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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Waste Management Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC20-60
<b>Regulation title</b>	Virginia Hazardous Waste Management Regulations
<b>Action title</b>	Annual Update 2015
<b>Final agency action date</b>	December 4, 2015
<b>Document preparation date</b>	November 5, 2015

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Virginia Hazardous Waste Management Regulations, 9VAC20-60, include citations and requirements in the form of incorporated federal regulatory text at Title 40 of the Code of Federal Regulations (CFR). This regulatory amendment will bring these citations up to date and incorporate the latest Title 40 of the CFR to the one as published in the July 1, 2015 update.

As part of this regulatory action, the Board is adopting EPA's Definition of Solid Waste (DSW) as promulgated on October 30, 2008 and subsequently updated by the Revisions to the Definition of Solid Waste Rule promulgated on January 13, 2015 (80 FR 1694). The purpose of the DSW rule is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material. However, Annual Update 2015 will not incorporate the conditional exclusion for hazardous secondary materials that are managed in land-based units. This regulatory action amends the definition of "contained" to add condition (5) which clarifies that land-based units managing hazardous

secondary materials will continue to be required to comply with the applicable provisions of the VHMWR for hazardous waste land-based units.

Section 2.2-4006 A 4 (c) of the Code of Virginia allows the Board to adopt this regulatory amendment to 9VAC20-60 as the changes are necessary to conform to changes in the federal regulations. This regulatory amendment will be effective 30 days after publication in the *Virginia Register*.

**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 2015, to 9VAC20-60 on December 4, 2015 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.

**Family impact**

*Please assess the impact of this 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.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

This regulatory amendment will revise the Virginia Hazardous Waste Management Regulations in order to incorporate the final federal rules.

Current section number	Current requirement	Proposed change and rationale
9VAC20-60-18	Incorporates U.S. EPA federal documents by reference.	Updated to the most recent CFR date of July 1, 2015. This change is needed to ensure that the most recent and accurate federal documents are adopted and enforceable by Virginia. This amendment will incorporate the final federal rules for: (i) the Definition of Solid Waste Rule (73 FR 64668) as updated by the Revisions to the Definition of Solid Waste (80 FR 1694); (ii) the Vacatur of the Comparable Fuels Rule and the Gasification Rule (80 FR 18777); and, (iii) the

		changes to 40CFR261 which are a part of the Disposal of Coal Combustion Residuals from Electric Utilities (80 FR 21302).
9VAC20-60-260	Adoption of 40 CFR Part 260 by reference.	Under subdivision B.2, modified the adoption of 40 CFR Part 260 to amend the definition of “contained”. The DSW’s less stringent requirements for the definition of “contained” includes a conditional exemption for land-based units managing hazardous secondary materials. Condition (5) has been added to the term contained to clarify that land-based units that manage hazardous secondary materials will continue to be required to meet the applicable VHWMR provisions for a hazardous waste land-based unit.
9VAC20-60-261	Adoption of 40 CFR Part 261 by reference.	Deleted Subdivision B.8 as the definition of solid waste rule and its subsequent revised rule are now being incorporated into 9VAC20-60.
9VAC20-60-1390	Changes in Classifications As a Solid Waste.	Added the DSW’s 40CFR260 provisions for variance and non-waste determination including conditions under which a variance could be considered a hazardous secondary material to this section.
9VAC20-60-1420	Administrative Procedures.	Added the DSW’s 40CFR260 provisions for variance and non-waste determination processing, term and notifications required to this section.

### 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

The 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 that would be achieved through the implementation of the regulations.

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.

## 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.*

CFR – Code of Federal Regulations

DSW – EPA's definition of solid waste rule including the 2015 revisions

FR – Federal Register

EPA – United States Environmental Protection Agency