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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Waste Management Facility Operators
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC155-20-40
VAC Chapter title(s)	Waste Management Facility Operator Regulations: Fees
Action title	Fee Increase
Date this document prepared	May 20, 2021 (revised Dec. 29, 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).

The intent of the proposed changes is to increase licensing fees for regulants of the Board for Waste Management Facility Operators. The Board must establish fees adequate to support the costs of Board operations and a proportionate share of the Department's operations. By close of the next biennium, the current fee structure will not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money but, instead, is funded almost entirely from revenue collected for license applications, renewal, and other licensing fees. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue.

The Board for Waste Management Facility Operators has no other source of revenue from which to fund its operations.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“Department” or “DPOR” means the Department of Professional and Occupational Regulation.

“Board” means the Board for Waste Management Facility Operators.

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.”

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

§ 54.1-113 (Callahan Act). Regulatory Boards to adjust fees – Following the close of any biennium, when the account for any regulatory Board within the Department of Professional and Occupational Regulation maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the Board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 describes each regulatory Board’s power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory Board and a proportionate share of the expenses of the Department . . .”

§ 54.1-304.3 describes the power and duty of the DPOR Director to “collect and account for all fees prescribed to be paid into each Board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory Boards, and the Department shall be paid . . .”

§ 54.1-308 provides for compensation of the Director, employees, and Board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each Board showing moneys collected on its behalf and expenses allocated to the Board.

These Code sections require the Department to:

- pay expenses of each Board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each Board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- accounts for the revenue collected for each Board distinctly;
- accounts for direct Board expenses for each Board, and allocates a proportionate share of agency operating expenses to each Board;

- reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and
- recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion on how the fees are adjusted by determining the amount of adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

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.

1. Board for Waste Management Facility Operators
2. § 54.1-113 (Callahan Act) requires regulatory Boards to periodically review and adjust fees
 § 54.1-201.4 provides the authority to regulatory Boards to levy and collect fees.
 § 54.1-304.3 describes the authority of DPOR to collect and account for fees
 § 54.1-308 requires costs to be paid by regulatory Boards

All of these provisions of the Code of Virginia are mandatory.

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.

This regulation change will continue to allow the Board for Waste Management Facility Operators to continue licensing individuals and protecting the health, safety, and welfare of citizens.

No potential issues needs to be addressed.

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.

18 VAC 155-20-40 would be amended to increase the fees and comply with the Callahan Act.

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.

The Department has considered the following alternatives to increasing fees for the Board:

- **Reduce services.** Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to applicants’ and licensees’ ability to work, and would decrease the Department’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety, and welfare.
- **Supplement Board activities with general funds.** The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. The Department’s Boards are intended to be self-funding pursuant to §§ 54.1-113, 54.1-201, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support Board operations does not appear to be an appropriate use of taxpayer dollars.

Periodic Review and Small Business Impact Review Announcement

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 providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to the attention of:

Marjorie King, Board Administrator
 Board for Waste Management Facility Operators
 Department of Professional and Occupational Regulation

By E-MAIL to:

WasteMGT@dpor.virginia.gov

By FAX to:

(866) 430-1033

By U.S. Mail to:

9960 Mayland Drive, Suite 400
Richmond, VA 23233

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.