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## Exempt Action: Final Regulation Agency Background Document

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| <b>Agency name</b>  | Virginia Waste Management Board                 |
| <b>Virginia Administrative Code (VAC) Chapter citation(s)</b> | 9VAC 20-60                                      |
| <b>VAC Chapter title(s)</b>                                   | Virginia Hazardous Waste Management Regulations |
| <b>Action title</b>   | Annual Update 2023 – Exempt Final Action        |
| <b>Final agency action date</b>                               | September 6, 2023                               |
| <b>Date this document prepared</b>                            | July 13, 2023, Revised September 15, 2023       |

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 2023**, will bring the citations up to date and incorporate the 2023 Annual edition of Title 40 of the CFR published on July 1, 2023.

With this regulatory action, the Board is adopting the following EPA rules:

**“Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes,”** which was published in the Federal Register on October 1, 2021, and which will be administered by

EPA. Adopting this EPA rule was put on hold during the 2022 annual update.

“Hazardous Waste Management System; Final Exclusion for Identifying and Listing Hazardous Waste” which was published in the Federal Register on July 13, 2022.

“EPA Method 23—Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources” which was published in the Federal Register on March 20, 2023.

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 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). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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 must implement RCRA programs that are at least as stringent as the federal requirements. Annually EPA publishes rule checklists, identifying federal rule changes to assist States in developing their program modifications.**

**The revisions to the Canada specific import-export movement codes were effective in all States as of October 31, 2021, and are administered by the Federal government as a foreign policy matter. According to EPA, State programs are required to adopt the provisions in this rule to maintain their equivalency with the Federal program.**

**The revisions to Test Methods for Standards to Control Organic Emissions finalized editorial and technical revisions to EPA’s Test Method 23 and allows an alternative to existing SW-846 methods. While EPA is not requiring states to adopt this change, the revision is included in the 2023 Annual Update since the change was made prior to July 1, 2023, and incorporation keeps the state regulations consistent with federal program.**

**A rule checklist was not provided for the revisions to Final Exclusion for Identifying and Listing Hazardous Waste; however, the revision is included in the 2023 Annual update since the change was made prior to July 1, 2023, and incorporation keeps the state regulations consistent with the federal program.**

**Because the Virginia Hazardous Waste Management Regulations incorporate Title 40 of the Code of Federal Regulations by reference as of an annual publication date, the above changes are adopted and keep state regulations consistent with the federal regulations. This amendment only incorporates recent changes made by EPA to federal hazardous waste regulations into Virginia’s regulations.**

### 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.*

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- 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.*

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**The Virginia Waste Management Board approved this amendment, Annual Update 2023, to 9VAC20-60 on September 6, 2023, 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.*

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**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 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.*

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**Conforming these regulations to the federal regulations allows DEQ to maintain authorization to implement the national hazardous waste management programs. Additionally, when Virginia's regulations are consistent with federal requirements, there is less confusion among the regulated community, and Virginia's businesses and facilities benefit from having local access to decision makers who have a clearer understanding of state-specific issues and needs. Maintaining hazardous waste**

regulations and direct state oversight is protective of the human health, safety and welfare by protecting the Commonwealth’s environment and natural resources from pollution, impairment or destruction.

### 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.*

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The regulatory action, Annual Update 2023, will update the 40 CFR citation to the most recent annual update of July 1, 2023, thereby incorporating the following rules promulgated by EPA:

“Hazardous Waste Management System; Final Exclusion for Identifying and Listing Hazardous Waste” which was published in the Federal Register on July 13, 2022. (87 FR41604, 7/13/22)

“EPA Method 23—Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources” which was published in the Federal Register on March 20, 2023. (88FR 16732, 3/20/23)

This regulatory action will also incorporate the following rule promulgated by EPA in 2021 by removing the existing exception language:

“Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes.” (86 FR 54381, 10/1/2021)

A summary of these rules is provided in Attachment B to this Town Hall document.

### 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.*

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The primary advantage of this amendment is that it conforms 9VAC20-60, Virginia Hazardous Waste Management Regulations, to the federal hazardous waste regulations by incorporating new rules promulgated by the EPA (see Attachment B). This causes less confusion for the regulated community and Virginia’s businesses and facilities benefit from having local 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.**

**Details of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* 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, 2023.<br><br>Removed the incorporation exception for EPA's <i>Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes</i> , (86 FR 54381 10/1/2021). |

**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.*

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**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.**

**Adoption of the changes allows state regulations to be consistent with the federal regulations leading to less confusion among the regulated community which includes small businesses.**

### **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.*

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**There is no impact on the institution of the family or family stability.**

**Attachment B**

**EPA Rule Included with Annual Update 2023  
Title 40 of the CFR —July 1, 2022, through June 30, 2023, and October 1, 2021**

| Title  | Federal Register                                | Summary  |
|--|---|--|
| <i>Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes</i> | 86 FR 54381, 10/1/2021<br>Effective: 10/31/2021 | EPA amended existing regulations to conform to changes made in the regulations relating to twelve hazardous waste import-export recovery and disposal operations used in hazardous waste export and import notices submitted to EPA by U.S. exporters and importers, and in movement documents that accompany export and import shipments. The changes to regulations related to these twelve recovery and disposal operations are needed to reflect changes to regulations related to Canadian import-export recovery and disposal operations that Canada promulgated in the Canada Gazette Part II on March 17, 2021 (“Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations,” Canada Gazette Part II, volume 155, number 6, pp. 324-543), and that become effective in Canada on October 31, 2021. The changes in the regulations are being made solely to conform to Canada’s regulatory changes to Canada-specific operation codes and descriptions.         |
| <i>Hazardous Waste Management System; Final Exclusion for Identifying and Listing Hazardous Waste</i>            | 87 FR 41604, 7/13/2022<br>Effective: 7/13/2022  | EPA is granting a petition submitted by Emerald Kalama Chemical, LLC, in Kalama, Washington to exclude (or “delist”) up to 3,500 cubic yards of U019 (benzene) and U220 (toluene) industrial wastewater biological solids (IWBS) per year from the list of Federal hazardous wastes under the Resource Conservation and Recovery Act.  |
| <i>EPA Method 23—Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans From</i>   | 88 FR 16732, 3/20/2023<br>Effective: 3/20/2023  | This action finalizes editorial and technical revisions to EPA’s Method 23 (Determination of Polychlorinated Dibenzo-p-Dioxins, Polychlorinated Dibenzofurans, and Polycyclic Aromatic Hydrocarbons from Stationary Sources). Final revisions include incorporating true, comprehensive, and stable isotope dilution for quantifying target compounds using corresponding carbon-13 labeled compounds for each target compound including most of the polycyclic aromatic hydrocarbons (PAH) and changing the method quality control from the current prescriptive format to a more flexible performance-based approach with specified performance criteria. It also expands the list of target compounds of Method 23 to include PAH and polychlorinated biphenyls (PCB). The final revisions allow facilities and their test teams flexibility when sampling and measuring polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (PCDD/PCDF), PAH, and PCB from stationary sources. |