



**Virginia
Regulatory
Town Hall**

Proposed Regulation Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-60-10 <i>et seq.</i>
Regulation Title:	Hazardous Waste Management Regulations, Amendment 15 A
Action Title:	Amendment 15 A
Date:	March 26, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary*

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Since 1981, the Virginia Hazardous Waste Management Regulations have provided definition and standards for the management of hazardous waste as they are generated, stored, transported, treated and disposed of. The regulations also establish criteria and procedures for permitting facilities that manage hazardous waste and provide for the closure of those facilities. For many years, the Virginia regulations were in large part a close analogue of federal regulations on the same subject. In Amendment 14 of the regulations, much of the analogous text was removed and replaced with language incorporating federal text from Title 40 of the Code of Federal Regulations. While the substance of the regulations remained much the same, the appearance of the text was changed. The purpose of Amendment 15 A is to comprehensively review the revised text and to incorporate additional federal text in replacement of analogous Virginia text. In particular, a main goal of Amendment 15 A is to delete the text describing the permitting process located in Part XI (9 VAC 20-60-960 through 9 VAC 20-60-1250) and replace it with incorporation of analogous text at 40 CFR 270 and elsewhere in Title 40 of the federal regulations. Consideration will be given to the reinstatement of a number of forms and procedures

regarding transporters and petitions to the director, which were previously in the regulations, but were removed in Amendment 14.

Basis*

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Section 10.1-1402 (11) of the Virginia Waste Management Act contained in Chapter 14 and Chapter 11.1 (§ 10.1-1182 et seq.), 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. The hazardous waste management program, usually known as RCRA (for the enabling statute, the Resource Conservation and Recovery Act), is mandated on the federal level under the management of United States Environmental Protection Agency (USEPA). The USEPA authorizes qualifying states to operate state hazardous waste management programs, if they are at least as stringent as the federal program, in lieu of the federal program (see RCRA § 3006). Virginia's program, through Amendment 14, has been authorized by the USEPA.

The statutes imply that the legislature desires an equivalent Virginia program that is no more restrictive than the federal program except where substantial reason exists for additional prudence. There are a few requirements in the Virginia regulations that are more restrictive than the federal regulations. These are adjustments of the federal regulations to accommodate the particular situation in Virginia. For example, by statute fees may be collected for review of permit applications. Also, underground injection of hazardous waste is not allowed in Virginia, because it does not have salt domes or appropriate geological structures to support such a facility. However, these are not new or amended requirements. The proposed amendments reinstate the annual reporting requirement for transporters, which is not required by federal law or regulation. Also, the use of "hazardous constituent" as used in 40 CFR 294.93 is expanded to include 40 CFR 294, Appendix IX constituents, and 40 CFR 264.94(a)(2) is changed to include current primary drinking water standards rather than an out-dated table included in the federal text.

In transforming Virginia regulations into the incorporation-by-reference format and thus directly adopting federal text verbatim, the difference between federal and state regulations has been reduced. Incorporation of the federal provision on permitting as a part of Amendment 15 A improves this parallelism between federal and state regulations regarding hazardous waste management. This course of action was recommended by Virginia industry and should ease the burden on industries with multi-state holdings, because Virginia regulations will more closely resemble the federal regulations with which they are already familiar while remaining protective of human health and the environment. The Virginia statute and regulations can be found at <http://www.deq.state.va.us/regulations>.

Purpose*

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not

acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Amendment of the existing Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-10 *et seq.*, is needed to continue the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. By regulating these activities the Commonwealth protects public health, natural resources and the environment. By maintaining the equivalence of its regulations with those issued by the USEPA under RCRA and the Hazardous and Solid Waste Amendments of 1984 (HSWA), the Commonwealth remains eligible to carry out its own hazardous waste management program and be an authorized state under the federal acts.

