

US EPA ARCHIVE DOCUMENT

ATTACHMENT 3 to the PROGRAM DESCRIPTION  
Virginia Hazardous Waste Management Regulations

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## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

#### 9 VAC 20-60-12 et seq. Virginia Hazardous Waste Management Regulations.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Effective Date: February 17, 1999.

#### CHAPTER 60. VIRGINIA HAZARDOUS WASTE MANAGEMENT REGULATIONS.

##### PART I. DEFINITIONS.

#### 9 VAC 20-60-10. (Repealed.)

#### 9 VAC 20-60-12. Definitions derived from the Code of Virginia.

A. Chapter 11.1 (§ 10.1-1182 et seq.) and Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia define the meaning of terms as used in the text of the statutes. Terms not otherwise defined in these regulations or an incorporated reference text shall have the meaning as established in the statutes.

B. Where a term is defined in these regulations or an incorporated reference text, the term shall have no other meaning, even if it is defined differently in the Code of Virginia or another regulation of the Virginia Administrative Code. The board has authority to adopt regulations only as granted to it by the Code of Virginia, and nothing herein shall be interpreted as extending the effect or scope of a regulation beyond that authority.

#### 9 VAC 20-60-14. Definitions derived from incorporations of reference texts.

A. These regulations contain the text herein and several incorporated texts from Title 40 of the Code of Federal Regulations (cited as 40 CFR followed by a part number, section number and subsection reference numbers). These incorporated texts are fully a part of these regulations; however, definitions, additions, modifications and exemptions stated in the text written herein direct how the incorporated text shall be interpreted, and they take precedence over the verbatim interpretation of the incorporated text. These incorporated texts include definitions that are fully a part of these regulations and generally applicable throughout all incorporated text and all text written herein; however, stated in the text written herein are directions as to how the incorporated text shall be interpreted, and these directions take precedence over the verbatim interpretation of the incorporated text.

B. Unless a specific direction regarding the substitution of terms is given elsewhere, the following terms, where they appear in the Code of Federal Regulations shall, for the purpose of these regulations, have the following meanings or interpretations:

1. "Director" shall supplant the "Administrator," "Assistant Administrator," "Assistant Administrator for Solid Waste and Emergency Response" and the "Regional Administrator," wherever they appear.
2. "Department of Environmental Quality" shall supplant the "United States Environmental Protection Agency," "Environmental Protection Agency," "Agency," "EPA," "EPA Headquarters," "EPA Region(s)" or "Regional Office," wherever they appear. The use of "EPA" as an adjective in "EPA Acknowledgment of Consent," "EPA document," "EPA form," "EPA identification number," "EPA number," "EPA Publication," or similar phrase shall not be supplanted with "Department of Environmental Quality" and shall remain as in the original text cited.
3. "Qualified engineer" means an engineer licensed as a certified professional engineer in the Commonwealth of Virginia.
4. "State," "authorized state," and "approved state" means the Commonwealth of Virginia.
5. "Approved program" means the Virginia regulatory program for the Virginia Hazardous Waste Management Regulations.

C. If a part of 40 CFR (as in 40 CFR Part 260) is cited, it shall mean the entire part (in this case, all of Part 260) including all subdivisions. If a section or subsection of a part of 40 CFR (as in 40 CFR 260.10) is cited, it shall mean the entire section (Section 10 of Part 260) and its subdivisions, but it does not include other sections or subsections of the same part.

D. The text of federal regulations incorporated by reference in these regulations includes dates that occurred before the effective date of the incorporation of those requirements into these regulations. Such dates shall not be construed as creating a retroactive right or obligation under the Virginia Hazardous Waste Management Regulations when that right or obligation did not exist in these regulations prior to the incorporation of the federal regulations by reference. In such cases, the effective date under Virginia Hazardous Waste Management Regulations is the earliest date the requirement was incorporated into these regulations or is as otherwise specified in these regulations. If a right or obligation existed under federal regulations based on a date in federal regulations and there is a period from the date cited in the incorporated text until the date they took effect in these regulations, nothing in these regulations shall contravene or countermand the legal application of the federal regulation for that period.

E. The text of federal regulations incorporated by reference in these regulations includes references to "RCRA," the "Resource Conservation and Recovery Act," sections of "RCRA," "Subtitle C of RCRA," the "Act," and other citations of enabling federal statutes. These statutes provide authority for actions by the United States Environmental Protection Agency, the administrator, and authorized states to regulate solid and hazardous waste management. The Virginia Waste Management Act (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia provides authority to the Virginia Waste Management Board, the director and the department analogous to many of those found in the federal statutes. See Part II (9 VAC 20-60-20 et seq.) of this chapter. Wherever in the incorporation by reference in these regulations of text from the Code of Federal Regulations there is a citation of authority from federal statutes, the authority and power of the analogous or related portions of the Virginia Waste Management Act shall be considered to apply in addition to the federal statutory citation and to support enforcement of the requirement.

#### **9 VAC 20-60-17. Definitions created by these regulations.**

A. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrator" means the Administrator of the United States Environmental Protection Agency or his designee. See 9 VAC 20-60-14 B 1.

"Another regulation of the Virginia Administrative Code" means any regulation that is not in 9 VAC 20-60-10 et seq., the Virginia Hazardous Waste Management Regulations.

"Application, Part A" means that part of the application which a permit applicant shall complete to qualify for interim status under § 3005(e) of RCRA or this chapter and for consideration for a permit.

"Application, Part B" means that part of the application which a permit applicant shall complete to be considered for a permit as required by 9 VAC 20-60-1010.

"Approved program" means a state program which has been approved by the U.S. EPA. An "approved state" is one administering an "approved program" under the hazardous waste provisions of RCRA.

"Authorization (authorized program)" means a state hazardous waste program which has been approved under the authorities of the Resource Conservation and Recovery Act.

"Authorized representative" means the manager, superintendent, or person of equivalent responsibility responsible for the overall operation of a facility or an operational unit (i.e., part of a facility).

"Commonwealth" means the Commonwealth of Virginia.

"Director" means the Director of the Department of Environmental Quality.

"Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the director. See 9 VAC 20-60-1050 A.

"EPA" means the U.S. Environmental Protection Agency. See 9 VAC 20-60-14 B 2.

"EPA identification number" means the number assigned by EPA or the director to each hazardous waste generator, hazardous waste transporter, or hazardous waste facility.

"EPA hazardous waste number" means the number assigned by EPA to each waste listed in Subpart D of 40 CFR Part 261 and to each characteristic identified in Subpart C of 40 CFR Part 261.

"Hazardous material" means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated under 49 CFR Parts 171 and 173.

"HSWA" means the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616).

"HSWA drip pad" means a drip pad where F032 wastes are handled.

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"HSWA tank" means a tank owned or operated by a small quantity generator or an underground tank for which construction commences after July 14, 1986, or an underground tank that cannot be entered for inspection.

"Non-HSWA tank" means any tank that is not a HSWA tank.

"Non-HSWA drip pad" means a drip pad where F034 or F035 wastes are handled.

"Permit" means a control document issued by the Commonwealth pursuant to this chapter, or by the EPA administrator pursuant to applicable federal regulations. The term "permit" includes any functional equivalent such as an authorization, license, emergency permit, or permit by rule. It does not include interim status under RCRA or this chapter, nor does it include draft permits.

"Permitted hazardous waste management facility" or "permitted facility" means a hazardous waste treatment, storage, or disposal facility that has received an EPA or Commonwealth permit in accordance with the requirements of this chapter or a permit from an authorized state program.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.).

"Regulation" means the control, direction and governance of solid and hazardous waste activities by means of the adoption and enforcement of laws, ordinances, rules and regulations.

"Responsible individual" means an individual authorized to sign official documents for and act on behalf of a company or organization. See also "authorized representative."

"Signature" means the name of a person written with his own hand.

"These regulations" means 9 VAC 20-60-10 et seq., the Virginia Hazardous Waste Management Regulations.

B. Terms used in liability insurance requirements. In the liability insurance requirements, the terms "bodily injury" and "property damage" shall have the meanings given these terms by the case law of the Virginia court system. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry.

**9 VAC 20-60-18. Applicability of incorporated references based on the dates on which they became effective.**

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and incorporated by reference, that regulation shall be as it exists and is in effect on June 30, 1995, unless an exception or an alternate date is specified. The amendments to Title 40 of the Code of Federal Regulations contained in the following Federal Register publications are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations:

December 6, 1994, Volume 59, Number 233, pages 62896 through 62953;

January 3, 1995, Volume 60, Number 1, pages 241 through 302;

January 13, 1995, Volume 60, Number 9, pages 3089 through 3095;

February 9, 1995, Volume 60, Number 27, pages 7824 through 7859;

April 4, 1995, Volume 60, Number 64, pages 17001 through 17004;

April 17, 1995, Volume 60, Number 73, pages 19165 through 19167;

May 12, 1995, Volume 60, Number 92, pages 25619 through 25620;

May 19, 1995, Volume 60, Number 97, pages 26828 through 26829; and

June 29, 1995, Volume 60, Number 125, pages 33911 through 33915.

**PART II.**

**GENERAL INFORMATION AND LEGISLATIVE AUTHORITY.**

**9 VAC 20-60-20. Authority for chapter.**

A. This chapter is issued under Virginia Waste Management Act, Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

B. Section 10.1-1402 of the Code of Virginia, assigns the Virginia Waste Management Board the responsibility for carrying out the purposes and provisions of the chapter and compatible provisions of federal acts.

C. The board is authorized to:

1. Exercise general supervision and control over waste management activities in the Commonwealth.
2. To consult, advise and coordinate with the Governor, the Secretary, the General Assembly, other state agencies and federal agencies for the purpose of implementing the chapter and the federal acts.
3. Provide technical assistance and advice concerning all aspects of waste management.
4. Develop and keep current a state solid and hazardous waste management plan and provide technical assistance and advice or other aid for the development and implementation of local or regional solid and hazardous waste management.
5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery, and resource recovery systems.
6. Collect such data and information as may be necessary to conduct the state programs, including data on the identification of and amounts of waste generated, transported, stored, treated, or disposed, and resource recovery.
7. Require any person who generates, collects, transports, stores, or provides treatment or disposal of a hazardous waste to maintain such records, manifest and reporting system as may be required pursuant to federal statute or regulations.
8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste which it deems to be hazardous.
9. Consult and coordinate with the heads of any other appropriate state and federal agencies, any appropriate independent regulatory agencies and any other appropriate governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this article while imposing the least burden of duplicative requirements on those persons subject to the provisions of this article.
10. Make application for such funds as may become available under federal acts and to transmit such funds when applicable to any appropriate person.
11. Promulgate and enforce such regulations as may be necessary to carry out its powers and duties and the intent of this chapter and the federal acts.
12. Subject to the approval of the governor, acquire by purchase, exercise of the right of eminent domain in accordance with Chapter 1.1 (§ 25-46.1 et seq.) of Title 25 of the Code of Virginia, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the board as constituting necessary and appropriate sites to be used for the purpose of the management of hazardous waste as defined in the chapter, including any and all lands adjacent to the site as the board may deem necessary or suitable for restricted areas. In all instances the board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this paragraph, the board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.
13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.
14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the board pursuant to this part shall be used exclusively to satisfy the responsibilities assumed by the board for the perpetual custody and maintenance of hazardous waste management facilities.
15. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage, or disposal facility or any person transporting hazardous wastes, permit application fees sufficient to defray only costs related to the issuance of permits as required by the Code in accordance with regulations promulgated by the board, but such fees shall not exceed the cost necessary to implement this paragraph. All fees received shall be used exclusively for the hazardous waste management program set forth herein.
16. To issue, deny, amend, and revoke certification of site suitability for hazardous waste facilities.
17. To make separate orders and regulations it deems necessary to meet any emergency to protect public health, natural resources, and the environment from the release or imminent release of waste.
18. Take actions to contain or clean up sites where solid or hazardous waste has been improperly managed and to institute legal proceedings to recover the costs of the containment or clean-up activities from the responsible parties.
19. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste laws and regulations or court orders pertaining to them for the purpose of responding to solid or hazardous waste incidents and clean-ups of sites which have been improperly managed, including sites eligible for a joint federal and state

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remedial project under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510.

20. To abate hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the jurisdiction of the board.

21. Notwithstanding any other provision of law to the contrary, regulate the management of mixed low-level radioactive waste.

D. The department has the following general powers, all of which, with the approval of the director, may be exercised by a unit, board or division of the department with respect to matters assigned to that organizational entity:

1. Administer the policies, rules, and regulations established by the Board pursuant to the Act.
2. Employ such personnel as may be required.
3. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under the Act, including, but not limited to, contracts with the United States, other state agencies, and governmental subdivisions of the Commonwealth.
4. Other powers designated by the Act.

E. The director shall:

1. Under direction and control of the Secretary of Natural Resources, exercise such powers and perform such duties as are conferred or imposed upon him by law and any other duties required of him by the governor or the board.
2. In addition to other responsibilities set forth in the Act, carry out management and supervisory responsibilities in accordance with the rules, regulations and policies of the board. In no event shall the director have the authority to promulgate any final regulations.
3. Be vested with all the authority of the board when it is not in session, subject to such rules and regulations as may be prescribed by the board.

**9 VAC 20-60-30. Purpose of chapter.**

A. The purpose of this chapter is to provide for the control of all hazardous wastes that are generated within, or transported to the Commonwealth for the purposes of storage, treatment, or disposal or for the purposes of resource conservation or recovery.

B. This chapter establishes a management control system which assures the safe and acceptable management of a hazardous waste from the moment of its generation through each step of management until the ultimate destruction or disposal.

C. This chapter is promulgated to meet the requirements of the Commonwealth legislative authority referenced in 9 VAC 20-60-20 A and will provide for a state hazardous waste program that will meet the requirements of the federal Resource Conservation and Recovery Act, Public Law 94-580, 42 USC 6901.

