



Proposed Regulation Agency Background Document

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| Agency name | Virginia Board for Waste Management Facility Operators |
| Virginia Administrative Code (VAC) citation | 18 VAC 155 -20 |
| Regulation title | Waste Management Facility Operator Regulations |
| Action title | Amending |
| Document preparation date | September 10, 2003 |

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed amendments to the Board's May 1, 2000 regulations will implement the following substantive changes:

1. Clarify that a waste management facility for which the Board has not established training and licensure requirements may be operated by an individual holding a Class I Waste Management Facility Operator license.
2. Require that applicants using experience to substitute for high school graduation must have obtained that experience during the seven years immediately preceding their application.
3. Require license applicants to document at least one year of experience with a waste management facility in order to qualify for a license in any class.

4. Repeal language requiring facility specific training to have been completed after January 1, 1989 in order to qualify for a license.
5. Require those applying to renew their license to state that they are in compliance with all facility specific operator training and examination requirements of federal and Virginia laws and regulations, and of the facility operating permit.
6. Repeal language concerning the first renewal after May 1, 2000, which assigned a single expiration date to all classes of license held by a single individual.
7. Amend the training course curriculum section to be more reflective of current technology and training needs.
8. Amend the “grounds for denial of application, denial of renewal or discipline” section make renewing a license through fraudulent means or misrepresentation a ground for license denial and disciplinary action.
9. Amend the “grounds for denial of application, denial of renewal or discipline” section to cite the provisions of Section 54.1-204 of the Code of Virginia pertinent to applicants with criminal conviction records.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-2211 of the Code of Virginia (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2211>) mandates that the Board promulgate regulations and standards for the training and licensing of waste management facility operators, and that the Board consider an applicant’s prior experience in determining whether the applicant meets the training requirements established by regulation. Discretion is allowed only to the extent that the Board may establish classes of training and licensing based upon the type of facility to be operated and may vary the training and licensing requirements for each facility class.

The proposed amendments change a number of training and licensing requirements and implement a new experience requirement in response to the Board’s legislative mandate to promulgate training and licensing standards.

The imperative form of the verb “shall” is used in the statute making the rulemaking provisions mandatory rather than discretionary.

By memorandum dated September 9, 2003, the Office of the Attorney General stated that the proposed regulations do not conflict with the laws of the Commonwealth of Virginia and the United States, and that the Board has the authority to promulgate the proposed regulations under Section 54.1-2211 of the Code of Virginia.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The subject matter of the planned regulation amendments is to continue to establish procedures and requirements for the licensure of individuals to operate waste management facilities in Virginia.

The intent of the planned regulation amendments is to assure the existence of an infrastructure of trained and qualified individuals to operate waste management facilities in compliance with both federal and state regulations that have the protection of Virginia's environment as their goal. All citizens benefit from properly operated waste management facilities that assure that the quality of our environment is protected and enhanced.

The amended regulations will continue the current regulatory program that establishes licensure requirements focused on approving only those applicants that clearly meet the minimum competency standards necessary to protect the public. This is accomplished by requiring facility specific training and experience as well as an examination. The training curriculum places emphasis on those aspects of facility operation that most directly affect the public and the environment. This includes familiarization with applicable federal and state regulations governing the approval and operation of facilities.

All waste management facilities must be approved for operation by the Department of Environmental Quality (DEQ) and, once approved, must operate under regulations promulgated by the boards under DEQ. All such facilities must be operated by an individual that has been issued a license by the Board. Licensed operators may be and have been disciplined by the Board for failing to operate their facilities in compliance with the various DEQ regulations. The training and examination provisions and the amendments thereto proposed by the Board will continue to assure that facilities are properly operated and that disciplinary action may be taken against those that fail to assure proper operation.

The proposed regulations are mandated by statute, and are essential to protect the health, safety and welfare of citizens and for the efficient and economical performance of an important governmental function.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The following is a summary of the proposed amendments to the Board's May 1, 2000 regulations:

Section 18 VAC 155-20-110 is being amended to anticipate the future development and implementation of new waste management technologies that are not included in the current facility classification scheme.

Section 18 VAC 155-20-120 is being amended to require that applicants using experience to substitute for high school graduation must have obtained that experience during the seven years immediately preceding their application.

Section 18 VAC 155-20-120 is being amended to add a new subdivision 4 that requires all applicants for licensure as a waste management facility operator to document at least one year of experience with a waste management facility in order to qualify for a license. Subsequent subdivisions are renumbered.

Section 18 VAC 155-20-120 is being amended to repeal the current subdivision 6 stating that the Board will accept facility specific training provided that it has been approved by the Board or was completed after January 1, 1989.

Section 18 VAC 155-20-160 A is being amended to require those renewing their license to make a statement that they are in compliance with all facility specific operator training and examination requirements of federal and Virginia laws and regulations and of the facility operating permits.

