



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-60-10 et seq.
Regulation Title:	Hazardous Waste Management Regulations
Action Title:	Amendment 15A
Date:	March 21, 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.

The Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-10 *et seq.*, provide for the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. The proposed amendments are intended to maintain the equivalency of the Commonwealth's regulations with those issued by the United States Environmental Protection Agency (USEPA) under the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA). Maintaining the Commonwealth's equivalency will enable the Commonwealth to remain eligible to carry out its own hazardous waste management program and be an authorized state under the federal acts.

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.

Section 10.1-1402(11) of the Virginia Waste Management Act contained in Chapter 14, Title 10.1, Code of Virginia (1950) as amended, authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Act and consistent with the federal statutes and regulations.

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.

Monitoring of the generation, transportation, treatment, storage, and disposal of hazardous wastes in the Commonwealth is essential to protect the public health, safety and welfare of the citizens of the Commonwealth from the effects of these activities if improperly performed. These amendments are necessary to ensure the regulations of the Commonwealth are current and conform to applicable federal regulations. In addition, maintaining the equivalency of Commonwealth's regulations with those issued by the U.S. Environmental Protection Agency under the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984, the Commonwealth remains eligible to carry out its own hazardous waste management program and be an authorized state under the federal acts.

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 15A to the Hazardous Waste Management Regulations, 9 VAC 20-60-10 *et seq.*, will further consider incorporation of changes in the federal regulations in Title 40 of the Code of Federal Regulations occurring since Amendment 14 through at least July 1, 1999, including amendments promulgated in the Federal Register on the following dates: January 3, 1995, December 6, 1994, January 13, 1995, February 9, 1995, April 17, 1995, May 12, 1995, April 4, 1995, May 19, 1995, June 29, 1995, July 11, 1995, September 29, 1995, October 30, 1995, December 11, 1995, February 9, 1996, March 26, 1996, April 8, 1996 (2), April 30, 1996, June 28, 1996, July 10, 1996, August 26, 1996, February 17, 1997, April 12, 1996, July 1, 1996, December 6, 1994, May 19, 1995, September 29, 1995, November 13, 1995, February 9, 1996, June 5, 1996, November 23, 1996, January 14, 1997, February 12, 1997, May 12, 1997, June 13, 1997, June 17, 1997, July 14, 1997, August 28, 1997, December 5, 1997, December 8, 1997, April 15, 1998, May 4, 1998, June 29, 1998, May 6, 1998, July 14, 1998, May 26, 1998, June 8, 1998, June 19, 1998, August 6, 1998, August 31, 1998, September 4, 1998, September 9, 1998, September, 24, 1998, October 22, 1998, November 30, 1998, December 24, 1998, January 21, 1999, February 11, 1999, May 11, 1999, May 14, 1999, and July 6, 1999. These amendments of the federal regulations address, at least, the following items:

1. Revisions of the Universal Treatment Standards re Land Disposal Restrictions or related changes;
2. Revisions to listings and exemptions of certain carbamate chemicals production wastes (U and K listings);

3. Housekeeping changes related to adoption errors and obsolete provisions;
4. Adoption of additional test methods related to rules that prohibit liquids in landfills;
5. New rules about the public participation process in the permitting of storage, treatment and disposal facilities and for test burns at incinerators and combustion facilities;
6. Correction of adoption errors in the exclusion rules for recovered oil which is recycled;
7. Addition of rules related to Phase III of the Land Disposal Restriction and treatment standards concerning carbamate pesticide production wastes, primary aluminum production wastes, characteristic wastes, listed wastes, and wastes that are diluted;
8. Identification of import and export wastes subject to the graduated system of controls under the Organization for Economic Cooperation and Development;
9. Revisions of rules for disposal of wastes from conditionally exempt small quantity generators;
10. Adoption of additional air standards for the control of organic emissions from tanks, surface impoundments, containers and miscellaneous units, including during accumulation of waste on-site;
11. Extensions of the national capacity variance (under Phase III of the Land Disposal Restrictions) for spent potliners for primary aluminum production;
12. Adoption of Military Munitions Rule, which identifies when conventional and chemical military munitions become a hazardous waste, provides rules for the safe storage and transport of such waste, changes rules regarding emergency responses involving munitions and explosives, and exempts generators and transporters from manifest requirements on right-of-ways that are on or along the border of contiguous properties under the control of the same person;
13. Adoption of Land Disposal Restrictions - Phase IV, which establishes treatment standards under the land disposal restrictions for waste from wood preserving operations, revises record keeping related to land disposal restrictions, regulates polymerizations as a treatment alternative, clarifies de minimis amounts exemption of characteristic wastewaters, and excludes processed circuit boards and scrap metal from regulation as hazardous wastes;
14. Update the incorporation by reference citation of SW-846, Third Edition, "Test Methods for Evaluation Solid Waste, Physical/Chemical Methods", to include changes through January 13, 1997 (through Update III);
15. Revisions and withdrawals of certain rules related to listing of carbamate wastes;
16. Extension of alternate treatment standard for carbamate under the land disposal restrictions (Aug. 26, 1997 to Aug. 26, 1998);
17. Clarifications of the rules for authorization of variances from the treatment standards of the land disposal restriction regulations, and incorporation of rules

requiring public participation in site specific variance considerations;