**9 VAC 20-60-40. Administration of chapter.**

A. The director is designated by the Act with the responsibility to carry out programs, consistent with board approval, that will comply with the requirements of the Act.

B. The board, acting on the advice of the director, will promulgate regulations to meet the requirements of the Act.

**9 VAC 20-60-50. Application of chapter.**

A. This chapter applies to any person that generates, transports, stores, treats, or disposes of a hazardous waste.

B. All persons who notify the U.S. Environmental Protection Agency under the authorities of § 3010 of the Resource Conservation and Recovery Act are subject to the provisions of this chapter.

C. All persons who did not notify the U.S. Environmental Protection Agency under the authorities of § 3010 of the Resource Conservation and Recovery Act, but that generate, transport, store, treat, or dispose of a hazardous waste shall also comply with the provisions of this chapter.

**9 VAC 20-60-60. Regulatory evaluation.**

A. Within three years after the effective date of this chapter, the department shall perform analysis on this chapter and provide the Waste Management Board with a report on the results. The analysis shall include:



1. The purpose and need for the chapter;
  2. Alternatives which would achieve the stated purpose of this chapter in a less burdensome and intrusive manner;
  3. An assessment of the effectiveness of this chapter;
  4. The results of a regulatory review of current state and federal statutory and regulatory requirements, including identification and justification of this chapter's requirements which exceed federal requirements; and
  5. The results of a review as to whether this chapter is clearly written and easily understandable by affected parties.
- B. Upon review of the department's analysis, the Waste Management Board shall confirm the need to:
1. Continue this chapter without amendment;
  2. Repeal this chapter; or
  3. Amend this chapter.

The Waste Management Board will authorize the department to initiate the applicable regulatory process, and to carry out the decision of the Waste Management Board, if amendment or repeal of this chapter is warranted.

**9 VAC 20-60-70. Public participation.**

A. All regulations developed under the provisions of Title 10.1 for hazardous waste management shall be developed in accordance with the provisions of the Commonwealth of Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and the Virginia Waste Management Board Public Participation Guidelines, 9 VAC 20-10-10 et seq.

B. All permits for hazardous waste management facilities including permits by rule, will be the subject of a public hearing, as specified in 9 VAC 20-60-1220.

C. Modifications and revisions to all hazardous waste management facility permits, except changes to interim status, shall be subject to public participation in accordance with Part XI (9 VAC 20-60-960 et seq.) of this chapter.

D. Modifications and revisions to this chapter shall be the subject of public participation as specified by the Virginia Administrative Process Act and the public participation guidelines of the department.

E. Dockets of all permitting actions, enforcement actions, and administrative actions relative to this chapter shall be available to the public for review, consistent with the Commonwealth of Virginia Administrative Process Act, Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia), and the provisions of this chapter.

F. All reports and related materials received from hazardous waste generators, transporters and facilities, as required by this chapter, shall be open to the public for review.

G. Public participation in the compliance evaluation and enforcement programs is encouraged. The department will:

1. Investigate and provide written responses to all citizen complaints addressed to the department;
2. Not oppose intervention by any citizen in a suit brought before a court by the department as a result of the enforcement action; and
3. Publish a notice in major daily or weekly newspaper of general circulation in the area and broadcast over local radio stations, and provide at least 30 days of public comment on proposed settlements of civil enforcement actions except where the settlement requires some immediate action.

H. Appropriate segments of the public will be provided information relative to the planning and implementation of this chapter on a routine and continuing basis.

**9 VAC 20-60-80. Enforcement and appeal procedures; offenses and penalties.**

A. All administrative enforcement and appeals taken from actions of the director relative to the provisions of this chapter shall be governed by the Virginia Administrative Process Act.

B. Inspections, right of entry.

1. In addition to the provisions of 9 VAC 20-60-1060 I, upon presentation of appropriate credentials and upon consent of the owner or custodian, the director or his designee shall have the right to enter at any reasonable time onto any property to include but not limited to conveyance, vehicle, facility or premises, to inspect, investigate, evaluate, conduct tests or take samples for testing in order to determine whether the provisions of this chapter are being complied with.



2. If the director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2, Code of Virginia.

C. Orders.

1. The board is authorized to issue orders to require any person to comply with the provisions of this chapter. Any such order shall be issued only after a hearing with at least thirty days notice to the affected person of the time, place, and purpose of it. Such order shall become effective not less than 15 days after mailing a copy of it by certified mail to the last known address of such person.

2. The provisions of 9 VAC 20-60-80 C 1, shall not affect the authority of the board to issue separate orders and regulations to meet any emergency to protect public health, natural resources, and the environment from the release or imminent threat of release of waste.

D. Penalties, injunctions, civil penalties and charges for violations.

1. In addition to penalties provided below, any person who knowingly transports any hazardous waste to an unpermitted facility; who knowingly transports, treats, stores, or disposes of hazardous waste without a permit or in violation of a permit; or who knowingly makes any false statement or representation in any application, label, manifest, record, permit, or other document filed, maintained, or used for purposes of hazardous waste program compliance shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than five years and a fine of not more than twenty-five thousand dollars for each day of violation, either or both. The provisions of this subsection (9 VAC 20-60-80 D 1) shall be deemed to constitute a lesser included offense of the violation set forth under 9 VAC 20-60-80 D 6. Each day of violation of each requirement shall constitute a separate offense.

2. In addition to the other provisions of this part, any person who violates any provisions of this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than twenty-five thousand dollars for each day of such violation. All penalties under this part shall be recovered in a civil action brought by the attorney general in the name of the Commonwealth.

3. Any person violating, or failing, neglecting, or refusing to obey any lawful regulation or order of the board or director, any condition of a permit, or certification or any provision of the Act may be compelled, in a proceeding instituted in an appropriate court by the board or the director, to obey such regulation, permit, certification, order, or provision of the Act and to comply with it by injunction, mandamus, or other appropriate remedy.

4. Without limiting the remedies which may be obtained in 9 VAC 20-60-80 D 3, any person violating, or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to 9 VAC 20-60-80 D 3, shall be subject, in the discretion of the court, to a civil penalty not to exceed twenty-five thousand dollars for each violation. Each day of violation shall constitute a separate offense.

5. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the board or the director, or any provisions of this Act, the board may provide, in an order issued by the board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in 9 VAC 20-60-80 D. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under 9 VAC 20-60-80 D.

6. Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste in violation of this chapter and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of violating 9 VAC 20-60-80 be subject to a fine not exceeding the greater of \$1,000,000 or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.

7. Prosecution under 9 VAC 20-60-80 shall be commenced within three years after discovery of the offense, notwithstanding the provisions of any other statute.

8. The board shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the board under 9 VAC 20-60-80 D in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

E. Legal representation.

1. The attorney general shall represent the board and the director in all actions and proceedings for the enforcement of this chapter except actions or proceedings to which the Commonwealth or any of its agencies or institutions is a party defendant.

2. Upon approval by the governor, the board is authorized to employ special counsel in actions or proceedings where the Commonwealth or any of its agencies or institutions is a party defendant.

F. If the director, any board member or any officer or employee of the department is arrested, indicted or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his duties related to the regulations, the director may employ an attorney approved by the attorney general to defend such person. The compensation for such attorney shall, subject to the approval of the attorney general, be paid out of the funds appropriated for the administration of the department.

**9 VAC 20-60-90. (Reserved.)**

### PART III.

#### INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE.

**9 VAC 20-60-100. (Repealed.)**

**9 VAC 20-60-110. (Repealed.)**

**9 VAC 20-60-120. (Repealed.)**

**9 VAC 20-60-124. Adoption of 40 CFR Part 124 by reference.**

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in Subpart A of 40 CFR Part 124 that are required for state RCRA programs (Resource Conservation and Recovery Act) by 40 CFR 271.14 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 124 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where text from 40 CFR Part 124 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Other sections of these regulations, particularly in Parts XI (9 VAC 20-60-960 et seq.) and XIV (9 VAC 20-60-1370 et seq.), describe processes or procedures wherein items from 40 CFR Part 124 are applied as a part of more complete and detailed requirements. The incorporations of portions of 40 CFR Part 124 in this part shall not be construed so as to contradict or interfere with the operations of other parts of these regulations.

2. In 40 CFR 124.5(d), 40 CFR 124.6(e), and 40 CFR 124.10(b), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 124.5(d), 40 CFR 124.6(e), and 40 CFR 124.10(b), the term "EPA" shall mean the United States Environmental Protection Agency.

4. In 40 CFR 124.10(c)(1)(ii), the term "EPA" shall mean the United States Environmental Protection Agency.

5. In Subpart A of 40 CFR Part 124, there are several references to elements of 40 CFR Part 270. These regulations do not incorporate 40 CFR Part 270 in its entirety, but do contain requirements in Parts XI and XIV of this chapter that are analogous to many of the subelements of 40 CFR Part 270 that are not incorporated by reference. Where a reference to a subelement of 40 CFR Part 270 is included in text of the Code of Federal Regulations incorporated in these regulations, those analogous requirements of these regulations shall be substituted for the subelement of 40 CFR Part 270.

**9 VAC 20-60-130 through 250. (Repealed.)**

**9 VAC 20-60-260. Adoption of 40 CFR Part 260 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 260 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 260 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 260 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

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1. In 40 CFR 260.10, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.
  2. In 40 CFR 260.10 the term "EPA" shall mean the United States Environmental Protection Agency.
  3. In 40 CFR 260.10 the term "new tank system" and "existing tank system", the reference to July 14, 1986, applies only to tank regulations promulgated pursuant to federal Hazardous and Solid Waste Amendment (HSWA) requirements. HSWA requirement categories include:
    - a. Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators;
    - b. Leak detection requirements for all underground tank systems for which construction commences after July 14, 1986; and
    - c. Permitting standards for underground tanks that cannot be entered for inspection.

For non-HSWA regulations the reference date shall be January 1, 1998.

4. In 40 CFR 260.10 the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.
5. In 40 CFR 260.10 definitions of the terms "Person," "State," and "United States," the term "state" shall have the meaning originally intended by the Code of Federal Regulations and not be supplanted by "Commonwealth of Virginia."
6. In 40 CFR 260.10 and wherever elsewhere in Title 40 of the Code of Federal Regulations the term "universal waste" appears, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."
7. Throughout 40 CFR 260.11(a) the terms "EPA" and "U.S. Environmental Protection Agency" shall not be supplanted with the term "Commonwealth of Virginia."
8. In Part XIV (9 VAC 20-60-1370 et seq.), the Virginia Hazardous Waste Management Regulations contains analogous provisions to 40 CFR 260.23, 40 CFR 260.30, 40 CFR 260.31, 40 CFR 260.32, 40 CFR 260.33, 40 CFR 260.40, and 40 CFR 260.41. These sections of 40 CFR Part 260 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations.
9. Sections 40 CFR 260.2, 40 CFR 260.20, 40 CFR 260.21 or 40 CFR 260.22 are not included in the incorporation of 40 CFR Part 260 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.
10. Appendix I to 40 CFR Part 260 is not incorporated by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

#### **9 VAC 20-60-261. Adoption of 40 CFR Part 261 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 261 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 261 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the director (Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009).
2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.
3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.
4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of Parts XI (9 VAC 20-60-960 et seq.) and XII (9 VAC 20-60-1260 et seq.) of these regulations.
5. No hazardous waste from a conditionally exempt small quantity generator shall be disposed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless the solid waste management facility had written permission from the department to receive such waste.

6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. In Subparts B and D of 40 CFR Part 261, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency, and the term "Director" shall not supplant "Administrator" throughout Subparts B and D.

8. All radioactive wastes classified as low-level radioactive material by the United States Nuclear Regulatory Commission shall be a hazardous waste. NOTE: A waste may be a hazardous waste as defined by 40 CFR Part 261 and a low-level radioactive waste. These "mixed wastes" are required to comply with the requirements of these regulations and all regulations of the United States Nuclear Regulatory Commission that apply.

**9 VAC 20-60-262. Adoption of 40 CFR Part 262 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 262 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 262 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 262 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 262.42(a)(2) the words "for the Region in which the generator is located" is deleted from the incorporated text and is not a part of these regulations.

2. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57 the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. For accumulation areas established before March 1, 1988, the generator shall notify the director that he accumulates hazardous waste in accordance with 40 CFR 262.34 by March 1, 1988. For accumulation areas established after March 1, 1988, he shall notify the director least 15 days prior to establishment of the accumulation areas that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34. In the case of a new generator who creates such accumulation areas after March 1, 1988, he shall notify the director at the time the generator files the Notification of Hazardous Waste Activity that he intends to accumulate hazardous waste in accord with 40 CFR 262.34. This notification shall specify the exact location of the accumulation area at the site.

5. In addition to the requirements in 40 CFR Part 262, management of hazardous wastes is required to comply with the Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.), including packaging and labeling for transport.

6. In addition to the requirements of 40 CFR Part 262, the generator shall designate on the manifest all subsequent transporters of the hazard waste shipment.

**9 VAC 20-60-263. Adoption of 40 CFR Part 263 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 263 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 263 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 263 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Additional requirements for transportation of hazardous materials are included in Part VII (9 VAC 20-60-420 et seq.) of these regulations and in the Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.).

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2. Sections of 40 CFR 263.21(a)(2), 40 CFR 263.30 and 40 CFR 263.31 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations. See 9 VAC 20-60-490 for requirements related to transportation discharge management.

**9 VAC 20-60-264. Adoption of 40 CFR Part 264 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 264 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 264 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 264 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 264.1(d), 40 CFR 264.1(f), 40 CFR 264.149, 40 CFR 264.150, 40 CFR 264.301(l), and Appendix VI are not included in the incorporation of 40 CFR Part 264 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 264.1(g)(11) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

3. In 40 CFR 264.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 264.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

5. In addition to the notifications required by 40 CFR 264.56(d)(2), notification shall be made to the on scene coordinator, the National Response Center and the Commonwealth Emergency Response Team. In the associated report filed under 40 CFR 264.56(j), the owner or operator shall include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

6. In 40 CFR 264.143(h), 40 CFR 264.145(h), and 40 CFR 264.151, an owner or operator may use the same financial mechanism for multiple facilities. If the facilities covered by the mechanism are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with all RCRA authorized state agencies where facilities covered by the financial mechanism are located or with the regional administrators where facilities are located in states without RCRA authorization.