Section 18 VAC 155-20-160 is being amended to repeal the current subsection B establishing the manner in which license classifications are indicated on the license beginning on May 1, 2000. Subsequent subsections are renumbered.

Section 18 VAC 155-20-220 is being amended as follows:

Subdivision B 12 is amended to add the names of the State Water Control Board and the State Air Pollution Control Board to the agencies whose regulations must be covered in the basic training course.

Subdivision B 13 is being amended to include instruction in the identification of unauthorized wastes in the basic training course. Subsequent subdivisions are renumbered.

Subdivision B 17 h is being amended to include instruction concerning composting facilities in the basic training course. Subsequent subdivisions are renumbered.

Subdivision C 3 is being amended to change the catch line from “solid waste disposal standards” to “sanitary landfills.”

Subdivision C 3 a, “general standards for sanitary landfills,” is being repealed and the subsequent subdivisions renumbered.

Subdivisions C 3 e, f and j are being moved to subdivision C 8 as a, b and c with rephrasing. Subsequent subdivisions are renumbered.

Subdivision C 7 g is being amended to add “and landfill gas recovery systems.”

Subdivision C 3 g is being added to include instruction covering large landfill air operating permits.

Subdivision C 7 is being amended to add subdivisions a, b and c to specify that instruction must include information concerning solid waste, air, Virginia Pollution Discharge Elimination System (VPDES) permits, and related water and wastewater permits.

Subdivision D 2 is being amended to move subdivisions b and e to a new subdivision 8 concerning financial assurance documentation. Current subdivision b is being rephrased from “financial assurance requirements” to “financial assurance documentation” and made subdivision 8. Current subdivision e is rephrased from “closure requirements” to “closure regulations” and made subdivision 8 a. “Corrective action” is added to subdivision 8 as a new requirement.

Subdivision D 5 is being amended to include instruction in “facility air operating permits” as subdivision d. Current subdivision d is renumbered as subdivision e.

Subdivision D 7 is a new subdivision to include instruction in “medical waste combustor regulations.”

Subdivisions E 9, 10, 11, 12 and 13 are added to include instruction in:

- Virginia pressure vessel regulation
- Air pollution control regulations for waste combustors
- Facility air operating permits
- Plant operations, including thermal fluids theory and boiler plant operations
- Financial assurance documentation, including closure regulations and corrective actions

Section 18 VAC 155-20-280 A 1 is amended for clarity.

Section 18 VAC 155-20-280 A 2 is amended to make clear that disciplinary action is authorized for fraud or misrepresentation in license renewal as well as initial application.

Section 18 VAC 155-20-280 A 4 is amended to add a reference to Section 54.1-204 of the Code of Virginia, which establishes the Board authority to deny licensure to applicants with criminal records.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The amendment to 18 VAC 155-20-110 by adding subsection C will benefit the public and the Commonwealth by placing all new technology waste treatment that does not fall into one of the four existing classes into Class I. Currently an emerging technology could be of such a nature that it would fall into NONE of the existing classifications. As proposed, that problem will be addressed by assigning all such new technologies to Class I. The innovators of the new technology will avoid delays in implementation while the Board develops regulation revisions to accommodate their innovation. The public and the Commonwealth will benefit by the oversight provided by a Class I operator, who has a basic level of knowledge and is capable of assuring environmental compliance as the new technology is implemented. New regulations promulgated to deal with the new technology will be implemented in a manner that allows adequate opportunity for compliance by the operators of the new technology. No disadvantages to the public or the Commonwealth have been identified.

The amendment to 18 VAC 155-20-120 by adding language to subdivision 3 of subsection B will benefit the public and the Commonwealth by providing that applicants using experience to substitute for high school graduation must have obtained that experience during the seven years immediately preceding their application. Experience more than seven years old would not have been obtained in the current regulatory and facility operation environment and is not viewed by the Board to be of sufficient value to substitute for the education requirement. No disadvantage to the public or the Commonwealth has been identified.

The amendment to 18 VAC 155-20-120 by adding new language as subdivision 4 will benefit the public and the Commonwealth by providing a year of employment experience at a waste management facility as an entry requirement for license applicants. Currently one may qualify for a license to be the operator in charge of a waste management facility by completing training and passing an examination. Absent the experience requirement, an operator may have no practical exposure to or knowledge of the operation of a waste management facility and may allow environmental hazards to occur. The hazards could occur, not as a result of the operator's inadequate knowledge of the requirements, but as a result of his inadequate practical experience.

He may allow something to occur simply because he does not recognize the hazard or lacks the practical experience to know what to look for to avoid hazards. The Board views the public to be at hazard and views the year of employment at a waste management facility to be a provision that will address the hazard. No disadvantages to the public or the Commonwealth have been identified.

