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Exempt Action - Final Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation(s)	9VAC20-60
Regulation title(s)	Virginia Hazardous Waste Management Regulations
Action title	Annual Update 2018
Final agency action date	June 10, 2019
Date this document prepared	May 8, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The *Virginia Hazardous Waste Management Regulations*, 9VAC20-60, include citations and requirements in the form of federal regulatory text at Title 40 of the Code of Federal Regulations (CFR) which is incorporated by reference. This regulatory amendment, Annual Update 2018, will bring the citations up to date and incorporate the 2018 annual edition of Title 40 of the CFR published on the July 1, 2018. However, the incorporation by reference of Title 40 of the Code of Federal Regulations does not include the provisions of EPA's *Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule* (83 FR 24664, 05/30/2018) as that rule is not being adopted in Virginia. Annual Update 2018 will also incorporate by reference two EPA rules promulgated after July 1, 2018: (i) *Safe Management of Recalled Air Bags* (83 FR 61552, 11/30/2018); and, (ii) *Management of Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine* (84 FR 5816, 02/22/2019). In addition to the conforming changes incorporating the EPA rules, other changes have been made in order to correct citations, update nomenclature, and fix grammatical errors.

Sections 2.2-4006 A 3 and A 4 (c) of the Code of Virginia allows the Board to adopt this regulatory amendment to 9VAC20-60 as a final exempt action as the changes are necessary to correct technical errors and to conform to changes in the federal regulations.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

2015 DSW Rule – EPA’s *Definition of Solid Waste Rule* (80 FR 1694, 01/13/2015).

2018 DSW Rule – EPA’s *Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule* (83 FR 24664, 05/30/2018).

Board – Virginia Waste Management Board

CFR – Code of Federal Regulations

FR – Federal Register

EPA – United States Environmental Protection Agency

VAC – Virginia Administrative Code

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Virginia Waste Management Board approved this amendment, Annual Update 2018, to 9VAC20-60 on June 10, 2019, as a final regulation and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Virginia Waste Management Act (Act). Additionally, Sections 2.2-4006 A 3 and A 4 (c) of the Code of Virginia allow the Board to adopt this regulatory amendment to 9VAC20-60 as a final exempt action as the changes are necessary to make corrections and to conform to changes in the federal regulations.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

Conforming the Virginia Hazardous Waste Management Regulations, 9VAC20-60, to the Title 40 of the CFR regulations promulgated by the EPA is necessary to maintain our federally granted authority to implement the national programs. Facilities also benefit from state implementation of the program as they have easier access to decision makers who have a clearer understanding of state-specific issues and needs.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The regulatory action, Annual Update 2018, will incorporate the following rules promulgated by EPA:

- *Confidentiality Determinations for Hazardous Waste Export and Import Documents* (82 FR 60894, 12/26/2017)

- *Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations* (83 FR 420, 01/30/2018)
- *Safe Management of Recalled Airbags* (83 FR 61552, 11/30/2018)
- *Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine* (84 FR 5816, 02/22/2019).

A summary of each of these rules is provided in Attachment A.

Annual Update 2018 does not include adoption of EPA’s 2018 DSW Rule as the 2018 DSW Rule as EPA is not requiring Virginia to adopt the rule. Currently, 9VAC20-60 incorporates by reference EPA’s 2015 DSW Rule, which was adopted by the Board in the Annual Update 2015 amendment to 9VAC20-60.

Issues

Please identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage of this amendment is that it conforms 9VAC20-60, *Virginia Hazardous Waste Management Regulations*, by incorporating four new rules promulgated by the EPA (see Attachment A). Conforming our regulations to EPA’s recent rulemakings, when required to do so, maintains Virginia’s federally granted authority to implement the national hazardous waste management programs. Additionally, an advantage for businesses and facilities in Virginia is that, by keeping our rules as current as possible, they benefit from state implementation of the programs as they have easier access to decision makers who have a clearer understanding of state-specific issues and needs.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

There are no agencies, localities, or entities particularly affected by this regulatory amendment.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The *Virginia Hazardous Waste Management Regulations* apply to all facilities including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance and reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational

standards required in the regulation; or (5) exemption of small businesses from all or any part of the requirements contained in this regulation for all small businesses would directly, significantly and adversely affect the benefits achieved through the implementation of the regulations for the safe management of hazardous waste.