7. In 40 CFR 264.147(a)(1)(ii), 40 CFR 264.147(b)(1)(ii), 40 CFR 264.147(g)(2), and 40 CFR 264.147(i)(4), the term "Virginia" shall not be substituted for the term "State."

8. In 40 CFR 264.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1997, instead of January 12, 1997.

9. In 40 CFR 264.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987, instead of July 14, 1986.

10. In 40 CFR 264.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1997, instead of January 12, 1997.

11. A copy of all reports made in accordance with 40 CFR 264.196(d) shall be sent to the director and to the chief administrative officer of the local government of the jurisdiction in which the event occurs. The sentence in 40 CFR 264.196(d)(1), "If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement." is not incorporated by reference into these regulations and is not a part of the Virginia Hazardous Waste Management Regulations.

12. The following text shall be substituted for 40 CFR 264.570(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreements for construction prior to January 14, 1993. All other drip pads are new drip pads. The



requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

13. In 40 CFR 264.1030(c), the reference to 40 CFR 124.15 shall be replaced by a reference to 40 CFR 124.5.

14. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

15. In addition to the notices required in Subpart B and others parts of 40 CFR Part 264, the following notices are also required:

a. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the director and administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

b. The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator of the facility is also the generator of this waste) shall inform the generator in writing that he has appropriate permits for, and will accept, the waste that the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

c. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements contained in 9 VAC 20-60-264 and Part XI (9 VAC 20-60-960 et seq.) of this chapter. An owner or operator's failure to notify the new owner or operator of the above requirements in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

d. Any person responsible for the release of a hazardous substance from the facility which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the director and the chief administrative officer of the local government of the jurisdiction in which the release occurs or their designees. In cases when the released hazardous substances are hazardous wastes or hazardous waste constituents additional requirements are prescribed by Subpart D of 40 CFR Part 264.

#### **9 VAC 20-60-265. Adoption of 40 CFR 265 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 265 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 265 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 265 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 265.1(c)(4), 40 CFR 265.149 and 40 CFR 265.150 and Subpart R of 40 CFR Part 265 are not included in the incorporation of 40 CFR Part 265 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 265.1(c)(14) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

3. A copy of all reports and notices made in accordance with 40 CFR 265.12 shall be sent to the director, the administrator and to chief administrative officer of the local government of the jurisdiction in which the event occurs.

4. In 40 CFR 265.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 265.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

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6. In addition to the notifications required by 40 CFR 265.56(d)(2), notification shall be made to the on scene coordinator, the National Response Center and the Commonwealth Emergency Response Team. In the associated report filed under 40 CFR 265.56(j), the owner or operator shall include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

7. In addition to the requirements of 40 CFR 265.91, a log shall be made of each groundwater monitoring well describing the soils or rock encountered, the permeability of formations, and the cation exchange capacity of soils encountered. A copy of the logs with appropriate maps shall be sent to the department.

8. In 40 CFR 265.143(g) and 40 CFR 265.145(g), an owner or operator may use the same financial mechanism for multiple facilities. If the facilities covered by the mechanism are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with all RCRA authorized state agencies where facilities covered by the financial mechanism are located or with the regional administrators where facilities are located in states without RCRA authorization.

9. In 40 CFR 265.147(a)(1)(ii), 40 CFR 265.147(g)(2), and 40 CFR 265.147(i)(4), the term "Virginia" shall not be substituted for the term "State."

10. In 40 CFR 265.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1986.

11. In 40 CFR 265.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987.

12. In 40 CFR 265.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is January 12, 1987 is replaced with November 2, 1997.

13. The following text shall be substituted for 40 CFR 265.440(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 265.443(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

14. In 40 CFR 265.1083(c)(4)(ii), the second occurrence of the term "EPA" shall mean the United States Environmental Protection Agency.

15. In addition to the requirements of 40 CFR 265.310, the owner or operator shall consider at least the following factors in addressing the closure and post-closure care objectives of this part:

- a. Type and amount of hazardous waste and hazardous waste constituents in the landfill;
- b. The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;
- c. Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration;
- d. Climate, including amount, frequency and pH of precipitation;
- e. Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and
- f. Geological and soil profiles and surface and subsurface hydrology of the site.

16. Additionally, during the post-closure care period, the owner or operator of a hazardous waste landfill shall comply with the requirements of 40 CFR 265.116 and the following items:

- a. Maintain the function and integrity of the final cover as specified in the approved closure plan;
- b. Maintain and monitor the leachate collection, removal, and treatment system, if present, to prevent excess accumulation of the leachate in the system;



- c. Maintain and monitor the landfill gas collection and control system, if present, to control the vertical and horizontal escape of gases;
- d. Protect and maintain, if present, surveyed benchmarks; and
- e. Restrict access to the landfill as appropriate for its post-closure use.

17. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

18. Regulated units of the facility are those units used for storage treatment or disposal of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills which received hazardous waste after July 26, 1982. In addition to the requirements of Subpart G of 40 CFR Part 265, owners or operators of regulated units who manage hazardous wastes in regulated units shall comply with the closure and post-closure requirements contained in Subpart G of 40 CFR Part 264, Subpart H of 40 CFR Part 264, and Subpart K of 40 CFR Part 264 through Subpart N of 40 CFR Part 264, as applicable, and shall comply with the requirements in Subpart F of 40 CFR Part 264 during any post-closure care period and for the extended groundwater monitoring period, rather than the equivalent requirements contained in 40 CFR Part 265. The following provisions shall also apply:

a. For owners or operators of surface impoundments or waste piles included above who intend to remove all hazardous wastes at closure in accordance with 40 CFR 264.228(a)(1) or 40 CFR 264.258(a), as applicable, submittal of contingent closure and contingent post-closure plans is not required. However, if the facility is subsequently required to close as a landfill in accordance with Subpart N of 40 CFR Part 264, a modified closure plan shall be submitted no more than 30 days after such determination. These plans will be processed as closure plan amendments. For such facilities, the corresponding post-closure plan shall be submitted within 90 days of the determination that the unit shall be closed as a landfill.

b. A permit application as required under Part XI (9 VAC 20-60-960 et seq.) to address the post-closure care requirements of 40 CFR 264.117 and for groundwater monitoring requirements of 40 CFR 264.98, 40 CFR 264.99, or 40 CFR 264.100, as applicable, shall be submitted for all regulated units which fail to satisfy the requirements of closure by removal or decontamination in 40 CFR 264.228(a)(1), 40 CFR 264.258(a), or 40 CFR 264.280(d) and 40 CFR 264.280(e), as applicable. The permit application shall be submitted at the same time as the closure plan for those units closing with wastes in place and six months following the determination that closure by removal or decontamination is unachievable for those units attempting such closure. The permit application shall address the post-closure care maintenance of both the final cover and the groundwater monitoring wells as well as the implementation of the applicable groundwater monitoring program whenever contaminated soils, subsoils, liners, etc., are left in place. When all contaminated soils, subsoils, liners, etc., have been removed yet groundwater contamination remains, the permit application shall address the post-closure care maintenance of the groundwater monitoring wells as well as the implementation of the applicable groundwater monitoring program.

c. In addition to the requirements of 40 CFR 264.112(d)(2)(i) for requesting an extension to the one year limit, the owner or operator shall demonstrate that he will continue to take all steps to prevent threats to human health and the environment.

d. In addition to the requirements of 40 CFR 264.119(c), the owner or operator shall also request a modification to the post-closure permit if he wishes to remove contaminated structures and equipment.

#### **9 VAC 20-60-266. Adoption of 40 CFR Part 266 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 266 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 266 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 266 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In addition to the requirements of Subpart C of 40 CFR Part 266, those who generate or transport recyclable materials or those who own or operate facilities that use or store recyclable materials are also subject to applicable requirements of Parts IV (9 VAC 20-60-305 et seq.), VII (9 VAC 20-60-420 et seq.), and XII (9 VAC 20-60-1260 et seq.) of these regulations if the materials are used in a manner constituting disposal.
2. In addition to the requirements of Subpart C of 40 CFR Part 266, those who generate or transport recyclable materials or those who own or operate facilities that use or store recyclable materials are also subject to applicable requirements of Parts IV, VII and XII of these regulations if the recyclable materials are for precious metals recovery.

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3. In addition to the requirements of Subpart G of 40 CFR Part 266, those who store lead-acid batteries subject to 40 CFR 266(b) are also subject to the requirements of Parts IV, VII and XII of these regulations.

**9 VAC 20-60-268. Adoption of 40 CFR Part 268 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 268 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 268 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 268 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 268.1(e)(3), the term "EPA" means the United States Environmental Protection Agency.
2. In 40 CFR 268.1(f) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."
3. In 40 CFR 268.5, 40 CFR 268.6, 40 CFR 268.10, 40 CFR 268.11, 40 CFR 268.12, 40 CFR 268.40(b), 40 CFR 268.42(b) and 40 CFR 268.44(a) through (g), the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee, the term "Regional Administrator" shall mean the regional administrator of the United States Environmental Protection Agency for Region III or his designee, and the term "EPA" shall mean the United States Environmental Protection Agency.
4. In 40 CFR 268.9(d), the term "EPA Region or authorized State" shall mean the Commonwealth of Virginia.
5. 40 CFR 268.13 is not included in the incorporation of 40 CFR Part 268 by reference and is not a part of the Virginia Hazardous Waste Management Regulations.
6. Any applications or petitions made to the director or the department in compliance with 40 CFR 268.44 shall comply with procedures of Part XIV (9 VAC 20-60-1370 et seq.) of these regulations.
7. In Subpart C of 40 CFR Part 268 there are dates on which a provision is or was to begin and dates on which national capacity variances expires or expired. None of these dates prior to the effective date of these regulations shall be incorporated by reference or be a part of the Virginia Hazardous Waste Management Regulations. Requirements associated with these expired dates shall be considered to be currently in effect. This exclusion from these regulations shall not be considered to remove or diminish any responsibility a person has or had regarding these dates under federal requirements related to the dates or during the interim following these dates.

**9 VAC 20-60-270. Adoption of 40 CFR Part 270 by reference.**

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in Subpart A of 40 CFR Part 270 that are required for state RCRA programs (Resource Conservation and Recovery Act) by 40 CFR 271.14 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. 40 CFR 270.1(c)(2) is also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 270 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 270 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR Part 270 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."
  2. In 40 CFR 270.5, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.
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3. In 40 CFR 270.5, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia, and no permits shall be issued for underground injection facilities.

5. Permit modifications for implementing a leak detection system shall be classified as required in 9 VAC 20-60-1170 and not as specified in 40 CFR 270.4.

C. Part XI (9 VAC 20-60-960 et seq.) of these regulations contains requirements from the incorporated text of 40 CFR Part 270 and additional requirements and clarifications unique to these regulations. The incorporation by reference in 9 VAC 20-60-270 shall be considered as supporting Part XI of these regulations and consistent with Title 40 of the Code of Federal Regulations; and any apparent conflict between requirements of the text incorporated by reference and the text of Part XI shall be resolved by compliance with Part XI. Except where the requirements of Part XI and 9 VAC 20-60-270 are mutually exclusive, compliance with both is required. No conflict shall be assumed to exist until the director renders a written opinion that a conflict exists and indicates the nature of the conflict.

#### **9 VAC 20-60-273. Adoption of 40 CFR Part 273 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 273 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 273 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 273 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 273.32(a)(3) the term "EPA" shall mean the United States Environmental Protection Agency or his designee.

2. In addition to universal wastes included in 40 CFR Part 273, other wastes are defined to be universal wastes in Part XVI (9 VAC 20-60-1495 et seq.) of these regulations. Part XVI also contains waste specific requirements associated with the waste defined to be universal waste therein. In 40 CFR 273.1, the definitions in 40 CFR 273.6, and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous waste that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed." Any listing of universal wastes in 40 CFR Part 273 shall incorporate the universal wastes set out in Part XVI in a manner identical to those included in the federal text; whether, for example, as in 40 CFR 273.32(b)(4), 40 CFR 273.32(b)(5), 40 CFR 273.39(b)(2), and 40 CFR 273.62(a)(20) or as items to be included in a calculation or requirement as in the definitions of "Large Quantity Handler of Universal Waste" and "Small Quantity Handler of Universal Waste."

3. A small quantity handler having a waste subject to the requirements of 40 CFR 273.13(a)(3)(i) is also subject to Parts IV (9 VAC 20-60-305 et seq.), VII (9 VAC 20-60-420 et seq.), XI (9 VAC 20-60-960 et seq.), and XII (9 VAC 20-60-1260 et seq.) of these regulations.

#### **9 VAC 20-60-279. Adoption of 40 CFR Part 279 by reference.**

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 279 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 279 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 279 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Only one sentence of 40 CFR 279.82 is included in the incorporation of 40 CFR Part 279 by reference. The sentence, "The use of used oil as a dust suppressant is prohibited." is incorporated by reference. All other words in 40 CFR 279.82 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. (Reserved.)

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PART IV.  
NOTIFICATION OF HAZARDOUS WASTE MANAGEMENT ACTIVITY REGULATIONS.

**9 VAC 20-60-280. (Repealed.)**

**9 VAC 20-60-290. (Repealed.)**

**9 VAC 20-60-300. (Repealed.)**

**9 VAC 20-60-305. General.**

A. Any person that manages a hazardous waste in the Commonwealth of Virginia shall notify the director of these activities.

