting the construction of a new municipal solid waste landfill: (1) in a 100-year flood plain; (2) in a tidal or nontidal wetland contiguous to a surface water body; (3) within five miles upgradient of any existing public water supply intake or reservoir; (4) in an area vulnerable to flooding because of dam failure; (5) over a sinkhole or less than 100 ft above a solution cavern; (6) in any park or recreational area, wildlife management area, or area designated as the critical habitat or any endangered species; or (7) over an active fault. (HB2557/SB1309/SB865)

Implementation:

The department has developed guidance dated July 23, 1999 to address the provisions of this section. This guidance will be the starting point for the modification of the regulation.

Modification to the regulation:

The regulation will need to address the language of the director's determination of site suitability. Other provisions of this section were added to the regulations in Amendment 2.

Alternatives*

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action, and the reasoning by which the agency has rejected any of the alternatives considered.

During the development of the regulation the department will consider less burdensome and less intrusive alternatives. If, during technical advisory committee (TAC) meetings or public participation, alternatives are offered or discussed, the less burdensome and less obtrusive alternative will be used that still achieves the need of the regulation. If the less burdensome or less intrusive alternative is not chosen, the department will justify the selected alternative.

The goals of these regulations are:

To protect the public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

To establish standards and procedures pertaining to the siting, design, construction, operation, maintenance, closure, post-closure care, and for undertaking corrective action, in order to protect the public's health, safety and welfare and the environment from harmful results of the mismanagement of solid wastes by its generators, as well as those that store, treat or dispose of solid waste.

The department will develop the regulation to meet both stated goals.

Public Participation*

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.

The department is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered written comments must include the name address and phone number of the commenter and must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach*

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The department is using the participatory approach to develop a proposal.

Family Impact Statement

Please provide a preliminary analysis of 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.

The regulations protect the public's health, safety and welfare and the environment from harmful results of the mismanagement of solid wastes. However, Amendment 3 of the Virginia Solid Waste Management Regulations has no direct impact on the institution of the family.