The repeal of the existing subdivision B 6 of 18 VAC 155-20-120 and of the existing subsection B of 18 VAC 155-20-160 are housekeeping in nature. Both represent provisions necessary to implement then new requirements. The requirements are in place and the existing language has no practical force or effect. The repeal will benefit the public and the Commonwealth by removing obsolete language. No disadvantage to the public or to the Commonwealth has been identified.

The amendment to subsection A of 18 VAC 155-20-160 requires those renewing their license to make an affirmative statement that they are in compliance with the training and examination requirements of law and regulation and of the facility operating permit. Some facilities have requirements for post-licensure operator training and examination. The advantage to the public and to the Commonwealth is that those who fail to comply and make a false statement when renewing their license are subject to discipline by the Board. No disadvantage to the public or to the Commonwealth has been identified.

The amendments to 18 VAC 155-20-220 update and clarify the training required for each class of licensure. The public and the Commonwealth benefit through licensed operators that have met clearly articulated relevant training standards. No disadvantage to the public or to the Commonwealth has been identified.

The amendments to 18 VAC 155-20-280 clarify the Board’s disciplinary authority. The public and the Commonwealth benefit from the Board’s ability to discipline those that endanger the public or the environment by failing to comply with the regulations. No disadvantage to the public or to the Commonwealth has been identified.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures | (a) Fund source – NGF Fund detail – 0900 (b) No one-time or ongoing costs are associated with the proposed regulation amendments. |
| Projected cost of the regulation on localities | None anticipated. |
| Description of the individuals, businesses or other entities likely to be affected by the regulation | Individuals licensed as waste management facility operators. |
| Agency’s best estimate of the number of such | The Department currently regulates approximately |

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| entities that will be affected | 1,100 waste management facility operators. |
| Projected cost of the regulation for affected individuals, businesses, or other entities | No additional costs to regulants will result from these changes. |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Board originally considered an amendment that would create a new license class for those operating municipal solid waste (MSW) composting facilities as well as an amendment that would move the operation of MSW composting facilities from Class II to Class I. Both alternatives were rejected in favor of continuing the current classification system. The Board concluded that Class II training was necessary to assure the competent operation of MSW composting facilities and, thereby, the protection of the public and the environment.

The Board considered amending the regulations to require employment at a waste management facility as an entry requirement only for specific classes of licensure and whether a year of such employment was minimally sufficient to protect the public. The Board concluded that one year was sufficient but not excessive to assure the necessary level of practical exposure to waste management facility operations to assure the classroom training is applied in a manner that will protect the public.

The Board considered requiring those renewing their license to document their compliance with any post-licensure training or examination requirements through formal written documentation. Given the oversight of waste management facilities by the Virginia Department of Environmental Quality, the Board concluded that an affirmative statement of compliance as a part of license renewal was sufficient to assure the public's protection.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

| Commenter | Comment | Agency response |
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| Katharine M. Webb, Virginia Hospital and Healthcare Association | Eliminate the Board for Waste Management Facility Operators and transfer its regulatory functions to the boards administered by the Department of Environmental Quality (DEQ). | The Board has no statutory authority to transfer the regulation of waste management facility operators to DEQ. An act of the Virginia General Assembly would be necessary. |
| Bob Kerlinger of the Mid-Atlantic Composting Association | The requirement that those operating a municipal solid waste (MSW) composting facility meet the same training and examination standards as those operating a municipal landfill should be amended. The | The Board asked Mr. Kerlinger, Mr. Davis and Mr. Dieter for additional information concerning the approach that it might take to address their concern while continuing to protect the public and the environment. |

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| | amendments should reflect criteria appropriate for the operation of a composting facility. | |
| W. T. Tommy Davis of the Virginia Department of Corrections | Same as Mr. Kerlinger | Same as Mr. Kerlinger |
| Michael Dieter of DEQ | Same as Mr. Kerlinger | Same as Mr. Kerlinger |

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

No impact has been identified.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
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| None | 18 VAC 155-20-110 C | Silent | Assigns emerging technology facilities to Class I until the Board can appropriately amend its regulations to deal with the new technology. Assigning to Class I assures oversight by an operator with a basic level of knowledge until such time as the Board's regulations may be properly amended. |
| 18 VAC 155-20-120 B 3 | Existing section number is unchanged | No limit as to the time frame in which the experience must have been obtained. | Requires experience to have been obtained within the past seven years. Experience more than seven years old would not have been obtained in the current regulation and facility operation environment and is not of |