B. Any person as described in 9 VAC 20-60-305 A that has notified the EPA or is subject to the requirements to notify the EPA as specified in Vol. 45, No. 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provisions of this chapter.

C. The purpose of this chapter is to provide a means for the Commonwealth of Virginia to utilize the information provided by all who complied with the notification requirements of the EPA as described in 9 VAC 20-60-305 B and to assure that all persons who did not notify the EPA as described in 9 VAC 20-60-305 B or all who initiated hazardous waste management activities subsequent to the requirements of the EPA as referenced in 9 VAC 20-60-305 B shall notify the director of their hazardous waste management activities.

**9 VAC 20-60-310. (Repealed.)**

**9 VAC 20-60-315. Notification.**

A. Any person that notified the EPA of hazardous waste management activities as referenced in 9 VAC 20-60-305 B shall provide a copy of that notification to the director.

B. Any person involved in hazardous waste management activities that did not comply with the notification requirements of the EPA as referenced in 9 VAC 20-60-305 B but is subject to those requirements shall notify the director in writing of their hazardous waste management activities by the effective date of this chapter. Notification may be accomplished by the use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

C. Any person who initiated a hazardous waste management activity subsequent to the preliminary notification period of 42 USC § 6930 but prior to the effective date of this chapter shall notify the director of the initiation of such activities by the effective date of this chapter. Notification may be accomplished by the use of EPA Form 8700-12 or the provisions of the same information in any other manner selected by the notifier.

D. (Reserved.)

E. Transporters shall provide only one notification form for all transportation activities.

F. One notification form is required for each generator site.

G. A notification form is required for each storage, treatment, disposal, or other facility. However, if one geographic site includes more than one storage, treatment or disposal activity, only one notification form for the entire facility site is required.

H. Generators that store, treat, or dispose of hazardous waste on-site shall file a notification form for generation activities as well as storage, and treatment and disposal activities.

I. New generators, transporters, treaters, storers, and disposers (those initiating activities subsequent to the assumption of the hazardous waste management program by the Commonwealth) shall comply with the requirements of 9 VAC 20-60-262, 9 VAC 20-60-263, and 9 VAC 20-60-264, as applicable, to obtain an identification number from the administrator.

**9 VAC 20-60-320. (Repealed.)**

**9 VAC 20-60-325. Prohibition.**

No hazardous wastes subject to this chapter may be transported, treated, stored, or disposed of unless notification has been given as required under this chapter.

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PART V. (REPEALED.)

PART VI. (REPEALED.)

9 VAC 20-60-330 through 410. (Repealed.)

PART VII.

REGULATIONS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

**9 VAC 20-60-420. General.**

A. This chapter applies to all persons who transport a hazardous waste as defined in this chapter and applies to all shipments of hazardous waste that originate within the Commonwealth or that terminate in the Commonwealth but originate in another state or foreign country. However, this chapter does not apply to the shipment of a hazardous waste on the site of a hazardous waste generator, nor on the site of a permitted hazardous waste management facility.

B. Transporters of hazardous waste shipments originating outside the Commonwealth and terminating in another state shall comply with 9 VAC 20-60-490 and applicable requirements of 9 VAC 20-60-263 while in transit through the Commonwealth.

C. All transporters of hazardous waste shall comply with the applicable portions of the Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.) and Parts III (9 VAC 20-60-124 et seq.), IV (9 VAC 20-60-305 et seq.), and VII (9 VAC 20-60-420 et seq.) of this chapter.

D. A transporter is a generator if he:

1. Transports hazardous waste into the Commonwealth from a foreign country; or
2. Mixes hazardous wastes of different shipping descriptions specified in Regulations Governing the Transportation of Hazardous Materials by placing them into a single container.

E. All transporters of hazardous waste shipments originating or terminating or both in the Commonwealth are required to obtain a permit from the director in accordance with 9 VAC 20-60-450.

F. Transporters of materials that are used in a manner that constitutes disposal are subject to the requirements of Parts III, IV, and VII.

G. Transporters of hazardous waste fuel are subject to the applicable requirements of 9 VAC 20-60-266.

**9 VAC 20-60-430. Recordkeeping and reporting requirements.**

A. Except as provided in 9 VAC 20-60-430 B and 9 VAC 20-60-430 C, all transporters shall retain one signed copy of all manifests in their records for not less than three years from the date of acceptance for shipment by the initial transporter. The retained copy shall show his signature as well as those of the generator and the designated facility owner or operator, or next designated transporter.

B. For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter shall retain a copy of the shipping paper containing all the information required in 9 VAC 20-60-470 C 2 for a period of three years from the date of acceptance by the initial transporter.

C. For shipments of hazardous waste by rail within the United States:

1. The initial rail transporter shall keep a copy of the manifest and shipping paper with all the information required in 9 VAC 20-60-470 D 2 for a period of three years from the date the hazardous waste was accepted by the initial transporter.
2. The final rail transporter shall keep a copy of the signed and dated manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.
3. Intermediate rail transporters are not required to keep records pursuant to this chapter.

D. A transporter who transports hazardous waste out of the United States shall keep a copy of the manifest, indicating that the hazardous waste left the United States, for a period of three years from the date the waste was accepted by the initial transporter.

E. The periods of retention referred to in this part are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the director.



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**9 VAC 20-60-440. Identification number.**

A. All persons who transport hazardous waste within, out of or into the Commonwealth shall apply for and receive from the Virginia Department of Environmental Quality an identification number prior to such transport.

B. An EPA identification number shall be obtained from the Virginia Department of Environmental Quality by submitting an application on EPA Form 8700-12.

C. The identification number issued to the transporter shall be included at all times on:

1. All correspondence related to the transport of hazardous waste and shall be displayed in the format as follows:

Hazardous Waste Transporter ID Number \_\_\_\_\_

Virginia Hazardous Waste Transporter Permit Number \_\_\_\_\_;

2. The manifest provided by the generator of a hazardous waste and utilized in the transport of hazardous waste, and

3. All documents related to the reporting of a discharge or accident.

D. The identification number and permit number shall remain unique to the applicant as long as the applicant continues to do business as a transporter of hazardous waste in the Commonwealth of Virginia. The identification number may not be transferred without the approval of EPA. The permit number may not be transferred without the approval of the director.

E. Provisional identification number. If an emergency or other unusual incident occurs which causes a necessity for the rapid transport of a hazardous waste to an authorized HWM facility, the transporter involved in such a circumstance can telephone the Department of Environmental Quality (804-698-4000) and obtain a provisional identification number. Applicants receiving such a number will be mailed a blank EPA Form 8700-12 which shall be completed and returned to the department within 10 calendar days.

**9 VAC 20-60-450. Transporter permit.**

A. This chapter applies to all persons who transport a hazardous waste, except as otherwise provided in Part VII (9 VAC 20-60-420 et seq.) of this chapter.

B. The transporter permit required under 9 VAC 20-60-450 applies only to those transporters who transport hazardous waste shipments which originate or terminate or both in the Commonwealth. Transporters who transport hazardous waste only through the Commonwealth are not required to obtain a transporter permit.

C. Permit issuance. Upon receipt of a complete application (Appendix 7.1 of this part) accompanied by the appropriate permit application fee as specified in Part XII (9 VAC 20-60-1260 et seq.) of this chapter, the director shall either:

1. Issue a permit, provided conditions of 9 VAC 20-60-440 are met; or
2. Deny the permit when it can be demonstrated that the transporter has violated regulations of the Commonwealth, another state or the federal government, so as to pose substantial present or potential hazard to health or environment. The procedure for denying a permit shall be consistent with the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

D. The term of the transporter permit shall be 10 years. A permit shall remain in effect until one or more of the following conditions are met:

1. The transporter ceases business operation;
2. The transporter requests, in writing, that the permit be terminated;
3. The permit is revoked;
4. The director determines that an emergency exists and that summary termination of a permit is necessary to prevent the creation or continuance, or both, of an immediate and present threat to human health or critical damage to the environment;
5. Upon the expiration date of the permit, unless reapplication for a new permit has been received by the director 30 days prior to such date.

E. Revocation of permit.

1. Revocation for cause. The director may revoke a transporter's permit when it can be demonstrated that a transporter has violated this chapter so as to pose substantial present or potential hazard to health or environment. The procedure for revoking a permit shall be consistent with the Administrative Process Act of the Commonwealth.

2. Revocation and reissuance. Whenever the transporter changes his corporate name, ownership or the EPA identification number or any of these, he shall notify the Department of Environmental Quality within 30 days of such a change. Upon receiving such a notification the department will revoke the old permit and reissue it reflecting the appropriate changes. The reissued permit will remain valid for the unexpired duration of the revoked permit.

3. Within 30 days of the receipt of the notice of revocation, the original copy of the permit shall be returned to the Department of Environmental Quality.

F. The transporter permit number shall appear at all times on:

1. All correspondence to the Commonwealth;
2. All documents related to the reporting of a discharge or accident.

G. Temporary transporter permit. If a provisional identification number is issued by EPA pursuant to the provisions of 9 VAC 20-60-440 E the applicant may obtain a temporary transporter permit by calling the director or his representative at (804) 225-2667. The permit will be valid only for the duration of the activity which required the provisional EPA identification number. The applicant shall submit a permit application conforming with 9 VAC 20-60-450 C within 10 calendar days.

H. Emergency transporter permit. In the event of a determination by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality, provisions of 9 VAC 20-60-260, 9 VAC 20-60-262, and Part VII of this chapter may be waived by the director or his designee. Such waiver will be considered as an emergency transporter permit valid for the duration of an emergency only.

#### **9 VAC 20-60-460. Labeling, placarding, and marking.**

See 9 VAC 20-60-262 and 9 VAC 20-60-263.

#### **9 VAC 20-60-470. Use of the manifest system.**

See 9 VAC 20-60-262 and 9 VAC 20-60-263.

#### **9 VAC 20-60-480. Acceptance, shipment and delivery of hazardous waste.**

A. A transporter shall not accept for shipment any hazardous waste for transport without determining that requirements of 9 VAC 20-60-263 have been complied with.

B. If a manifest is required by 9 VAC 20-60-263, the generator shall sign and date the manifest and release the hazardous waste shipment to the transporter.

C. The transporter who is subject to 9 VAC 20-60-480 B shall sign and date the manifest and accept the hazardous waste for shipment.

D. The transporter shall not accept any hazardous waste for shipment unless all applicable labeling, container and packaging requirements of this chapter have been met by the generator.

E. If the transporter ships the hazardous waste to a treatment, storage or disposal facility or transfers the hazardous waste to another transporter, such acts shall be in accordance with the following:

1. The receiving treatment, storage or disposal facility or transporter shall have an identification number issued by the EPA;
2. The manifest shall be signed over to the receiving treatment, storage or disposal facility or transporter with the prior transporter retaining a copy of the manifest.

F. The transporter shall maintain the labeling required by the Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.) during the shipment of the hazardous waste.

G. 1. The transporter shall deliver the entire quantity of hazardous waste which he accepted for shipment from a generator or a previous transporter to:

- a. The designated facility listed on the manifest;
- b. The next designated transporter; or
- c. The place outside the United States designated by the generator.



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2. If the hazardous waste shipment cannot be delivered in accordance with 9 VAC 20-60-480 G 1, the transporter must contact the generator for further directions concerning an alternate facility for delivery and must revise the manifest according to the generator's instructions.

H. If the hazardous waste shipment will terminate within the Commonwealth of Virginia, the transporter shall deliver the shipment to a storage, treatment, disposal, or other facility permitted by the Commonwealth of Virginia under the provisions of this chapter or a facility permitted by the EPA or which qualifies for interim status.

I. If the shipment of hazardous waste is transported out of the Commonwealth, the transporter shall deliver the shipment to a designated facility permitted by that state under an approved program or by EPA or which qualifies for interim status (see 9 VAC 20-60-990) in the opinion of the applicable aforementioned authority.

J. If the shipment of hazardous waste is shipped out of the United States, the transporter shall handle the manifest in accordance with 9 VAC 20-60-263.

K. If the transporter mixes hazardous wastes of different shipping descriptions specified in Regulations Governing the Transportation of Hazardous Materials by placing them into a single container, such transporter shall also comply with 9 VAC 20-60-262.

L. All transporters shipping a hazardous waste to a destination within the Commonwealth from another state shall comply with all provisions of this chapter including obtaining a transporter permit from the director and an identification number from the EPA.

M. A transporter that imports a hazardous waste from a foreign country into the Commonwealth shall comply with the provisions of 9 VAC 20-60-262 and shall obtain a transporter permit from the director and obtain an ID number from the EPA.

N. A transporter shall not accept for transport a hazardous waste or hazardous material which is prohibited from transportation by either the U.S. Department of Transportation or EPA.

#### **9 VAC 20-60-490. Discharges.**

A. The transporter shall comply with all federal and Commonwealth requirements relative to discharges.

B. 1. In the event of a discharge or spill of hazardous wastes, the transporter shall take appropriate emergency actions to protect human life, health, and the environment and shall notify appropriate local authorities. Upon arrival on the scene of state or local emergency or law-enforcement personnel, the transporter shall carry out such actions as required of him.

2. The transporter shall clean up any hazardous waste discharge that occurs during transportation and shall take such action as is required by the federal government, the Virginia Water Control Board, the Department of Emergency Services, the Department of Environmental Quality, or local officials, so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

3. If the discharge of hazardous waste occurs during transportation and a Department of Environmental Quality official determines that immediate removal of the waste is necessary to protect human health or the environment, an emergency transporter permit will be issued in accordance with 9 VAC 20-60-450 H.

4. The disposal of the discharge materials shall be done in a manner consistent with this chapter and other applicable Virginia and federal regulations.

