



Periodic Review / Retain Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9VAC20-200
Regulation title	Mercury Switch Regulations
Document preparation date	April 2, 2012

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

Section 10.1-1402 of the Virginia Waste Management Act (Title 10.1, Chapter 14 of the Code of Virginia) authorizes the Virginia Waste Management Board to promulgate regulations to supervise, coordinate, and control waste management activities in order to protect human health and the environment.

Promulgating Entity

The promulgating entity for this regulation is the Virginia Waste Management Board.

Federal Requirements

There are no federal statutory or regulatory requirements that form a basis for this regulation.

State Requirements

Code of Virginia § 10.1-1400 defines solid waste as "any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended."

Code of Virginia § 10.1-1400 defines hazardous waste as "a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly stored, transported, disposed of, or otherwise managed."

Code of Virginia § 10.1-1402 provides that the Virginia Waste Management Board shall carry out the purposes of Title 10.1, Chapter 14 of the Code of Virginia and compatible federal acts and is authorized to adopt regulations concerning the criteria and standards for removal of mercury switches by vehicle demolishers.

Code of Virginia § 46.2-635 provides that every person disposing of a motor vehicle, trailer or semitrailer which is to be demolished shall make an assignment of title to the transferee, which shall be delivered to the Department, accompanied by a form provided by the Commissioner stating that the vehicle is to be demolished and certifying that, before demolition, a good faith effort was made to remove mercury switches in vehicles manufactured for the 2002 model year and preceding model years. Manufacturers of vehicles sold in the Commonwealth shall be responsible for providing a method for storing, shipping, recycling, or disposing of mercury switches removed from vehicles manufactured by them. For purposes of this section "mercury switches" means each mercury-containing capsule, commonly known as a "bullet," that is part of a convenience light switch in a vehicle manufactured for the 2002 model year or any preceding model year. Provisions of this section pertaining to mercury switches are effective only until July 1, 2015.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Alternatives to the proposal have been considered by the Department. The Department has determined that the retention of the regulation (the first alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets statutory requirements and the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives considered, are discussed below.

1. Retain the regulation without amendment. This option is being selected because the current regulation provides the least onerous means of complying with the minimum requirements of the legal mandates.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state and federal mandates, and associated regulations and policies. This option was not selected because it could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits to human health and protection of the environment.
3. Repeal the regulation or amend it to satisfy the provisions of legally binding state and federal mandates. This option was not selected because the regulation is effective in meeting its goals and already satisfies those mandates.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Notice of Periodic Review was published in the Virginia Register of Regulations on February 13, 2012. The comment period closed on March 5, 2012. No comments were received concerning this regulation.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation is necessary for the protection of public health and the environment, as it is needed to meet the primary goals Title 10.1, Chapter 14 of the Code of Virginia.

The regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth, ensuring that owners and operators comply with good hazardous waste management and control practices.

The Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

This regulation satisfies the provisions of the law and legally binding state requirements, and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to

minimize the economic impact of regulations on small businesses.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state requirements that protect human health and the environment.

No complaints or comments were received from the public during the comment period.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation became effective in 2007 after the final regulation was adopted by the Board on January 8, 2007. This regulation continues to provide the most efficient and cost-effective means to protect human health and the environment.

The Department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on families or family stability.

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