In transforming Virginia regulations into the incorporation by reference format and thus directly adopting federal text verbatim, the difference between federal and state regulations has been reduced. Incorporation of the federal provisions on permitting as a part of Amendment 15 A improves this parallelism between federal and state regulations regarding hazardous waste management. This course of action was recommended by Virginia industry and should ease the burden on industries with multi-state holdings, because Virginia regulations will more closely resemble the federal regulations with which they are already familiar while protecting human health and the environment.

The amendment also returns to the regulations transportation provisions and forms that were a part of the regulations in the past and allow for improved management of the transportation of hazardous waste. Re-inclusion of a petition provision allows submission of petitions that seek changes in the definition of their waste as a solid waste when it meets specific criteria related to recycling and to recognize the delistings of hazardous wastes made by USEPA.

Substance*

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

In Amendment 14 of the regulations, much of the analogous text was removed and replaced with language incorporating federal text from Title 40 of the Code of Federal Regulations. While the substance of the regulations remained much the same, the appearance of the text was much changed. The purpose of Amendment 15 A is to comprehensively review the revised text and to incorporate additional federal text in replacement of analogous Virginia text. In particular, a main goal of Amendment 15 A is to delete the text describing the permitting process located in Part XI (9 VAC 20-60-960 through 9 VAC 20-60-1250) and replace it with incorporation of analogous text at 40 CFR 270 and elsewhere in Title 40 of the federal regulations.

Changes in Part II of the regulations include the removal of outdated and conflicting review provisions now covered by executive order. Other changes are the removal of verbatim quotation of the statutes regarding powers of the board, powers of the director, powers of the department, and enforcement penalties and options. That text is replaced with direct citations to the statutes.

In Part II of the regulations, the incorporation of federal text into Virginia regulations is expanded in 9 VAC 20-60-124 and 9 VAC 20-60-270 to coincide with the removal of all analogous text of Part XI. Also, text from Part XI that is not clearly contained in and redundant with federal regulations is transferred to 9 VAC 20-60-124 B and 9 VAC 20-60-270 B. In 9 VAC 20-60-261, it is proposed that text now direct "conditionally exempt small quantity generators" to the Solid Waste Management Regulations for the rule about the disposal of exempt hazardous waste in solid waste facilities, removing a redundant regulatory control (the rule is unchanged since the two regulations have the same rule). In 9 VAC 20-60-262,

generators are required to see that the transporters or facility, to which they transfer the hazardous waste, have the proper identification number and permit required by the regulations. Also, in 9 VAC 20-60-262, the requirement is removed for generators to give a fifteen day prior notification before creating a new accumulation area. In 9 VAC 20-60-264, the use of "hazardous constituent" as used in 40 CFR 294.93 is expanded to include 40 CFR 294, Appendix IX constituents, and 40 CFR 264.94(a)(2) is changed to include current primary drinking water standards rather than an out-dated table included in the federal text. Since Amendment 14 was adopted, the USEPA has adopted its own universal waste standards for mercury containing lamps. This result is that there is no longer a need for a separate Virginia universal waste, and in Part XVI the previous standard is removed. However, provisions related to crushing of bulbs that were a part of the current Virginia standard but are not a part of the federal standard are retained and relocated to 9 VAC 20-60-273.

In Part IV at 9 VAC 20-60-355, the generator is required to have and use an USEPA identification number. The section explains that these are available from the department and establishes procedures to allow for issuance of provisional numbers. In Part VII, the requirement for transporters to file an annual report and the forms for that report are reinstated as they existed prior to Amendment 14. In Part XII, the nomenclature for permit modification classification is changed to match the federal nomenclature. Also, language is added to clarify how corrective action permits fit with the permit fee schedule. In Part XIV, language is proposed to allow the department to issue a matching variance from state regulations after the USEPA has delisted a waste from being a hazardous waste. Also, procedures were reinstated to allow the department to issue a variance to recycled materials such that they are no longer defined to be a solid waste for the purposes of the regulations.

Issues*

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.