C. Discharges by air, rail, highway, or water (nonbulk) transporters.

1. In addition to requirements contained in preceding parts, an air, rail, highway or water (nonbulk) transporter who has discharged hazardous waste shall give notice at the earliest practicable moment to agencies indicated in 9 VAC 20-60-490 C 2 after each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which as a direct result of the discharge of the hazardous wastes:

- a. A person is killed;
- b. A person receives injuries requiring his hospitalization;
- c. Estimated carrier or other property damage exceeds \$50,000;
- d. Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material;
- e. Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

f. A situation exists of such a nature that, in the judgment of the transporter, it should be reported in accordance with 9 VAC 20-60-490 C 2 even though it does not meet the above criteria (e.g., continuing danger of life exists at the scene of the incident), or as required by 49 CFR 171.15.

2. The notice required by 9 VAC 20-60-490 C 1 shall be given to:

- a. The National Response Center, U.S. Coast Guard, at 800-424-8802 (toll free) or at 202-426-2675 (toll call); and
- b. The Department of Emergency Services at 800-468-8892 (toll free) or 804-674-2400 (Richmond local area).

In a case of discharges affecting state waters, the notice shall also be given to the PReP Coordinator in the appropriate regional office of the Department of Environmental Quality.

3. When notifying as required in 9 VAC 20-60-490 C 1, the notifier shall provide the following information:

- a. Name of person reporting the discharge and his role in the discharge;
- b. Name, telephone number and address of the transporter;
- c. Name, telephone number and address of the generator;
- d. Telephone number where the notifier can be contacted;
- e. Date, time and location of the discharge;
- f. Type of incident, nature of hazardous waste involvement, and whether a continuing danger to life exists at the scene;
- g. Classification, name and quantity of hazardous waste involved; and
- h. The extent of injuries, if any.

4. Within 15 calendar days of the discharge of any quantity of hazardous waste, the transporter shall send a written report on DOT Form F5800.1 in duplicate to the Chief, Information System Division, Transportation Programs Bureau, Department of Transportation, Washington, D.C. 20590. Two copies of this report will also be filed with the Department of Environmental Quality, Post Office Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009.

5. In reporting discharges of hazardous waste as required in 9 VAC 20-60-490 C 4, the following information shall be furnished in Part H of the DOT Form F5800.1 in addition to information normally required:

- a. An estimate of the quantity of the waste removed from the scene;
- b. The name and address of the facility to which it was taken; and
- c. The manner of disposition of any unremoved waste.

A copy of the hazardous waste manifest shall be attached to the report.

#### D. Discharges by water (bulk) transporters.

1. A water (bulk) transporter shall, as soon as he has knowledge of any discharge of hazardous waste from the vessel, notify, by telephone, radio telecommunication or a similar means of rapid communication, the office designated in 9 VAC 20-60-490 C 2.

2. If notice as required in 9 VAC 20-60-490 D 1 is impractical, the following offices may be notified in the order of priority:

- a. The government official predesignated in the regional contingency plan as the on-scene coordinator. Such regional contingency plan for Virginia is available at the office of the 5th U.S. Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705;
- b. Commanding officer or officer-in-charge of any U.S. Coast Guard unit in the vicinity of the discharge; or
- c. Commander of the 5th U.S. Coast Guard District.

3. When notifying the notifier shall provide the following information:

- a. Name of person reporting the discharge and his role in the discharge;
- b. Name, telephone number and address of the transporter;
- c. Name, telephone number and address of the generator;
- d. Telephone number so the notifier can be contacted;

e. Date, time, location of the discharge;

f. Type of incident and nature of hazardous waste involvement and whether a continuing danger to life exists at the scene;

g. Classification, name and quantity of hazardous waste involved; and

h. The extent of injuries, if any.

E. Discharges at fixed facilities. Any transporter responsible for the release of a hazardous material (as defined in Part I (9 VAC 20-60-12 et seq.) of this chapter) from a fixed facility (e.g., transfer facility) which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the chief administrative officer of the local government of the jurisdiction in which the release occurs as well as the department or their designees.

**9 VAC 20-60-500. Transfer facilities.**

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR 262.30 at a transfer facility for a period of 10 days or less is not subject to regulations established for facility management and permitting under these regulations with respect to the storage of those wastes.

APPENDIX 7.1.  
APPLICATION FOR A TRANSPORTER PERMIT.

Name \_\_\_\_\_ Date \_\_\_\_\_  
Address (if applicable) \_\_\_\_\_ Phone Number \_\_\_\_\_  
\_\_\_\_\_ Completed by \_\_\_\_\_  
\_\_\_\_\_ Title \_\_\_\_\_

EPA ID # \_\_\_\_\_

1. Please attach financial data:

a. Interstate transporters: Copy of document showing insurance required under 49 CFR Part 387.

b. Intrastate transporters: Either copy of insurance required under 49 CFR Part 387 or latest annual balance sheet.

2. Incorporated in \_\_\_\_\_

3. VA Corporation ID# (if applicable) \_\_\_\_\_

4. Corporate Headquarters Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Chief Executive Officer \_\_\_\_\_

6. Are you presently licensed or permitted by any other state to transport hazardous materials or hazardous wastes? Yes || No ||

If yes, attach a list of licensing/permit agent and appropriate code to identify your licenses/permits.

7. Have you been informed by a state or federal agency of violations pertaining to the management of hazardous wastes or transportation of hazardous wastes/materials? Yes || No ||

If yes, give agency issuing notice of violations and circumstances.

8. Give name, address, and telephone number of the principal contact.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: Permit application fee must accompany this Transporter Permit Application. See Appendix 12.1 of the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 et seq.

Certification Below Must Be Signed

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I certify that all statements are true and are representative of the ability of to provide hazardous waste transportation services consistent with the Commonwealth of Virginia Hazardous Waste Management Regulations.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

PART VIII. (REPEALED.)

9 VAC 20-60-510. (Repealed.)

PART IX. (REPEALED.)

9 VAC 20-60-520 through 9 VAC 20-60-680. (Repealed.)

9 VAC 20-60-690. (Reserved.)

9 VAC 20-60-700. (Reserved.)

9 VAC 20-60-710 through 9 VAC 20-60-730. (Repealed.)

PART X. (REPEALED.)

9 VAC 20-60-740 through 9 VAC 20-60-890. (Repealed.)

9 VAC 20-60-900 to 9 VAC 20-60-920. (Reserved.)

9 VAC 20-60-930. (Repealed.)

9 VAC 20-60-940. (Repealed.)

9 VAC 20-60-950. (Repealed.)

PART XI.

HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT REGULATIONS.

9 VAC 20-60-960. (Reserved.)

9 VAC 20-60-970. **Scope of the hazardous waste management (HWM) permit regulations.**

These regulations require a permit for the treatment, storage, or disposal of any hazardous waste as identified or listed by 9 VAC 20-60-261. Owners and operators of hazardous waste management units shall have permits during the active life (including the closure periods) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR 265.115) after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal as provided under 9 VAC 20-60-970 F and 9 VAC 20-60-970 G. If a post-closure permit is required, the permit shall address applicable 9 VAC 20-60-264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of these regulations. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this part.

A. Specific inclusions. Without limiting in any way the scope of the permit requirements as set forth in 9 VAC 20-60-970, HWM permits are required for:

1. Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. (However, the owner and operator of a POTW receiving hazardous waste will be deemed to have an HWM permit for that waste if they comply with the requirements of 9 VAC 20-60-1040 B.)
2. Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment or storage facilities associated with an ocean disposal operation. (However, the owner and operator will be deemed to have an HWM permit for ocean disposal from the barge or vessel itself if they comply with the requirements of 9 VAC 20-60-1040 A.)

B. Specific exclusions. The following are not required to obtain an HWM permit:

1. Generators who only accumulate hazardous wastes on-site for less than the time periods provided in 40 CFR 262.34;
2. Farmers who dispose of hazardous waste pesticides from their own use as provided in 40 CFR 262.70;

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3. Owners and operators of facilities operated solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under 40 CFR 261.4 or 40 CFR 261.5;
  4. Owners and operators of totally enclosed treatment facilities;
  5. Owners and operators of elementary neutralization units and waste water treatment units;
  6. Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR 262.30 at a transfer facility for a period of 10 days or less;
  7. Persons adding absorbent material to waste in a container and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container and 40 CFR 264.17, 40 CFR 264.171, and 40 CFR 264.172 are complied with;
  8. a. A person is not required to obtain an HWM permit for treatment or containment activities during immediate response to any of the following situations:
    - (1) A discharge of a hazardous waste;
    - (2) An imminent and substantial threat of a discharge of a hazardous waste;
    - (3) A discharge of a material which, when discharged, becomes a hazardous waste.b. Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of Parts XI (9 VAC 20-60-960 et seq.) and XII (9 VAC 20-60-1260 et seq.) of this chapter for those activities.
  9. Universal waste handlers and universal waste transporters are subject to regulation under:
    - a. 40 CFR Part 273<sup>3</sup> and
    - b. Part XVI (9 VAC 20-60-1495 et seq.) of this chapter.
  - C. Specific prohibition. Treatment, storage or disposal of hazardous wastes by means of underground injection is prohibited within the Commonwealth.
  - D. Validity of the federal HWM permits.
    1. Hazardous waste management facilities located in Virginia which possess an effective final RCRA permit issued by EPA will be considered to possess a valid Virginia HWM permit for the duration of the unexpired term of the federal permit, provided that:
      - a. The facility remains in compliance with all of the conditions specified in the federal permit;
      - b. The operator submits a complete copy of the federal permit to the director no later than January 31, 1988, or the effective date of the federal permit whichever is later; and
      - c. The owner and operator of the facility submit a request to continue the validity of the federal permit addressed to the director.
    2. Federal permits issued to hazardous waste management facilities located in Virginia by EPA pursuant to HSWA requirements which constitute the federal portion of the combined Virginia - EPA RCRA permits are considered, for the purposes of this chapter, as addenda to the Virginia permits and will remain in effect during the unexpired term of the Virginia permit.
  - E. Permits for less than an entire facility. The director may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.
  - F. Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under 9 VAC 20-60-265 standards shall obtain a post-closure permit unless they can demonstrate to the director that the closure met the standards for closure by removal or decontamination in 40 CFR 264.228(a), 40 CFR 264.258(a), or 40 CFR 264.80(e). The demonstration may be made in the following ways:
    1. If the owner or operator has submitted a Part B application for a post-closure permit, the owner or operator may request a determination, based on information contained in the application, that 9 VAC 20-60-264 closure by removal standards were met. If the director believes that 9 VAC 20-60-264 standards were met, he will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in 9 VAC 20-60-970 G.
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2. If the owner or operator has not submitted a Part B application for a post-closure permit, the owner or operator may petition the director for a determination that a post-closure permit is not required because the closure met the applicable 9 VAC 20-60-264 closure standards.

a. The petition shall include data demonstrating that closure by removal or decontamination standards were met.

b. The director will approve or deny the petition according to the procedures outlined in 9 VAC 20-60-970 G.

G. Procedures for closure equivalency determination.

1. If a facility owner or operator seeks an equivalency demonstration under 9 VAC 20-60-970 F, the director will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The director will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the 9 VAC 20-60-265 closure to a 9 VAC 20-60-264 closure. The director will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

2. The director will determine whether the 9 VAC 20-60-265 closure met 9 VAC 20-60-264 closure by removal or decontamination requirements within 90 days of the receipt of the petition. If the director finds that the closure did not meet the applicable 9 VAC 20-60-264 standards, he will provide the owner or operator with a written statement of the reasons why the closure failed to meet 9 VAC 20-60-264 standards. The owner or operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The director will review any additional information submitted and make a final determination within 60 days.

3. If the director determines that the facility did not close in accordance with 9 VAC 20-60-264 closure-by-removal standards, the facility is subject to post-closure permitting requirements.

**9 VAC 20-60-980. Application for permit.**

A. Permit application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the director as described in 9 VAC 20-60-980 and 9 VAC 20-60-990. Persons currently authorized with interim status shall apply for permits when required by the director. Persons covered by permits by rule (9 VAC 20-60-1040) need not apply. Procedures for application, issuance and administration of emergency permits are found exclusively in 9 VAC 20-60-1050 A. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in 9 VAC 20-60-1050 D.

B. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit; however, the owner shall also sign the permit application.

C. Completeness of application.

1. The director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit contained in 9 VAC 20-60-980 and 9 VAC 20-60-1000 and the signature requirements of 9 VAC 20-60-1030.

2. The director shall not issue a permit before receiving a complete application except permits by rule (9 VAC 20-60-1040), emergency permits (9 VAC 20-60-1050 A), or continued federal permits (9 VAC 20-60-970). An application for a permit is complete when the director receives an application form and any supplemental information which are completed to his satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

3. All applicants for hazardous waste management permits shall provide information set forth in 9 VAC 20-60-1000 and applicable portions of 9 VAC 20-60-1010 to the director.

4. An application for a permit will be considered complete notwithstanding the failure of the owner or operator to submit the exposure information described in 9 VAC 20-60-980 J.

5. The director may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.

D. Existing HWM facilities and interim status qualifications.

1. a. Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirements of Part XI (9 VAC 20-60-960 et seq.) of this chapter shall submit Part A of their permit application no later than:

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(1) Six months after the date of publication of regulations which first require them to comply with the standards set forth in 9 VAC 20-60-265 or 9 VAC 20-60-266;

(2) Thirty days after the date they first become subject to the standards set forth in 9 VAC 20-60-265 or 9 VAC 20-60-266;

(3) On the submission date established by the EPA administrator as required by his compliance order issued under § 3008 of RCRA (see 40 CFR 270.10(e)(3));

(4) Thirty days after extension of the submission date established by the director as required by his compliance order, whichever first occurs; or

(5) For generators generating greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and treating, storing, or disposing of these wastes on-site by March 24, 1987.

b. In cases when Part A of the application was first submitted to the EPA administrator, a copy of such submission shall be sent to the director and shall satisfy the requirements contained in 9 VAC 20-60-980 D 1 a.

