



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

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| Agency Name: | Virginia Waste Management Board |
| VAC Chapter Number: | 9 VAC 20-60-12 <i>et seq.</i> |
| Regulation Title: | Hazardous Waste Management Regulations, Amendment 15 A |
| Action Title: | Amendment 15 A |
| Date: | December 12, 2001 |

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

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 by reference 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 by reference additional federal text in replacement of analogous Virginia text. In particular, a main effect of Amendment 15 A is delete of text describing the permitting process located in Part XI (9 VAC 20-60-960 through 9 VAC 20-60-1250) and replacing it with incorporation of analogous text at 40 CFR 270 and elsewhere in Title 40 of the federal regulations. Other changes include 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.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The Virginia Waste Management approved Amendment 15 A as a final regulations on January 14, 2002.

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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final 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. In addition, 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. Further, Virginia more closely regulates transporters by requiring a permit and annual report. In some reporting of releases, Virginia requires additional notifications, such as to local officials. Virginia permit applications require additional information initially which federal regulations may leave to be requested after the submittal. Virginia has some procedures for establishing cleanup standards that, in a few cases, may be more restrictive than federal procedures.

In transforming Virginia regulations into the incorporation-by-reference format and thus directly adopting federal text by reference, 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 final 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 20-60-12 *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 by reference, 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. Corrective changes are made to some procedures related to groundwater monitoring and standards for corrective action where incorporated federal provisions are determined to be out-dated and possibly not protective of human health. 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. New section 9 VAC 20-60-1435 allows the director to approve variance from applicable treatment standards under the land disposal restrictions. Explanatory materials are inserted in the permit fee application section to clarify the fees for permits related to corrective actions.

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 of the regulatory action's detail.

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 enforcement penalties and options and the replacement of that text with direct citations to the statute.

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. In addition, 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, 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. In addition, 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 maximum contaminant levels from the primary drinking water regulations 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, made equivalent to federal standards, 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 before Amendment 14. In Part XI, the nomenclature for permit modification classification is changed to match the federal nomenclature. In addition, 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. In addition, 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. New section 9 VAC 20-60-1435 allows the director to approve variance from applicable treatment standards under the land disposal restrictions

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 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, the board sought specific advice from the public on this regulatory change. A comment was received expressing concern about possible impacts, but the comment was of a general nature and no person specifically affected by the change responded with an objection. While the exact impact on specific facilities was not established by public comment, the changes are continued in the final regulation because they are an advantage to the department and the public in that they present a clearer standard and broader spectrum for evaluating clean up and monitoring.

The reinstatement of transporter requirement for an annual reports (forms provided) may be a disadvantage to transporters, since addition accounting and reporting effort is required. Since such reports were required before 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 examined 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. Therefore, USEPA established conditions for authorization of state program based on equivalency with the federal universal waste rule. These conditions are included in the final regulations so that the crushing provisions can be a part of the universal waste in Virginia's authorized program.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

In 9 VAC 20-60-14, it was necessary to add a definitional statement that substitutes Virginia Administrative Process Act procedures for the federal Environmental Appeals Board procedures where they might be called for in incorporated federal text.

In 9 VAC 20-60-18, the proposed regulations cited a date for federal text incorporated by reference. This date has been change to July 1, 2001, by an immediate final rule approved by the board while the proposed regulations were under consideration. The new language of the immediate final rule appears also in the text of this amendment.

In 9 VAC 20-60-70 G.3, a requirement that notices appear in radio announcement is removed for consistency, because it is not the current policy of the board and does not parallel other regulations of the board.

In 9 VAC 20-60-124 B.7., old language no longer appropriate because of new incorporations of federal text by reference is removed. New language is added that substitutes Virginia Administrative Process Act procedures for the federal Environmental Appeals Board procedures where they might be called for in incorporated federal text

In 9 VAC 20-60-262 B.4., a clarifying reference to federal text is inserted to prevent the inadvertent addition of new requirements to otherwise exempt generators. Grammatical changes are made in 9 VAC 20-60-262 B.6. for clarity, and a new section, 9 VAC 20-60-262 B.7. is added to coordinate incorporate federal text that concerns reserved federal authority.

In 9 VAC 20-60-264 B.17., the terms "primary maximum contaminant level" and "PMCL" are changed to refer to maximum contaminant levels as established by the Primary Drinking Water Regulations.

In 9 VAC 20-60-266 B.3., a federal citation is corrected.

In 9 VAC 20-60-270 B., items 3, 10,11 and 15 are removed because they are redundant with federal regulatory text incorporated by reference. In item 6, a sentence is inserted to clarify how the item is to be applied and its substitution for federal regulatory text. In item 8.b., a cross-reference to exceptions is added. In new item 13, an existing Virginia requirement that was inadvertently left out of the proposed regulations is reinstated in the final regulations. New item 15 is added to coordinate with other sections and note the substitution of Virginia's Administrative Process Act procedures for USEPA's Environmental Appeals Board procedures.

In 9 VAC 20-60-273 B 3.c., conditions are added to Virginia's universal waste rule for lamp with crushing to make them equivalent to USEPA's universal waste rule for lamps without crushing. USEPA has indicated that this equivalence will allow Virginia's program element to be authorized for this universal waste.

New section 9 VAC 20-60-1435 allows the director to approve variance from applicable treatment standards under the land disposal restrictions. This power allows authorization of certain parts of Virginia's program by USEPA that might be retained otherwise.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

There were six commenters. The USEPA regional office provided the most comments in terms of checklists and other correspondence that indicated errors in wording or citation and made recommendations of how the regulations could better coordinate with federal regulations.

One commenter suggested clarifying changes to the transportation related forms. Another commenter felt that the transporter annual report was more burdensome and cost more than the preamble to the proposed regulations seemed to indicate. The commenter objected to the report as unnecessary. The commenter also doubted whether the report could be filed electronically.

One commenter objected to the use of PMCL's instead of "Table 1" in federal regulations. They were concerned that an alternative for arriving at a cleanup standard will be lost and there will be an increase in the sampling burden and cleanup cost for some facilities.

One commenter asked for a rewording of 9 VAC 20-60-262 B.4. to clarify that the requirements did not apply to generators that were exempted elsewhere in the federal regulations incorporated by reference.

One commenter offered general support for the amendment and wanted to be sure that the May 2001 amendment of federal regulations related to mixing and derived from provision are included in Virginia's regulations. New section 9 VAC 20-60-1435 allows the director to approve variance from applicable treatment standards under the land disposal restrictions.

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the 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.

In 9 VAC 20-60-14 and elsewhere, it was necessary to add a definitional statement that substitutes Virginia Administrative Process Act procedures for the federal Environmental Appeals Board procedures where they might be called for in incorporated federal text. In 9 VAC 20-60-18, the proposed regulations cited a date for federal text incorporated by reference. This date has been change to July 1, 2001, by an immediate final rule approved by the board while the proposed regulations were under consideration. The new language of the immediate final rule appears also in the text of this amendment.

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Family Impact Statement

Please provide an analysis of the regulatory action that assesses the 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 health and the environment for all Virginians.