The removal of analogous text in Part XI and its replacement with language incorporating federal text from Title 40 of the Code of Federal Regulations is a major change to the regulations proposed in Amendment 15 A. The movement to the incorporations by reference results in a simplification and clarification in understanding the rules that apply. It also makes clear those few requirements where Virginia has different provisions, its prohibition on underground injection, for example.

In 9 VAC 20-60-262, the requirement is removed for generators to give a fifteen day prior notification before creating a new accumulation area. This well intended requirement proved to be impractical for the regulated community. By allowing for notice at the time of establishment of an accumulation area and a prompt entry in the operating record, the process becomes practical for those regulated. This is not an advantage or disadvantage for the department, and is not expected to impact the public.

In 9 VAC 20-60-264 B 16 and 17, the use of "hazardous constituent" as used in 40 CFR 294.93 is expanded to include 40 CFR 294, Appendix IX constituents, and 40 CFR 264.94(a)(2) is changed to include current primary drinking water standards rather than an out-dated table included in the federal text. Current practices and interpretations by the department and USEPA, for technical reasons, make these the usual applied standards; however, some of the regulated community may feel that these changes are a disadvantage in their particular situation. This is particularly true if they are involved in or anticipate participating in closure of waste management areas. Therefore, the regulated community is alerted to these possibilities, is asked to evaluate these changes relative to their own situation and plans and to provide comments on how they may be impacted. The changes are an advantage to the

department and the public because they present a clearer standard and broader spectrum for evaluating clean up and monitoring.

The reinstatement of transporter requirements for annual reports (forms provided) may be a disadvantage to transporters, since additional accounting and reporting effort is required. Since such reports were required prior to Amendment 14, this may not be a great disadvantage. Compliance staff of the department has experienced unexpected difficulty tracking transportation compliance since the reports were discontinued with Amendment 14; therefore, the reinstatement is an advantage to the department. Improved compliance tracking is an advantage to the public.

The USEPA is examining its policy regarding state programs for universal waste that allow crushing of the waste lamps (mercury containing bulbs). In its own universal waste standards for used lamps, it does not allow crushing; however, many state programs, including Virginia's, allow crushing, and EPA could adopt a number of different policies in how it deals with the states and authorization of state programs. The regulated community has an advantage in flexibility to use crushing offered by the Virginia regulations as proposed and should comment on the issue. USEPA may decide that crushing is a disadvantage to the public. The department finds neither advantage nor disadvantage to its programs, but it does favor the flexibility the crushing provision allows to the regulated community. While some of the regulated community may find the crushing provision an advantage, the advantage would be nullified by two standards, an enabling Virginia provision and a position by USEPA that disapproves of crushing and refusal to authorize Virginia's provision.

Locality Particularly Affected*

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality that bears any identified disproportionate material impact that would not be experienced by other localities.

No locality is known to bear any identified disproportionate material impact that would not be experienced by another locality.

Public Participation*

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forestlands.

Anyone wishing to submit written comments for the public comment file may do at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget

activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; e) the projected cost of the regulation for affected individuals, businesses, or other entities; and f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

- (a) There is no projected cost to the agency to implement and enforce the proposed amendments to the regulations. Compliance assistance will be provided by the Department of Environmental Quality, regional compliance staff. Permitting assistance will be provided by the department's Office of Waste Program Coordination, Office of Waste Permitting. These on-going programs are not expected to experience a significant change in workload.
- (b) Localities may manage hazardous waste and may have some minor impact from the changes contained in proposed amendment; however, such changes are mostly administrative in nature and not represent a substantial increase in workload or cost.
- (c) Transporters of hazardous waste (approximately 150 in-state and 600 out-of-state) and hazardous waste management facilities generally located at manufacturing facilities (approximately 50) are the entities most likely to be impacted by these regulations.
- (d) Transporters would be required to fill in report forms once a year from existing data. The projected cost should be less than one hundred dollars per transporter. Changes in 9 VAC 20-60-264 B 16 and 17 may involve more significant impact on some of the fifty hazardous waste management facilities; however, the agency has no information on the number of those affected and the extent of the cost that might result. The agency is specifically requesting comments on the impact of these items.
- (e) Other affected individuals, businesses or entities are likely to benefit from a format that is easier to use than previous versions of the regulations, but the exact savings are unknown.
- (f) Small businesses are unlikely to be hazardous waste management facilities, but they may be generators. Significant impacts are more likely to be experienced by larger business, such as manufacturing plants. Small businesses are more likely to benefit from a format that is easier to use than previous versions of the regulations, but the exact savings are unknown.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