2. At any time after promulgation of Final Facility Standards (9 VAC 20-60-264), the owner and operator of an existing HWM facility may be required to submit Part B (9 VAC 20-60-1010) of their permit application. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing HWM facility may voluntarily submit Part B of the application at any time after the effective date of 9 VAC 20-60-264.

3. Notwithstanding the above, any owner or operator of an existing HWM facility shall submit a Part B permit application in accordance with the dates specified in 9 VAC 20-60-990 E. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirements of Part XI of this chapter shall submit a Part B application in accordance with the dates specified in 9 VAC 20-60-990 E.

4. Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status.

#### E. New HWM facilities.

1. Except as provided in 9 VAC 20-60-980 E 3, no person shall begin physical construction of a new HWM facility without having submitted Part A and Part B of the permit application and having received a final effective HWM permit.

2. An application for a permit for a new HWM facility may be filed any time after promulgation of Final Facility Standards. The application shall be filed with the director. All applications shall be submitted at least 180 days before physical construction is expected to commence.

3. Notwithstanding 9 VAC 20-60-980 E 1, a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the EPA administrator under § (6)(e) of the Toxic Substances Control Act (15 USC § 2601 et seq.) and any person owning or operating such a facility may, at any time after construction or operation of such a facility has begun, file an application for an HWM permit to incinerate hazardous waste authorizing such facility to incinerate hazardous waste.

#### F. Updating permit applications.

1. If any owner or operator of a hazardous waste management facility has filed Part A of the permit application and has not yet filed Part B, the owner or operator shall file with the director an amended Part A application when:

a. A new waste has been added to any of the lists described in Subpart D of 40 CFR Part 261 and such owner or operator treats, stores, or disposes of such new wastes; or

b. Other changes during interim status are proposed in accordance with 9 VAC 20-60-990 C;

2. The owner or operator of a facility who fails to comply with the updating requirement of 9 VAC 20-60-980 F 1 by the effective date of the regulations listing such a new waste, does not receive interim status as to the wastes not covered by duly filed Part A applications.

G. Reapplications. Any HWM facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the director. The director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

#### H. Continuation of expiring permits.

1. The conditions of an expired permit continue in force until the effective date of the new permit if:



a. The permittee has submitted a timely reapplication under 9 VAC 20-60-980 G which is a complete application for a new permit; and

b. The director through no fault of the permittee does not issue a new permit with an effective date on or before the expiration date of the previous permit.

2. Permits continued under 9 VAC 20-60-980 H 1 remain fully effective and enforceable.

3. When the permittee is not in compliance with the conditions of the expiring or expired permit, the director may choose to do any or all of the following:

a. Initiate enforcement action based on the permit which has been continued;

b. Issue a notice of intent to deny the new permit (9 VAC 20-60-1180 B). If the permit is denied, the owner or operator would then be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without permit;

c. Issue a new permit with appropriate conditions; or

d. Take other actions authorized by this chapter.

4. A federal HWM permit may be continued in force beyond its expiration date by the Commonwealth provided that the requirements of 9 VAC 20-60-970 D and 9 VAC 20-60-980 H 1 have been met.

I. Permit application fee. All permit applications required by 9 VAC 20-60-980 A and reapplications required by 9 VAC 20-60-980 G shall be accompanied by an appropriate permit application fee as specified in Part XII (9 VAC 20-60-1260 et seq.) of this chapter. Applications or reapplications not accompanied by such fees will not be considered complete as provided for in 9 VAC 20-60-980 C.

J. Exposure information.

1. After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, treats or disposes of hazardous waste in a surface impoundment or a landfill shall be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information shall address:

a. Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

b. The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described in 9 VAC 20-60-980 J 1 a; and

c. The potential magnitude and nature of the human exposure resulting from such releases.

2. By August 8, 1985, owners and operators of a landfill or surface impoundment who have submitted a Part B application prior to November 8, 1984, shall submit the information required in 9 VAC 20-60-980 J 1.

K. The director may require a permittee or an applicant to submit information in order to establish permit conditions under 9 VAC 20-60-1080 A 2 and 9 VAC 20-60-1090 D.

#### **9 VAC 20-60-990. Interim status.**

A. Qualifying for interim status.

1. Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have an HWM permit and who has not been denied interim status by the director or the regional administrator, shall have interim status and shall be treated as having been issued a permit to the extent he has:

a. Notified the director in accordance with Part IV (9 VAC 20-60-305 et seq.) of this chapter and has qualified for interim status in the opinion of U.S. EPA; and

b. Complied with the requirements governing submission of Part A applications.

2. a. The director may deny interim status to any owner or operator if, at the time the Part A application is submitted, the facility is in violation of any regulation of the Department of Environmental Quality so as to pose a substantial present or potential hazard to human health or environment.

b. If the director has reason to believe upon examination or re-examination of a Part A application that it fails to meet the requirements of 9 VAC 20-60-1000, he shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for such belief. The owner or operator shall have 30 days to

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respond to such notification and to explain or cure the alleged deficiency. If after such notification and opportunity for response, the director determines that the application is deficient, he shall issue the notification of denial in accordance with 9 VAC 20-60-990 A 3.

3. The director shall notify owners or operators, in writing, of his determination to deny interim status. Such notification shall state the reason for denial and shall inform the owner or operator that he is subject to enforcement action for operation without permit.

4. If the director denies the interim status, the owner or operator may, pursuant to this chapter and the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia, appeal the decision. The appeal procedure provides for:

a. Within 30 days of the date of notification of denial, the applicant may demand of the director a hearing for the purpose of contesting such decision. The hearing shall be conducted in accordance with procedures set forth in the Administrative Process Act.

b. Within 30 days of the conclusion of such hearing, the director shall render a decision affirming or reversing his initial decision.

c. The owner or operator, if dissatisfied with the decision of the director, may appeal such decision to an appropriate circuit court, as provided for in the Administrative Process Act.

5. 9 VAC 20-60-990 A 1 shall not apply to any facility which has been previously denied an HWM permit or if authority to operate the facility under this chapter has been previously terminated.

B. Operation during interim status. During the interim status period, the facility shall not:

1. Treat, store, or dispose of hazardous waste not specified in Part A of the permit application;

2. Employ processes not specified in Part A of the permit application; or

3. Exceed the design capacities specified in Part A of the permit application.

C. Changes during interim status.

1. Except as provided in 9 VAC 20-60-990 C 2, the owner or operator of an interim status facility may make the following changes at the facility:

a. Treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the permit application (and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification) if the owner or operator submits a revised Part A permit application prior to such treatment, storage, or disposal;

b. Increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for change) and the director approves the changes because:

(1) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities; or

(2) The change is necessary to comply with a federal, state, or local requirement.

c. Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A permit application prior to such change (along with a justification explaining the need for the change) and the director approves the change because:

(1) The change is necessary to prevent a threat to human health and the environment because of an emergency situation; or

(2) The change is necessary to comply with a federal, state, or local requirement.

d. Changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of Subpart H of 40 CFR Part 265 (Financial Requirements), until the new owner or operator has demonstrated to the director that he is complying with the requirements of that section. The new owner or operator shall demonstrate compliance with Subpart H of 40 CFR Part 265 requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the director by the new owner or operator of compliance with Subpart H of 40 CFR Part 265, the director will notify the old owner or operator in writing that he no longer needs to comply with Subpart H of 40 CFR Part 265 as of the date of demonstration. All other interim

status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility.

e. Changes made in accordance with an interim status corrective action order issued by EPA under RCRA § 3008(h) or other federal authority, by the Commonwealth, or by a court in a judicial action brought by EPA or the Commonwealth. Changes under 9 VAC 20-60-990 C 1 e are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

f. Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised Part A permit application on or before the date on which the unit becomes subject to the new requirements.

2. Except as specifically allowed under 9 VAC 20-60-990 C 2, changes listed under 9 VAC 20-60-990 C 1 may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes of the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

a. Changes made solely for the purposes of complying with the requirements of Subpart I of 40 CFR Part 195 for tanks and ancillary equipment.

b. If necessary to comply with federal, state or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of RCRA § 3004(o) (Minimum Technological Requirements).

c. Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

d. Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

e. Changes necessary to comply with an interim status corrective action order issued by EPA under RCRA § 3008(h) or other federal authority, by the Commonwealth, or by a court in a judicial proceeding brought by EPA or the Commonwealth, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

f. Changes to treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by 9 VAC 20-60-268 or RCRA § 3004, provided that such changes are made solely for the purpose of complying with 9 VAC 20-60-268 or RCRA § 3004.

g. Addition of newly regulated units under 9 VAC 20-60-990 C 1 f.

#### D. Compliance with regulations; termination of interim status.

1. During the period when their facilities are under interim status, owners or operators shall comply with the interim status standards of 9 VAC 20-60-265.

2. Interim status terminates when final disposition of a permit application is made; or when interim status is terminated by the director. Interim status may be terminated for any of the following reasons:

a. Failure to submit a completed Part B application on time;

b. Failure to furnish any information required by this chapter;

c. Falsification, misrepresentation or failure to fully disclose any information submitted or required to be kept under this chapter;

d. Violation of this chapter; and

e. A determination that the facility poses a significant threat to public health or the environment.

3. The director may terminate the interim status upon receiving a voluntary request for such an action from the owner and the operator of the facility.

a. To be considered for voluntary termination such request shall:

(1) Be received by the director prior to the issuance of the request to submit Part B of the permit application in accordance with 9 VAC 20-60-980 D 2; and

(2) Be accompanied by a waiver of procedures contained in 9 VAC 20-60-990 D 3.

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b. Termination under this part will not be granted to the owner and operator of the facility:

- (1) Which is not in compliance with the standards contained in 9 VAC 20-60-265; or
- (2) When termination proceedings have been instituted under 9 VAC 20-60-990 D 2.

c. The effective date of the termination of the interim status will be determined by the director to allow for proper closure of the facility in accordance with Subpart G of 40 CFR Part 264 and Subpart G of 40 CFR Part 265, as applicable.

E. Automatic termination. Interim status terminates automatically without recourse to procedures contained in 9 VAC 20-60-990 D 3:

1. For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

- a. The owner or operator submits a Part B application for a permit for that facility prior to that date; and
- b. The owner or operator certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

2. For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have an HWM permit and which is granted interim status, 12 months after the date on which the facility first becomes subject to such permit requirements unless the owner or operator of such facility:

- a. Submits a Part B application for an HWM permit for such facility before the date 12 months after the date on which the facility first becomes subject to such requirements; and
- b. Certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

3. For owners or operators of any land disposal unit that is granted authority to operate under 9 VAC 20-60-990 C 1 a, 9 VAC 20-60-990 C 1 b, or 9 VAC 20-60-990 C 1 c, on the date 12 months after the effective date of such requirement, unless the owner or operator certifies that such unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

4. For owners or operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a Part B application for an HWM permit for an incinerator facility by November 8, 1986.

5. For owners or operators of any facility (other than a land disposal or an incinerator facility) which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a Part B application for an HWM permit for the facility by November 8, 1988.

#### **9 VAC 20-60-1000. Contents of Part A.**

Part A of the application shall include the following information:

- A. The activities conducted by the applicant which require him to obtain a permit.
  - B. Name, mailing address, and location of the facility for which the application is submitted.
  - C. Up to four SIC codes which best reflect the principal products or services provided by the facility.
  - D. The latitude and longitude of the facility.
  - E. The name, address and telephone number of the owner of the facility.
  - F. An indication of whether the facility is new or existing and whether it is a first or revised application.
  - G. For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas.
  - H. For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.
  - I. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.
  - J. A listing of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the Commonwealth:
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1. Hazardous waste management program under RCRA;
2. NPDES program under CWA;
3. Prevention of significant deterioration (PSD) program under the Clean Air Act;
4. Nonattainment program under the Clean Air Act;
5. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
6. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
7. Dredge or fill permits under § 404 of CWA; and
8. Other relevant environmental permits, including local permits.

K. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within the 1/4-mile of the facility property boundary.

L. A brief description of the nature of the business.

M. A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

N. A specification of the hazardous wastes to be treated, stored, or disposed at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.

#### **9 VAC 20-60-1010. Contents of Part B.**

The following information is required for all facilities:

A. Part B information requirements presented in this section reflect the current standards. These information requirements are necessary in order to determine compliance with the standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in Part B cannot be provided to the extent required, the director may make allowance for submission of such information on a case-by-case basis. Information required in Part B shall be submitted to the director and signed in accordance with requirements in 9 VAC 20-60-1030. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer.

B. General information requirements. The following information is required for all HWM facilities, except as 40 CFR 264.1 and 9 VAC 20-60-970 provide otherwise:

1. A general description of the facility.
2. Chemical and physical analyses of the hazardous wastes and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes in accordance with 9 VAC 20-60-264.
3. A copy of the required waste analysis plan. See 40 CFR 264.13(b) and 40 CFR 264.13(c).
4. A description of the security procedures and equipment required or a justification demonstrating the reasons for requesting a waiver of this requirement. See 40 CFR 264.13(b)(4).
5. A copy of the general inspection schedule required by 40 CFR 264.15(b). Include, where applicable, as part of the inspection schedule, specific requirements in 40 CFR 264.174, 40 CFR 264.193(i), 40 CFR 264.195, 40 CFR 264.226, 40 CFR 264.254, 40 CFR 264.273, 40 CFR 264.303, 40 CFR 264.602, 40 CFR 264.573, 40 CFR 264.1033, 40 CFR 264.1052, 40 CFR 264.1053, and 40 CFR 264.1058.
6. A justification of any request for waivers of the preparedness and prevention requirements. See Subpart C of 40 CFR Part 264.
7. A copy of the contingency plan as required by Subpart D of 40 CFR Part 264.

NOTE: Include, where applicable, as part of the contingency plan, specific requirements of 40 CFR 264.227, 40 CFR 264.200 and 40 CFR 264.255.

8. A description of procedures, structures, or equipment used at the facility to:
  - a. Prevent hazards in unloading operations.