Conforming state regulations to those of the EPA is necessary to maintain federally granted authority to implement the national programs. Facilities benefit from state implementation of the program as they have easier access to decision makers with a clearer understanding of state-specific issues and needs.

Detail of All Changes Made in this Regulatory Action

*Please list all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC20-60-18	Applicability of incorporated references based on the dates on which they became effective.	Updated the 40 CFR citation to the most recent annual update of July 1, 2018. However, the incorporation by reference of Title 40 of the Code of Federal Regulations does not include the provisions of EPA's Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule (83 FR 24664, 05/30/2018) as that rule is not being adopted. Added Subsection B (first paragraph is now Subsection A) to also adopt the incorporation by reference of two EPA rules promulgated after July 1, 2018: (i) Safe Management of Recalled Air Bags (83 FR 61552, 11/30/2018); and, (ii) Management of Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine (84 FR 5816, 02/22/2019).
9VAC20-60-70	Public participation requirements.	Corrected citation for the Board's <i>Public Participation Guidelines</i> , which are under 9VAC20-11.
9VAC20-60-260	Adoption of 40 CFR Part 260 by reference.	Added Subdivision B.13 for incorporation of the <i>Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations</i> (83 FR 420, 01/30/2018) in order to retain the term "EPA" in 40 CFR 261.21.f(6)(i). Added Subdivision B.14 to retain the requirements of the 2015 DSW Rule under 40 CFR 261.4(a)(23) and 261.4(a)(24) and keep 261.4(a)(25) reserved.
9VAC20-60-261	Adoption of 40 CFR Part 261 by reference.	Added Subdivision B.13 for incorporation of the <i>Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations</i> (83 FR 420, 01/30/2018) in order to retain the term "EPA" in 40 CFR 260.4(a)(4) and 260.5(b)(2). Added Subdivision B.14 to retain the requirements of the 2015 DSW Rule under 40 CFR 260.42 and 260.43
9VAC20-60-264	Adoption of 40 CFR Part 264 by reference.	Revised Subdivision B.33 for the incorporation of the <i>Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and</i>

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
		<i>Amendments to Manifest Regulations</i> (83 FR 420, 01/30/2018). Adoption of 40 CFR 264.71(j) references specific 40 CFR 264 Subpart FF provisions; therefore, EPA does not require states to adopt the fee provisions of Subpart FF of 40 CFR 264.
9VAC20-60-265	Adoption of 40 CFR Part 265 by reference.	Revised Subdivision B.20 for the incorporation of the <i>Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations</i> (83 FR 420, 01/30/2018). Adoption of 40 CFR 265.71(j) references specific 40 CFR 265 Subpart FF provisions; therefore, EPA does not require states to adopt the fee provisions of Subpart FF of 40 CFR 265.
9VAC20-60-266	Adoption of 40 CFR Part 266 by reference.	Added Subdivisions B.4 through B.9. Subdivisions B.4 was added as 40 CFR Parts 171 through 180 are incorporated by reference in Section 110 of the Board's <i>Regulations Governing the Transportation of Hazardous Materials</i> , 9VAC20-110. Subdivisions B.5 through B.9 were added as Virginia incorporates the provisions of EPA's air regulations, which are under 40 CFR Parts 62 and 63, as provided in these subdivisions.
9VAC20-60-328	EPA identification number.	Updated the website address in Subsection D.
9VAC20-60-1390	Changes in classifications as a solid waste.	Corrected a grammatical error in Subdivision A.2.f.
9VAC20-60-1430	Petitions to include additional hazardous wastes.	Updated Subdivision B.2 to the new term, very small quantity generators.
9VAC20-60-1505	Additional universal wastes.	Updated Subdivision B.7.n to the new term, very small quantity generators.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess 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.

