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Exempt Action: Final Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC20-60
VAC Chapter title(s)	Virginia Hazardous Waste Management Regulations
Action title	Annual Update 2021
Final agency action date	October 8, 2021
Date this document prepared	September 7, 2021

Although 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 (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 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 2021**, will bring the citations up to date and incorporate the 2021 Annual edition of Title 40 of the CFR published on July 1, 2021.

However, the incorporation by reference of Title 40 of the Code of Federal Regulations does not include the provisions of EPA's *Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations* which will be added during a future regulatory update. 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.

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, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "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."

EPA-authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program. The revisions to these test methods are considered to be neither more nor less stringent than the existing test methods. Thus, authorized states may, but are not required to, adopt these changes. Adoption of the changes allows DEQ to be consistent with the federal regulations, and more flexibility to the regulatory community with regard to the test methods being changed. This amendment incorporates recent changes made by EPA to federal hazardous waste regulations into Virginia's regulations. Conforming state regulations to those of the EPA is necessary to maintain federally granted authority to implement the national programs.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Board – Virginia Waste Management Board
CFR – Code of Federal Regulations
FR – Federal Register
EPA – United States Environmental Protection Agency
VAC – Virginia Administrative Code
RCRA – Resource Conservation and Recovery Act

Statement of Final Agency Action

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 2021, to 9VAC20-60 on October 8, 2021, 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

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

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's 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

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 2021, will incorporate the following rule promulgated by EPA:

- **Modernizing Ignitable Liquids Determinations (85 FR 40594, 7/7/2020)**

A summary of this rule is provided in Attachment B.

Annual Update 2021 does not include adoption of EPA's *Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations* (84 FR 67202 12/9/2019) which will be addressed in a future regulatory update.

Issues

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 a new rule promulgated by the EPA (see Attachment B). 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.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements of the regulatory update which are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

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.

Other State Agencies Particularly Affected:

There are no other state agencies particularly affected by this regulatory amendment.

Localities Particularly Affected:

There are no localities particularly affected by this regulatory amendment.

Other Entities Particularly Affected:

There are no entities particularly affected by this regulatory amendment.

Detail of All Changes Proposed in this Regulatory Action

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	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC20-60-18	N/A	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, 2021. However, the incorporation by reference of Title 40 of the Code of Federal Regulations does not include the provisions of EPA's <i>Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations</i> (84 FR 67202 12/9/2019) will be addressed during a future regulatory update.

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.

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 B

**EPA Rule Included with Annual Update 2021
Title 40 of the CFR – March 2019 through July 2021**

Title	Federal Register	Summary
Modernizing Ignitable Liquids Determinations	85 FR 40594, 7/7/2020 Effective: 09/08/2020	EPA amended existing regulations regarding the definition of ignitability to clarify the alcohol exclusion for alcohols used as solvents. EPA also amended test methods that may be used to determine if a solid waste exhibits the characteristic of ignitability. EPA has also revised the definition of ignitability to include language that equates with Department of Transportation regulations at 49 CFR regarding ignitability.