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- b. Prevent run-off from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding.
  - c. Prevent contamination of water supplies.
  - d. Mitigate effects of equipment failure and power outages.
  - e. Prevent undue exposure of personnel to hazardous waste (for example, protective clothing).
  - f. Prevent releases to atmosphere.

9. A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with 40 CFR 264.17, including documentation demonstrating compliance with 40 CFR 264.17(c).

10. Traffic pattern, estimated volume (number, types of vehicles) and control; describe access road surfacing and load bearing capacity; show traffic control signals.

C. Facility location information.

1. Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year flood plain. This identification shall indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) which shall be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood.

2. Owners and operators of facilities located in the 100-year floodplain shall provide the following information:

a. Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood.

b. Structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., flood walls, dikes) at the facility and how these will prevent washout.

c. If applicable, and in lieu of 9 VAC 20-60-1010 C 2 a and 9 VAC 20-60-1010 C 2 b, a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(1) Timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility;

(2) A description of the locations to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with this chapter;

(3) The planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use; and

(4) The potential for accidental discharges of the waste during movement.

3. Existing facilities not in compliance with 40 CFR 264.18(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

D. An outline of both the introductory and continuing training programs by owners and operators to prepare persons to operate or maintain the HWM facility in a safe manner as required by 9 VAC 20-60-264. A brief description of how training will be designed to meet actual job tasks.

E. A copy of the closure plan and, where applicable, the post-closure plan required by 40 CFR 264.112, 40 CFR 264.118 and 40 CFR 264.197. Include, where applicable, as part of the plans, specific requirements in 40 CFR 264.178, 40 CFR 264.197, 40 CFR 264.228, 40 CFR 264.258, 40 CFR 264.280, 40 CFR 264.310, 40 CFR 264.351, 40 CFR 264.601 and 40 CFR 264.603.

F. For hazardous waste disposal units that have been closed, documentation that notices required under 40 CFR 264.119 have been filed.

G. 1. The most recent closure cost estimate for the facility prepared in accordance with 40 CFR 264.142 and a copy of the documentation required to demonstrate financial assurance under 40 CFR 264.143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B application.

2. Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with 40 CFR 264.144 plus a copy of the documentation required to demonstrate financial assurance under 40 CFR 264.145. For



a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B application.

H. Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of 40 CFR 264.147. For a new facility, documentation showing the amount of insurance meeting the specification of 40 CFR 264.147(a) and, if applicable, 40 CFR 264.147(b), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage for a new or existing facility may be submitted as specified in 40 CFR 264.147(c).

I. A topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5 centimeters (one inch) equal to not more than 61.0 meters (200 feet). Contours shall be shown on the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (five feet), if relief is greater than 6.1 meters (20 feet) or an interval of 0.6 meters (two feet), if relief is less than 6.1 meters (20 feet). Owners and operators of HWM facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

1. Map scale and date.
2. 100-year floodplain area.
3. Surface waters including intermittent streams.
4. Surrounding land uses (residential, commercial, agricultural, recreational).
5. A wind rose (i.e., prevailing wind speed and direction).
6. Orientation of the map (north arrow).
7. Legal boundaries of the HWM facility site.
8. Access control (fences, gates).
9. Injection and withdrawal wells both on-site and off-site.
10. Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, run-off control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.).
11. Barriers for drainage or flood control.
12. Location of operational units within the HWM facility site, where hazardous waste is (or will be) treated, stored, or disposed (including equipment cleanup areas).
13. Applicants may be required to submit such information as may be necessary to enable the director to carry out his duties as required.

J. For land disposal facilities, if a case-by-case extension has been approved under 40 CFR 268.5 or a petition has been approved under 40 CFR 268.6, a copy of the notice of approval for the extension or petition is required.

K. Specific information requirements. The following additional information is required from owners or operators of specific types of HWM facilities that are used or to be used for storage, treatment or disposal:

1. For facilities that store containers of hazardous waste, except as otherwise provided:
  - a. A description of the containment system. Show at least the following:
    - (1) Basic design parameters, dimensions, and materials of construction;
    - (2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system;
    - (3) Capacity of the containment system relative to the number and volume of containers to be stored;
    - (4) Provisions for preventing or managing run-on;
    - (5) How accumulated liquids can be analyzed and removed to prevent overflow;
  - b. Sketches, drawings, or data demonstrating location of buffer zone, containers holding ignitable or reactive wastes and location of incompatible wastes, where applicable;
  - c. Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with this chapter;



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- d. For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with 40 CFR 264.175, including:
- (1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and
  - (2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.
2. For facilities that use tanks to store or treat hazardous waste, except as otherwise provided in 40 CFR 264.190:
- a. A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under 40 CFR 264.191 and 40 CFR 264.192;
  - b. Dimensions and capacity of the tanks;
  - c. Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents);
  - d. A diagram of piping, instrumentation, and process flow for each tank system;
  - e. A description of materials and equipment used to provide external corrosion protection, as required under 40 CFR 264.192(a)(3)(ii);
  - f. For new tank systems, a detailed description of how the tank systems will be installed in compliance with 40 CFR 264.192(b) through 40 CFR 264.192(e);
  - g. Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of 40 CFR 264.193(a) through 40 CFR 264.193(f);
  - h. For tank systems for which a variance from the requirements of 40 CFR 264.193 is sought (as provided by 40 CFR 264.193(g)):
    - (1) Detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous waste constituents into the groundwater or surface water during the life of the facility; or
    - (2) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment;
  - i. Description of controls and practices to prevent discharges and overflows, as required under 40 CFR 264.194(b); and
  - j. For tanks systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of 40 CFR 264.198 and 40 CFR 264.199.
3. For facilities that dispose, store, or treat hazardous waste in surface impoundments, except as otherwise provided in Subpart A of 40 CFR Part 264:
- a. A list of the hazardous wastes placed or to be placed in each surface impoundment;
  - b. Detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated, and maintained to meet the requirements of 40 CFR 264.19, 40 CFR 264.221, 40 CFR 264.222 and 40 CFR 264.223. This submission shall address the following items as specified in those provisions:
    - (1) The liner system (except for an existing portion of a surface impoundment). If an exemption from the requirement for a liner is sought as provided by 40 CFR 264.221(b), submit detailed plans and engineering and hydrogeologic reports as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;
    - (2) The double liner and leak (leachate) detection, collection, and removal system, if the surface impoundment must meet the requirements of 40 CFR 264.221(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by 40 CFR 264.221(d), 40 CFR 264.221(e), or 40 CFR 264.221(f), submit appropriate information;
    - (3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
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- (4) The construction quality assurance (CQA) plan if required under 40 CFR 264.19;
  - (5) Proposed action leakage rate, with rationale, if required under 40 CFR 264.222 and response action plan, if required under 40 CFR 264.223;
  - (6) Prevention of overtopping; and
  - (7) Structural integrity of dikes;
- c. A description of how each surface impoundment, including the double liner system, leak detection system, and cover systems and appurtenances for control of overtopping, will be inspected in order to meet the requirements of 40 CFR 264.226(a), 40 CFR 264.226(b), and 40 CFR 264.226(d). This information should be included in the inspection plan submitted under 9 VAC 20-60-1010 B 5;
  - d. A certification by a qualified professional engineer which attests to the structural integrity of each dike, as required under 40 CFR 264.226(c). For new units, the owner or operator shall submit a statement by a qualified professional engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications;
  - e. A description of the procedure to be used for removing a surface impoundment from service, as required under 40 CFR 264.227(b) and 40 CFR 264.227(c). This information should be included in the contingency plan submitted under 9 VAC 20-60-1010 B 7;
  - f. A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under 40 CFR 264.228(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report describing how 40 CFR 264.228(a)(2) and 40 CFR 264.228(b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under 9 VAC 20-60-1010 E;
  - g. If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how 40 CFR 264.229 will be complied with;
  - h. If incompatible wastes, or incompatible wastes and materials, will be placed in a surface impoundment, an explanation of how 40 CFR 264.230 will be complied with;
  - i. If acutely hazardous wastes listed in 40 CFR 261.31 (F020, F021, F022, F023, F026, and F027) will be placed in the surface impoundment, a waste management plan describing how it is or will be designed, constructed, operated and maintained to meet the requirements of 40 CFR 264.231. The submission shall address the following items:
    - (1) The volume, physical and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
    - (2) The attenuative properties of underlying and surrounding soils or other materials;
    - (3) The mobilizing properties of other materials co-disposed with these wastes; and
    - (4) The effectiveness of additional treatment, design, or monitoring techniques.
4. For facilities that store or treat hazardous waste in waste piles, except as otherwise provided in Subpart A of 40 CFR Part 264:
    - a. A list of hazardous wastes placed or to be placed in each waste pile;
    - b. If an exemption is sought to Subpart F of 40 CFR Part 264 and 40 CFR 264.251 as provided in 40 CFR 264.250(c) and 40 CFR 264.90(b)(2), an explanation of how the standards of 40 CFR 264.250(c) will be complied with and detailed plans and an engineering report describing how the requirements of 40 CFR 264.90(b)(2) will be met;
    - c. Detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated, and maintained to meet the requirements of 40 CFR 264.19, 40 CFR 264.251, 40 CFR 264.252, and 40 CFR 264.253 and addressing the following items:
      - (1) (a) The liner system (except for an existing portion of a pile), if the waste pile must meet the requirements of 40 CFR 264.251(a). If an exemption from the requirement for a liner is sought, as provided by 40 CFR 264.251(b), the owner or operator shall submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;
      - (b) The double liner and leak (leachate) detection, collection, and removal system, if the waste pile must meet the requirements of 40 CFR 264.251(c). If an exemption from the requirements for double liners and a leak
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detection, collection, and removal system or alternative design is sought as provided by 40 CFR 264.251(d), 40 CFR 264.251(e), or 40 CFR 264.251(f), submit appropriate information;

(c) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(d) The construction quality assurance (CQA) plan if required under 40 CFR 264.19;

(e) Proposed action leakage rate, with rationale, if required under 40 CFR 264.252 and response action plan if required under 40 CFR 264.253;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding units associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

d. (Reserved.)

e. A description of how each waste pile, including double liner, system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of 40 CFR 264.254(a), 40 CFR 264.254(b), and 40 CFR 264.254(c). This information should be included in the inspection plan submitted under 9 VAC 20-60-1010 B 5;

f. If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

g. If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of 40 CFR 264.256 will be complied with;

h. If incompatible wastes, or incompatible wastes and materials, will be placed in a waste pile, an explanation of how 40 CFR 264.257 will be complied with;

i. A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under 40 CFR 264.258(a). For any waste not to be removed from the waste pile upon closure, the owner or operator shall submit detailed plans and an engineering report describing how 40 CFR 264.310(a) and 40 CFR 264.310(b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under 9 VAC 20-60-1010 E;

j. If acutely hazardous wastes listed in 40 CFR 261.31 (F020, F021, F022, F023, F026, and F027) will be placed in the waste pile, a waste management plan describing how a waste pile that is not enclosed is or will be designed, constructed, operated and maintained to meet the requirements of 40 CFR 264.259. The submission shall address the following items:

(1) The volume, physical and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

5. For facilities that incinerate hazardous waste, except as 40 CFR 264.340 provides otherwise, the applicant shall fulfill the requirements of 9 VAC 20-60-1010 K 5 a, 9 VAC 20-60-1010 K 5 b, or 9 VAC 20-60-1010 K 5 c:

a. When seeking exemption under 40 CFR 264.340(b) or 40 CFR 264.340(c) ignitable, corrosive or reactive wastes only:

(1) Documentation that the waste is listed as a hazardous waste in Subpart D of 40 CFR Part 261 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both;

(2) Documentation that the waste is listed as a hazardous waste in Subpart D of 40 CFR Part 261 solely because it is reactive (Hazard Code R) for characteristics other than those listed in Subpart C of 40 CFR Part 261 and will not be burned when other hazardous wastes are present in the combustion zone;

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under 40 CFR 261.22 or 40 CFR 261.23; or

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(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in 40 CFR 261.23(a)(1), 40 CFR 261.23(a)(2), 40 CFR 261.23(a)(3), 40 CFR 261.23(a)(6), 40 CFR 261.23(a)(7), or 40 CFR 261.23(a)(8) and that it will not be burned when other hazardous wastes are present in the combustion zone.

b. Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with 9 VAC 20-60-1050 B; or

c. In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned, including:

(a) Heat value of the waste in the form and composition in which it will be burned.

(b) Viscosity (if applicable), or description of physical form of the waste.

(c) An identification of any hazardous organic constituents listed in Appendix VIII of 40 CFR Part 261 which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in that appendix which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" or their equivalent.

(d) An approximate quantification of the hazardous waste constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods."

(e) A quantification of those hazardous constituents in the waste which may be designated as POHCs based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in 40 CFR 264.343.

(2) A detailed engineering description of the incinerator, including:

(a) Manufacturer's name and model number of incinerator.

(b) Type of incinerator.

(c) Linear dimension of incinerator unit, including cross sectional area of combustion chamber.

(d) Description of auxiliary fuel system (type/feed).

(e) Capacity of prime mover.

(f) Description of automatic waste feed cutoff system(s).

(g) Stack gas monitoring and pollution control monitoring system.

(h) Nozzle and burner design.

(i) Construction materials.

(j) Location and description of temperature, pressure, flow indication and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in 9 VAC 20-60-1010 K 5 c (1). The analysis should specify the POHCs which the applicant has identified in the waste for which a permit is sought and any differences from the POHCs in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burns, including:

(a) Sampling and analysis techniques used to calculate performance standards in 40 CFR 264.343.

(b) Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement).

(6) The expected incinerator operation information, including:

(a) Expected carbon monoxide (CO) level in the stack exhaust gas;

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- (b) Waste feed rate;
  - (c) Combustion zone temperature;
  - (d) Indication of combustion gas velocity;
  - (e) Expected stack gas volume, flow rate, and temperature;
  - (f) Computed residence time for waste in the combustion zone;
  - (g) Expected hydrochloric acid removal efficiency;
  - (h) Expected fugitive emissions and their control procedures; and
  - (i) Proposed waste feed cutoff limits based on the identified significant operating parameters.