18. Amendments and clarifications of the air standards for the control of organic emissions from tanks, surface impoundments, and container;
19. Exclusions from regulation as hazardous waste of the condensates derived from the overhead gases from kraft mill steam strippers under specified conditions;
20. Additions of specific organobromine production wastes to the list of hazardous wastes and listings of land disposal treatment standards for those wastes;
21. Correction and adoption of rules related to the management standards of used oil contaminated with PCB's and other used oil;
22. Adoption of treatment standards under the land disposal restrictions for metal wastes, mineral processing waste and twelve metal constituents, adoption of land disposal prohibition and treatment standards for mineral processing waste that are ignitable, corrosive or reactive, amendment of the definition of when secondary materials being recycled are solid waste so as to exclude certain mineral processing waste, amendment of the definition of which wastes fall under the Bevill exemption, adoption of treatment standards under the land disposal restrictions for contaminated soils as waste, and adoption of corrections and clarifying provisions to the land disposal restrictions;
23. Exclusion from regulation as solid waste those fuels produced from a hazardous waste which is comparable to some currently used fossil fuels, and addition of provisions to make it easier for existing facilities to make changes to their existing permit.
24. Listing of four petroleum refining process wastes as hazardous (K169-K172) excluding certain recycled secondary materials from the definition of solid waste. The materials include both oil-bearing residuals from petroleum refineries and oil from associated petrochemical facilities, when they are inserted into the refining process; and spent caustic from liquid treating operations when used as a feedstock to make certain chemical products. The rule clarifies an existing exclusion for recovered oil from certain petroleum industry sources. Finally, this rule applies the universal treatment standards to the petroleum refining wastes.
25. On May 26, 1998 (63 FR 28556), EPA published an amendment to the Land Disposal Restriction treatment standards for metal-bearing hazardous wastes which exhibit the characteristic of toxicity (commonly referred to as the Phase IV rule). The new, Phase IV treatment standards in that rule are not well suited for zinc micronutrient fertilizers and the new standards could result in greater use of zinc fertilizers that contain relatively higher concentrations of hazardous constituents. EPA expects to develop a more consistent and comprehensive approach to regulating hazardous waste-derived fertilizers, and currently intends to leave this amendment, which places an administrative stay on the new treatment standards, in place until those new regulations are adopted. In the interim, the fertilizers affected by this amendment would remain subject to the previous treatment standards for toxic metals found at 40 CFR 268.41 in the July 1, 1990 edition of the CFR.
26. Revision of the waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes. First, the rule establishes revised treatment standards for seven specific carbamate waste constituents

(A2213; bendiocarb phenol; diethylene glycol, dicarbamate; dimetilan; formparanate; isolan; and tirpate) for which there are no available analytical reference standards. The rule also deletes the treatment standard for one additional constituent (o-phenylenediamine) for which available analytical methods do not achieve reliable measurements.

27. Extension of the compliance date until November 26, 1998 for a limited portion of the Phase IV Final Rule (63 FR 28556). The Phase IV Final Rule amended the Land Disposal Restriction treatment standards for metal-bearing hazardous wastes exhibiting the toxicity characteristic. This action extends the date for treatment standards only for secondary lead slags exhibiting the toxicity characteristic for one or more metals that are generated from thermal recovery of lead-bearing wastes (principally batteries). In the interim, the affected wastes are still subject to the treatment standards for TC metals set forth in the Third Third Final Rule (55 FR 22520).
28. Interim replacement standards for spent potliners from primary aluminum reduction (EPA hazardous waste K088) under its Land Disposal Restrictions program. Spent potliners will now be prohibited from land disposal unless the wastes have been treated in compliance with the numerical standards contained within this rule. The newly promulgated treatment standards will be in place until EPA has fully reviewed all information on all treatment processes which may serve as a basis for a more permanent revised standard. In addition, the K088 national capacity variance is extended until September 21, 1998.
29. Modification of the requirement for a post-closure permit, to allow for the use of a variety of authorities to impose requirements on non-permitted land disposal units requiring post-closure care. As a result, regulators have the flexibility to use alternate mechanisms under a variety of authorities to address post-closure care requirements, based on the particular needs at the facility. The rule also amends the regulations governing closure of land-based units that have released hazardous constituents, to allow certain regulated units where releases may have mingled with releases from solid waste management units to be addressed through the corrective action program. This will provide regulators the discretion to use corrective action requirements, rather than closure requirements, to address the closure of these regulated units. Finally, the rule specifies the Part B information submission requirements for facilities that receive post-closure permits.
30. Streamlining of the permitting process for treatment, storage and disposal of remediation wastes managed at cleanup sites. The new requirements: 1) make permits faster and easier to obtain, 2) provide that obtaining these permits will not subject the owner/operator to facility-wide corrective action at remediation-only facilities, and 3) allow the use of Remediation Action Plans (RAPs) as an alternative to traditional RCRA permits. Regulations are also finalized regarding use of staging piles during cleanup and providing an exclusion for dredged materials managed under appropriate Clean Water Act or Marine Protection Research and Sanctuaries Act permits. In addition, this rule expands the use of Corrective Action Management Units and Temporary Unit to include implementing clean up remedies at permitted facilities that are not subject to 40 CFR 264.101.
31. Correction of errors that appeared in the May 11, 1995 Universal Waste Rule (60 FR 25492). No new regulatory requirements are created with this rule; instead it, (1) makes three corrections to regulations governing the management of spent