There is no impact on the institution of the family or family stability.

Attachment A

**EPA Rules Included with Annual Update 2018
Title 40 of the CFR - October 2017 through February 2019**

Title	Federal Register	Summary
Confidentiality Determinations for Hazardous Waste Export and Import Documents	82 FR 60894, 12/26/2017 Effective: 06/26/2018	EPA amended existing regulations regarding the export and import of hazardous wastes from and into the United States. Specifically, this rule applies a confidentiality determination such that no person can assert confidential business information (CBI) claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs). EPA is making these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation. The rule will result in cost-savings and greater efficiency for EPA and the regulated community as well as facilitate transparency with respect to the documents that are within the scope of this rulemaking. However, EPA is not finalizing the proposed internet posting requirement in the proposed rule.
Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations	83 FR 420, 01/30/2018 Effective: 06/30/2018	EPA is establishing by this regulation, the methodology the Agency will use to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest system (e-Manifest system) that EPA is developing under the Hazardous Waste Electronic Manifest Establishment Act. After the e-Manifest system's implementation date, certain users of the hazardous waste manifest will be required to pay a prescribed fee for each electronic and paper manifest they use and submit to the national system so that EPA can recover the costs of developing and operating the national e-Manifest system. This final rule also announces the date when EPA expects the system to be operational and available to users. EPA will begin accepting manifest submissions and collecting the corresponding manifest submission fees on this date. In addition, this action announces final decisions and regulations relating to several non-fee related matters that were included in the proposed rule. This includes modifying the existing regulations to: allow changes to the transporters designated on a manifest while the shipment is en route; describe how data corrections may be made to existing manifest records in the system; and amend the previous e-Manifest regulation (the One Year Rule) to allow the use, in certain instances, of a mixed paper and electronic manifest to track a hazardous waste shipment.
Safe Management of Recalled Airbags	83 FR 61552, 11/30/2018 Effective: 11/30/2018	Environmental Protection Agency (EPA) issued this interim final rule in response to the urgent public health issue posed by recalled Takata airbag inflators still installed in vehicles. This interim final rule facilitates a more expedited removal of defective Takata airbag inflators from vehicles by dealerships, salvage yards and other locations for safe and environmentally sound disposal by exempting the collection of airbag waste from hazardous waste requirements so long as certain conditions are met.
Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine	84 FR 5816, 02/22/2019 Effective: 08/21/2019	EPA issued this rule which establishes cost-saving, streamlined standards for handling hazardous waste pharmaceuticals to better fit the operations of the healthcare sector while maintaining protection of human health and the environment. Some pharmaceuticals are regulated as hazardous waste under the Resource Conservation and Recovery Act (RCRA) when discarded. This final rule adds regulations for the management of hazardous waste pharmaceuticals by healthcare facilities and reverse distributors. Healthcare facilities (for both humans and animals) and reverse distributors will manage their hazardous waste pharmaceuticals under this new set of sector-specific standards in lieu of the existing hazardous waste generator regulations. The rule creates a new 40 CFR Part 266 subpart P for the management of hazardous waste pharmaceuticals by healthcare facilities and reverse distributors in lieu of the generator regulations in 40 CFR Part 262. This new subpart prohibits the disposal of hazardous waste pharmaceuticals down the drain and eliminates the dual

		<p>regulation of RCRA hazardous waste pharmaceuticals that are also Drug Enforcement Administration controlled substances by finalizing a conditional exemption. The new subpart also maintains the household hazardous waste exemption for pharmaceuticals collected during pharmaceutical take-back programs and events, while ensuring their proper disposal and codifies EPA's prior policy on the regulatory status of nonprescription pharmaceuticals going through reverse logistics. EPA took two additional actions by finalizing an amendment to the P075 acute hazardous waste listing of nicotine and salts to exclude certain U.S. Food and Drug Administration approved over-the counter nicotine replacement therapies and, in the preamble, established a policy on the regulatory status of unsold retail items that are not pharmaceuticals and are managed via reverse logistics.</p>
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