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| | | | sufficient value to substitute for the education requirement. |
| None | 18 VAC 155-20-120 B 4 | Silent, this is a new provision. | Provide a year of employment experience as an entry standard for all license applicants. Absent this requirement, a regulant may be in responsible charge of a facility with only classroom instruction. The year of actual experience at a facility will provide the practical exposure to waste operations necessary to allow implementation of the classroom training. |
| 18 VAC 155-20-120 B 6 | None, subpart 6 is repealed. | Recognizes training not approved by the Board that was completed after January 1, 1989. | Repeal has the effect of recognizing only training approved by the Board as qualifying for licensure. The provision was necessary to implement the initial regulations, should have been repealed earlier, and is outdated as Board-approved training is readily available. |
| 18 VAC 155-20-160 A | Existing section number is unchanged | Silent | Provides for an affirmative statement of compliance with any post-licensure training and examination requirements of law, regulation or facility operating permit. Those found failing to comply are subject to disciplinary action by the Board. |
| 18 VAC 155-20-160 B | None, subsection B is repealed | Implements new provisions of the May 1, 2000 regulations creating a single license showing all classes the regulant is qualified to operate. | Repealed as the new license program is fully implemented. |
| 18 VAC 155-20-220 B 12 | Existing section number is unchanged | Referenced the Virginia Waste Management Board. | Adds the State Water Control Board and the Virginia State Air Pollution Control Board to the agencies whose regulations must be addressed in the basic training class. The regulations of all three agencies are pertinent to the operation of waste management facilities. |
| None | 18 VAC 155-20-220 B 14 | Silent | Adds identification of unauthorized wastes to the basic training class. The Board views this as a subject requiring emphasis. Failure to properly identify and dispose of waste material has an adverse impact on operation costs as well as the environment. |
| None | 18 VAC 155-20-220 B 18 h | Silent | Adds composting facilities as one of the permitted solid waste management facilities that must be included in the overview of permitted solid waste management facilities for the basic course. Composting is receiving more attention as a waste management method and the Board concluded that a training emphasis is necessary. |
| 18 VAC 155-20-220 C 3 | Existing section number is | Same – Clarification amendment | The heading is changed to “sanitary landfills” to use the more common term. Clarifies and conforms to the term used in other pertinent |

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| | unchanged | | state regulations. |
| 18 VAC 155-20-220 C 3 a | None, subdivision a is repealed | Provides for instruction in the “general” standards for sanitary landfills. | “General” is somewhat vague. The other provisions and amendments provide more specificity. |
| 18 VAC 155-20-220 C 3 e, f, and j | Moved to become 18 VAC 155-20-220 C 8 a, b, and c respectively | Same – provisions have been moved to subdivision 8 of the same subsection and rephrased to add to clarity. | Reorganization of requirements for clarity. No substantive change. Subsequent provisions are renumbered. |
| None | 18 VAC 155-20-220 C 3 d | Silent | “Landfill gas recovery systems” are a part of the “control of decomposition gases” subject matter that the Board decided needed additional emphasis in Class II training. |
| 18 VAC 155-20-220 C 7 | Add a, b, and c to existing section | Same – more specificity added. | Assures that instruction will include all permitting provided for in Virginia law and the regulations of the boards under DEQ. |
| 18 VAC 155-20-220 D 2 b and e | Moved to become 18 VAC 155-20-220 8 and 8 a respectively | Same – provisions have been moved to a new subdivision of the same subsection and rephrased to add to clarity. | Reorganization of requirements for clarity. No substantive change. Subsequent provisions are renumbered. |
| None | 18 VAC 155-20-220 D 5 d | Silent | Assures that instruction on facility air operating permits issued by DEQ is a part of the Class III instruction. Subsequent provisions are renumbered. |
| None | 18 VAC 155-20-220 D 7 | Silent | Assures that instruction on medical waste combustor regulations promulgated by DEQ is a part of the Class III instruction. Subsequent provisions are renumbered. |
| None | 18 VAC 155-20-220 D 8 | Includes provisions moved from subdivisions b and e of subdivision 2 of the same subsection. | Adds “corrective action” as a subject area under “financial assurance documentation” as a part of the Class III instruction. The Board concluded that this is a necessary area of instruction for Class III operators. |
| None | 18 VAC 155-20-220 E 9, 10, 11, 12 and 13 | Silent | Adds a number of pertinent areas of instruction for Class IV that are absent from the current regulations. A comprehensive review of the current regulations by the Board brought them to the conclusion that minimal instruction in these areas is necessary to protect the public. |
| 18 VAC 155-20-280 A 1 | N/A | Same – Amendment for clarification. | Rephrase to make clear that a violation of any single provision of the Board’s regulations is grounds for disciplinary action. |
| 18 VAC 155-20-280 A 2 | N/A | Same – Amendment for clarification. | Clarify that a fraud or misrepresentation when applying to renew a license is subject to disciplinary action by the Board. |
| 18 VAC 155-20-280 A 4 | N/A | Same – Amendment for clarification. | Clarify that the Board’s authority to take action concerning those with criminal records is governed by Section 54.1-204 of the Code of Virginia. |