- lead-acid batteries that are reclaimed, (2) corrects the definition of a small quantity universal waste handler, and (3) clarifies the export requirements which apply to destination facilities, when the facilities act as universal waste handlers.
32. Clarify of certain regulatory text and reinstate certain regulatory provisions that were inadvertently removed contained in the rules to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment (59 FR 62896, December 6, 1994).
33. Temporarily deferral from the definition of hazardous waste landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes (K169, K170, K171, and K172). This exemption applies to landfill leachate and gas condensate subject to regulation under the Clean Water Act. The exempted leachate may not ordinarily be managed in surface impoundments or otherwise placed on the land after February 13, 2001, except for the purpose of providing storage under temporary or emergency conditions.
34. Clarification and/or technical corrections to the following five final rules published by EPA:
- (1) May 12, 1997, regulations promulgating Land Disposal Restrictions (LDR) treatment standards for wood preserving wastes, as well as reducing the paperwork burden for complying with LDRs;
 - (2) May 26, 1998, regulations promulgating LDR treatment standards for metal-bearing wastes, as well as amending the LDR treatment standards for soil contaminated with hazardous waste, and amending the definition of which secondary materials from mineral processing are considered to be wastes subject to the LDRs;
 - (3) August 31, 1998, an administrative stay of the metal-bearing waste treatment standards as they apply to zinc micronutrient fertilizers;
 - (4) September 4, 1998, an emergency revision of the LDR treatment standards for hazardous wastes from the production of carbamate wastes; and,
 - (5) September 24, 1998, revised treatment standards for spent aluminum potliners from primary aluminum production.
35. Approval of use of EPA Method 1664, Revision A: N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated N-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry (hereafter Method 1664) for use in EPA's Clean Water Act (CWA) programs, and incorporates Method 1664 by reference for use in EPA's Resource Conservation and Recovery Act (RCRA) programs. The rule also deletes Method 9070 and adds revised Method 9071B as Update IIIA to the Third Edition of the EPA-approved test methods manual SW-846.
36. Addition of spent hazardous waste lamps to the list of universal wastes. Handlers of universal wastes are subject to less stringent standards for storing, transporting, and collecting these wastes. The streamlined universal waste management requirements under 40 CFR Part 273 should lead to better management of spent lamps and will facilitate compliance with hazardous waste requirements.

In addition to the promulgated amendments of federal regulations, Amendment 15A may consider the following items:

37. Errors and omissions resulting from previous amendments of the regulations, including the change in the format of the regulations effected by Amendment 14;
38. Several amendments to the requirements for the transportation of hazardous waste, including insurance requirements; financial assurance requirements for hazardous waste management facilities; and documentation demonstrating compliance with financial assurance requirements which were recommended by commenters regarding Amendment 14, but which could not be addressed in Amendment 14 for procedural reasons;
39. Revision of the schedule of permit application fees to reflect increased cost of permit reviews;
40. Further use or expansion of the format of incorporation by reference of federal regulations;
41. Inclusion of additional waste streams as listed Universal Wastes;
42. Alterations or clarifications of the regulations concerning transfer station and the definition of transfer stations to prevent inappropriate siting of the transfer station and abusive practices; and
43. Alterations or clarifications of the regulations concerning receipt of waste from conditionally exempt small quantity generators to prevent threats caused by amassing such waste from several generators in an inappropriate manner.

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 and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

The Board will, during the Notice of Intended Regulatory Action and the Notice of Public Comment request comments on or alternatives to the amendments. In addition, a technical advisory committee will advise the Board on what amended regulatory text should be proposed. The committee will advise the Board on less intrusive and less burdensome alternatives, where such exist.

The vast majority of changes to be considered will be the direct result of incorporation of federal regulatory text into the Commonwealth's regulations, and consistency with federal regulations is required by Federal law and regulation and necessary for authorization of the Commonwealth's program the U.S. Environmental Protection Agency. Many of the changes resulting from changes to the federal regulations that are to be incorporated by this amendment are themselves a reduction in intrusion and burden on the regulated community from prior federal requirements currently incorporated into the Commonwealth regulations.

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 Board 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. 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.

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 Board intends to use 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 Board does not expect any direct impacts on the institution of the family and family stability. Indirect benefits could result by protecting public health, safety and welfare from the improper transportation, treatment, storage, and disposal of hazardous waste.