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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 20-70 9 VAC 20-81
VAC Chapter title(s)	Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities Solid Waste Management Regulations
Action title	Amend Regulations to Ensure Financial Assurance is Sufficient for Proper Closure, Post-Closure Care, or Corrective Action at Solid Waste Management Facilities
Date this document prepared	May 11, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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 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 this regulatory action is to amend or modify the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities (9 VAC 20-70) to ensure that financial assurance is sufficient to cover all costs for leachate pretreatment systems, closure, post-closure care, and any necessary corrective action and remediation at a solid waste management facility. Corresponding amendments or modifications to the Solid Waste Management Regulations (9 VAC 20-81) may also be necessary. The financial assurance criteria in the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities regulations (Part III, 9 VAC 20-70-80 et seq.) were last substantively amended 25 years ago in 2001.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board – Virginia Waste Management Board
CFR – Code of Federal Regulations
Department or DEQ – Virginia Department of Environmental Quality

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 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.”

There is no mandate from the General Assembly, federal government, or court that requires these amendments.

The impetus for this regulatory action is the recent abandonment of a solid waste management facility in Central Virginia, and the Department’s utilization of the owner’s financial assurance, which was insufficient to maintain the facility and its closure in a manner that is protective of public health and the environment. Without sufficient financial assurance to ensure solid waste management facilities will be able to cover all costs for closure, post-closure care, and any necessary corrective action, communities and the environment may risk significant impacts.

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.

Section 10.1-1402.11 of the Code of Virginia, authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out the requirements of the Virginia Waste Management Act (Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia). Section 10.1-1408.1 of the Code of Virginia requires a person who operates any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste to obtain a permit from the Director of the Department.

Section 10.1-1410 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate regulations to ensure that if a solid waste disposal, transfer or treatment facility (i.e., a solid waste management facility) is abandoned, the costs associated with protecting public health and safety may be recovered from the person abandoning the facility.

The Virginia Waste Management Board has adopted these regulations (9VAC20-70 and 9VAC20-81) under the authority granted by state law.

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.

The Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities (9VAC20-70) require owners and operators of solid waste management facilities to establish and maintain financial assurance for the estimated cost of leachate pretreatment systems, facility closure, post-closure care, and groundwater corrective action. The regulatory amendment is necessary to ensure owners and operators provide sufficient financial assurance to protect health, safety, and welfare of citizens in the Commonwealth. The recent abandonment of a solid waste management facility in Central Virginia, and the Department’s utilization of the owner’s financial assurance, which was insufficient to maintain the facility and its closure in a manner that is protective of public health and the environment, has demonstrated a need to update and amend the current regulations.

The Virginia Solid Waste Management Regulations (9 VAC 20-81) establish standards and procedures for the siting, design, construction, operation, maintenance, closure, and post-closure care of solid waste management facilities in the Commonwealth. The regulations also establish standards and procedures pertaining to the management of solid waste, including requirements to provide financial assurance in accordance with the Financial Assurance Requirements for Solid Waste Disposal, Transfer, and Treatment. The requirements found in these regulations are protective of human health and the environment.

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.

The substance of this action is to update the financial assurance requirements to ensure sufficient financial assurance is provided by solid waste management facilities owners or operators to cover all costs for leachate pretreatment systems, closure, post-closure care, and any necessary corrective action and remediation at a solid waste management facility. Corresponding amendments to the Solid Waste Management Regulations (9 VAC 20-81) may also be necessary.

The purpose of this action is to review and evaluate the existing regulations through the amendment process to determine the most effective methods of strengthening the existing financial assurance requirements. In addition, this action would propose modifications to the existing financial assurance requirements to provide the highest feasible level of protection for the Commonwealth while allowing solid waste management facility owners and operators an appropriate choice of demonstration options.

The financial assurance criteria in the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities regulations (Part III, 9 VAC 20-70-80 et seq.) were last substantively amended 25 years ago in 2001.

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 considered alternatives to this regulatory action. No alternatives considered were viable due to the need to have enforceable requirements that are based on current financial mechanisms to ensure public safety and environmental protection.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency.

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 or email to Rebecca Rathe, 4411 Early Road, Harrisonburg, VA, 22801, (540) 830-7241, Rebecca.Rathe@deq.virginia.gov. 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.