In Amendment 14 of the regulations, much of the analogous text was removed and replaced with language incorporating federal text from Title 40 of the Code of Federal Regulations. While most of the substance of the regulations remained the same because of the analogous nature of the incorporated text, the appearance of the text was changed. An important goal of Amendment 15 A is to comprehensively review the revised text and to incorporate additional federal text in replacement of analogous Virginia text. In particular, a main goal of Amendment 15 A is to delete the text describing the permitting process located in Part XI (9 VAC 20-60-960 through 9 VAC 20-60-1250) and replace it with incorporation of analogous text at 40 CFR 270 and elsewhere in Title 40 of the federal regulations.

Changes in Part II of the regulations include the removal of outdated and conflicting review provisions now covered by executive order. Other changes are the removal of verbatim quotation of the statutes regarding powers of the board, powers of the director, powers of the department, and enforcement penalties and options. That text is replaced with direct citations to the statutes.

In Part III of the regulations, the incorporation of federal text into Virginia regulations is expanded in 9 VAC 20-60-124 and 9 VAC 20-60-270 to coincide with the removal of all analogous text of Part XI. Also, text from Part XI that is not clearly contained in and redundant with federal regulations is transferred to 9 VAC 20-60-124 B and 9 VAC 20-60-270 B. In 9 VAC 20-60-261, it is proposed that text now direct “conditionally exempt small quantity generators” to the Solid Waste Management Regulations for the rule about the disposal of exempt hazardous waste in solid waste facilities, removing a redundant regulatory control (the rule is unchanged since the two regulations have the same rule). In 9 VAC 20-60-262, generators are required to see that the transporters or facility, to which they transfer the hazardous waste, have the proper identification number and permit required by the regulations. Also, in 9 VAC 20-60-262, the requirement is removed for generators to give a fifteen day prior notification before creating a new accumulation area. In 9 VAC 20-60-264, the use of “hazardous constituent” as used in 40 CFR 294.93 is expanded to include 40 CFR 294, Appendix IX constituents, and 40 CFR 264.94(a)(2) is changed to include current primary drinking water standards rather than an out-dated table included in the federal text. Since Amendment 14 was adopted, the USEPA has adopted its own universal waste standards for mercury containing lamps. This result is that there is no longer a need for a separate Virginia universal waste, and in Part XVI the previous standard is removed. However, provisions related to crushing of bulbs that were a part of the current Virginia standard but are not a part of the federal standard are retained and relocated to 9 VAC 20-60-273.

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Other changes proposed are editorial, adjustments to accommodate new incorporation by reference formatting or clarifying items more closely aligning Virginia text and federal text incorporated by reference.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The alternate to amending the regulations to incorporate federal text is to continue analogous Virginia text. This would require the regulated community (especially those operating in several states) to use a larger mass of regulatory text that would by its nature be more confusing and difficult to use. The proposed alternative attempts to make the regulations that apply clearer and more compact. It has the additional benefit of making standards that are unique to Virginia, easy to find and use in conjunction with parallel, incorporated federal regulatory text.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

During the public comment period and public meeting on the Notice of Regulatory Action, no comments were received.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

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Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Periodic review of the regulations is planned within three years of the latest amendment's effective date.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 should be no discernable impact on the family other than helping to provide a healthy and safe environment for all Virginians.