



## Periodic Review / Retain Regulation Agency Background Document

<b>Agency name</b>	Virginia Waste Management Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC20-40
<b>Regulation title</b>	Administrative Procedures for Hazardous Waste Facility Site Certification
<b>Document preparation date</b>	February 6, 2012

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.*

#### Promulgating Entity

The promulgating entity for this regulation is the Virginia Waste Management Board.

#### State and Federal Legal Authority

Section 10.1-1402 of the Virginia Waste Management Act (Title 10.1, Chapter 14 of the Code of Virginia) authorizes the Virginia Waste Management Board ("the Board") to promulgate regulations to supervise, coordinate, and control waste management activities in order to protect human health and the environment.

Code of Virginia § 10.1-1400 defines solid waste as "any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended."

Code of Virginia § 10.1-1400 defines hazardous waste as "a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly stored, transported, disposed of, or otherwise managed."

Code of Virginia § 10.1-1433 defines a hazardous waste facility as "any facility, including land and structures, appurtenances, improvements and equipment for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this article, it does not include: (i) facilities which are owned and operated by and exclusively for the on-site treatment, storage or disposal of wastes generated by the owner or operator; (ii) facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; (iii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works."

Code of Virginia §§ 10.1-1433 through 1447 mandate procedures and standards to ensure that sites of new hazardous waste management facilities have been adequately evaluated and deemed suitable to protect the public health, safety, and welfare and the environment.

There are no federal statutory or regulatory requirements that form a basis for this regulation.

## Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

Alternatives to the proposal have been considered by the Department. The Department has determined that the retention of the regulation (the first alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets statutory requirements and the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives considered, are discussed below.

1. Retain the regulation without amendment. This option is being selected because the current regulation provides the least onerous means of complying with the minimum requirements of the legal mandates.
2. Make alternative regulatory changes to those required by the provisions of the legally binding mandates, and associated regulations and policies. This option was not selected because it could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits to human health and protection of the environment.
3. Repeal the regulation or amend it to satisfy the provisions of legally binding mandates. This option was not selected because the regulation is effective in meeting its goals and already satisfies those mandates.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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Notice of Periodic Review was published in the Virginia Register of Regulations on December 19, 2011. The comment period closed on January 9, 2012. No comments were received concerning this regulation.

### Effectiveness

*Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

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This regulation provides the minimum requirements to comply with the mandates of Code of Virginia §§ 10.1-1433 through 1447 and is necessary for the protection of public health and the environment.

The regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth, ensuring that owners and operators comply with best waste management and control practices for hazardous waste.

The Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

### Small business impact

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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This regulation continues to be needed. It provides regulated entities with the most cost-effective means of fulfilling ongoing state and federal requirements that protect human health and the environment.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. It amplifies and supplements Article 6 (§ 10.1-1433 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia. This regulation is part of a set of four related regulations mandated by Virginia statutes that establish a procedure for siting of hazardous waste management facilities including certification of the

site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process

This regulation was last reviewed in 2005. This regulation continues to provide the most efficient and cost-effective means to protect human health and the environment.

The Department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

## Result

*Please state whether the agency is recommending that the regulation should stay in effect without change.*

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This regulation satisfies the provisions of the law and legally binding state requirements and is effective in meeting its goals; therefore, the Director of the Department of Environmental Quality, on behalf of the Virginia Waste Management Board, recommends that this regulation be retained without amendment.

## Family impact

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

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It is not anticipated that this regulation will have a direct impact on families or family stability.

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