(7) Such supplemental information as the director finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, in addition to that required in 9 VAC 20-60-1010 K 5 c (1), sufficient to allow the director to specify as permit Principal Organic Hazardous Constituents (permit POHCs) those constituents for which destruction and removal efficiencies will be required.

d. The director shall approve a permit application without a trial burn if he finds that:

- (1) The wastes are sufficiently similar; and
- (2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify operating conditions that will ensure that the performance standards will be met by the incinerator.

6. For facilities that use land treatment to dispose of hazardous waste, except as otherwise provided in Subpart A of 40 CFR Part 264:

a. A description of plans to conduct a treatment demonstration as required under 40 CFR 264.272. The description shall include the following information:

- (1) The wastes for which the demonstration will be made and the potential hazardous constituents in the wastes;
- (2) The data sources to be used to make the demonstration (e.g., literature, laboratory data, field data, or operating data);
- (3) Any specific laboratory or field test that will be conducted, including:
  - (a) The type of test (e.g., column leaching, degradation);
  - (b) Materials and methods, including analytical procedures;
  - (c) Expected time for completion;
  - (d) Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions and operating practices.

b. A description of a land treatment program, as required under 40 CFR 264.271. This information shall be submitted with the plans for the treatment demonstration and updated following the treatment demonstration. The land treatment program shall address the following items:

- (1) The wastes to be land treated;
  - (2) Design measures and operating practices necessary to maximize treatment in accordance with 40 CFR 264.273(a), including:
    - (a) Waste application method and rate;
    - (b) Measures to control soil pH;
    - (c) Enhancement of microbial or chemical reactions; and
    - (d) Control of moisture content;
  - (3) Provisions for unsaturated zone monitoring, including:
    - (a) Sampling equipment, procedures, and frequency;
    - (b) Procedures for selecting sampling locations;
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- (c) Analytical procedures;
  - (d) Chain of custody control;
  - (e) Procedures for establishing background values;
  - (f) Statistical methods for interpreting results; and
  - (g) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for such selection in 40 CFR 264.278(a);
- (4) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to 40 CFR 264.13; and
- (5) The proposed dimensions of the treatment zone.
- c. A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of 40 CFR 264.273. This submission shall address the following items:
- (1) Control of run-on;
  - (2) Collection and control of run-off;
  - (3) Minimization of run-off of hazardous constituents from the treatment zone;
  - (4) Management of collection and holding facilities associated with run-on and run-off control systems;
  - (5) Periodic inspection of the unit. This information should be included in the inspection plan submitted under 9 VAC 20-60-1010 B 5; and
  - (6) Control of wind dispersal of particulate matter, if applicable.
- d. If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under 40 CFR 264.276(a) will be conducted, including:
- (1) Characteristics of the food-chain crop for which the demonstration will be made;
  - (2) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;
  - (3) Procedures for crop growth, sample collection, sample analysis, and data evaluation; and
  - (4) Characteristics of the comparison crop, including the location and conditions under which it was or will be grown.
- e. If food-chain crops are to be grown, and cadmium is present in the land-treatment waste, a description of how the requirements of 40 CFR 264.276(b) will be complied with.
- f. A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under 40 CFR 264.280(a)(8) and 40 CFR 264.280(c)(2). This information should be included in the closure plan and, where applicable, the post-closure care plan submitted under 9 VAC 20-60-1010 E.
- g. If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of 40 CFR 264.281 will be complied with.
- h. If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how 40 CFR 264.282 will be complied with.
- i. If acutely hazardous wastes listed in 40 CFR 261.31 (F020, F021, F022, F023, F026, and F027) will be treated in the land treatment facility, a waste management plan describing how it is or will be designed, constructed, operated, and maintained to meet the requirements of 40 CFR 264.283. The submission shall address the following items:
- (1) The volume, physical and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
  - (2) The attenuative properties of underlying and surrounding soils or other materials;
  - (3) The mobilizing properties of other materials co-disposed with these wastes; and
  - (4) The effectiveness of additional treatment, design, or monitoring techniques.
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7. For facilities that dispose of hazardous waste in landfills, except as otherwise provided in Subpart A of 40 CFR Part 264:

- a. A list of the hazardous wastes placed or to be placed in each landfill or landfill cell.
- b. Detailed plans and an engineering report describing how the landfill is designed, and is or will be constructed, operated, and maintained to comply with the requirements of 40 CFR 264.19, 40 CFR 264.301, 40 CFR 264.302, and 40 CFR 264.303. This submission shall address the following items as specified in those provisions:
  - (1) (a) The liner system (except for an existing portion of a landfill) if the landfill must meet the requirements of 40 CFR 264.301(a). If an exemption from the requirements for a liner and a leachate collection and removal system is sought as provided by 40 CFR 264.301(b), submit detailed plans and engineering and hydrogeologic reports as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituent into the groundwater or surface water at any future time;
  - (b) The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of 40 CFR 264.301(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by 40 CFR 264.301(d), 40 CFR 264.301(e), or 40 CFR 264.301(f), submit appropriate information;
  - (c) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation and the location of the saturated zone in relation to the leak detection system;
  - (d) The construction quality assurance (CQA) plan if required under 40 CFR 264.19;
  - (e) Proposed action leakage rate, with rationale, if required under 40 CFR 264.302 and response action plan, if required under 40 CFR 264.303;
- (2) Control of run-on;
- (3) Control of run-off;
- (4) Management of collection and holding facilities associated with run-on and run-off control systems; and
- (5) Control of wind dispersal of particulate matter, where applicable.
- c. (Reserved.)
- d. A description of how each landfill, including the double or single liner system, leachate collection and removal system, leak detection system, cover systems, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of 40 CFR 264.303(a), 40 CFR 264.303(b), and 40 CFR 264.303(c). This information should be included in the inspection plan submitted under 9 VAC 20-60-1010 B 5.
- e. Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with 40 CFR 264.310(a) and a description of how each landfill will be maintained and monitored after closure in accordance with 40 CFR 264.310(b). This information should be included in the closure and post-closure plans submitted under 9 VAC 20-60-1010 E.
- f. If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of 40 CFR 264.312 will be complied with.
- g. If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how 40 CFR 264.313 will be complied with.
- h. If bulk or noncontainerized liquid waste or waste containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of 40 CFR 264.314(a) will be complied with. If nonhazardous liquid waste is to be landfilled after November 8, 1985, an explanation of how the requirements of 40 CFR 264.314(f)(1) and 40 CFR 264.314(f)(2) will be met.
- i. If containers of hazardous waste are to be landfilled, an explanation of how the requirements of 40 CFR 264.315 or 40 CFR 264.316, as applicable, will be complied with.
- j. If acutely hazardous wastes listed in 40 CFR 261.31 (F020, F021, F022, F023, F026, F027) will be placed in the landfill, a waste management plan describing how it is or will be designed, constructed, operated, and maintained to meet the requirements of 40 CFR 264.317. The submission shall address the following items:
  - (1) The volume, physical and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

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- (2) The attenuative properties of underlying and surrounding soils or other materials;
  - (3) The mobilizing properties of other materials co-disposed with these wastes; and
  - (4) The effectiveness of additional treatment, design, or monitoring techniques.
8. Except as otherwise provided in 40 CFR 264.600, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units shall provide the following additional information:
- a. A detailed description of the unit being used or proposed for use, including the following:
    - (1) Physical characteristics, materials of construction, and dimensions of the unit;
    - (2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of 40 CFR 264.601 and 40 CFR 264.602; and
    - (3) For disposal units, a detailed description of the plans to comply with the post-closure requirements of 40 CFR 264.603.
  - b. Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of 40 CFR 264.601. If the applicant can demonstrate that he does not violate the environmental performance standards of 40 CFR 264.601 and the director agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.
  - c. Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.
  - d. For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.
  - e. Any additional information determined by the director to be necessary for evaluation of compliance of the unit with the environmental performance standards of 40 CFR 264.601.
9. For facilities that have process vents to which Subpart AA of 40 CFR Part 264 applies, except as otherwise provided in Subpart A of 40 CFR Part 264:
- a. For facilities that cannot install a closed-vent system and control device to comply with the provisions of Subpart AA of 40 CFR Part 264 on the effective date that the facility becomes subject to Subpart AA of 40 CFR Part 265 or Subpart AA of 40 CFR Part 264, an implementation schedule as specified in 40 CFR 264.1033(a)(2).
  - b. Documentation of compliance with the process vent standards in 40 CFR 264.1032, including:
    - (1) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents in the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).
    - (2) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions shall be made using operating parameter values (e.g., temperatures, flow rates, or concentrations) that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.
    - (3) Information and data used to determine whether or not a process vent is subject to the requirements of 40 CFR 264.1032.
  - c. When an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of 40 CFR 264.1032, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in 40 CFR 264.1035(b)(3).
  - d. Documentation of compliance with 40 CFR 264.1033, including:
    - (1) A list of all information references and sources used in preparing the documentation.
    - (2) Records, including the dates, of each compliance test required by 40 CFR 264.1033(k).
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(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" or other engineering texts acceptable to the director that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in 40 CFR 264.1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless the total organic emission limits of 40 CFR 264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent.

10. For facilities that have equipment to which Subpart BB of 40 CFR Part 264 or Subpart BB of 40 CFR Part 265 applies, except as otherwise provided in Subpart A of 40 CFR Part 264:

a. For each piece of equipment to which Subpart BB of 40 CFR Part 264 applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (e.g., a pump or pipeline valve).

(4) Percent by weight total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(6) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

b. For facilities that cannot install a closed-vent system and control device to comply with the provisions of Subpart BB of 40 CFR Part 264 on the effective date that the facility becomes subject to the provisions of Subpart BB of 40 CFR Part 264 or 265, an implementation schedule as specified in 40 CFR 264.1033(a)(2).

c. When an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in 40 CFR 264.1035(b)(3).

d. Documentation that demonstrates compliance with the equipment standards in 40 CFR 264.1052 to 40 CFR 264.1059. This documentation shall contain the records required under 40 CFR 264.1064. The director may request further documentation before deciding if compliance has been demonstrated.

e. Documentation to demonstrate compliance with 40 CFR 264.1060 shall include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by 40 CFR 264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" or other engineering texts acceptable to the director that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in 40 CFR 264.1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

11. For facilities burning hazardous waste in boilers and industrial furnaces:

a. Trial burns.

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(1) General. Except as provided below, owners and operators that are subject to the standards to control organic emissions provided by 40 CFR 266.104, standards to control particulate matter provided by 40 CFR 266.105, standards to control metals emissions provided by 40 CFR 266.106, or standards to control hydrogen chloride or chlorine gas emissions provided by 40 CFR 266.107 must conduct a trial burn to demonstrate conformance with those standards and must submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with 9 VAC 20-60-1050 E.

(a) A trial burn to demonstrate conformance with a particular emission standard may be waived under provisions of 40 CFR 266.104 through 40 CFR 266.107 and 9 VAC 20-60-1010 K 11 a (2) through 9 VAC 20-60-1010 K 11 a (5); and

(b) The owner or operator may submit data in lieu of a trial burn, as prescribed in 9 VAC 20-60-1010 K 11 a (6).

(2) Waiver of trial burn for DRE.

(a) Boilers operated under special operating requirements. When seeking to be permitted under 40 CFR 266.104(a)(4) and 40 CFR 266.110 that automatically waive the DRE trial burn, the owner or operator of a boiler must submit documentation that the boiler operates under the special operating requirements provided by 40 CFR 266.110.

(b) Boilers and industrial furnaces burning low risk waste. When seeking to be permitted under the provisions for low risk waste provided by 40 CFR 266.104(a)(5) and 40 CFR 266.109(a) that waive the DRE trial burn, the owner or operator must submit:

(i) Documentation that the device is operated in conformance with the requirements of 40 CFR 266.109(a)(1);

(ii) Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in Appendix VIII of 40 CFR Part 261, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on analytical techniques specified in "Test Methods for Evaluating of Solid Waste, Physical/Chemical Methods";

(iii) Documentation of hazardous waste firing rates and calculations of reasonable, worst-case emission rates of each constituent identified in 9 VAC 20-60-1010 K 11 a (2) (b) (ii) using procedures provided by 40 CFR 266.109(a)(2)(ii);

(iv) Results of emissions dispersion modeling for emissions identified in 9 VAC 20-60-1010 K 11 a (2) (b) (iii) of this section using modeling procedures prescribed by 40 CFR 266.106(h). The director will review the emission modeling conducted by the applicant to determine conformance with these procedures. The director will either approve the modeling or determine that alternate or supplementary modeling is appropriate; and

(v) Documentation that the maximum annual average ground level concentration of each constituent identified in 9 VAC 20-60-1010 K 11 a (2) (b) (ii) quantified in conformance with 9 VAC 20-60-1010 K 11 a (2) (b) (iv) does not exceed the allowable ambient level established in Appendix IV and Appendix V of 40 CFR Part 266. The acceptable ambient concentration for emitted constituents for which a specific Reference Air Concentration has not been established in Appendix IV of 40 CFR Part 266 or Risk-Specific Dose has not been established in Appendix V of 40 CFR Part 266 is 0.1 micrograms per cubic meter, as noted in the footnote to Appendix IV of 40 CFR Part 266.

(3) Waiver of trial burn for metals. When seeking to be permitted under the Tier I (or adjusted Tier I) metals feed rate screening limits provided by 40 CFR 266.106(b) and 40 CFR 266.106(e) that control metals emissions without requiring a trial burn, the owner or operator must submit:

(a) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(b) Documentation of the concentration of each metal controlled by 40 CFR 266.106(b) or 40 CFR 266.106(e) in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;

(c) Documentation of how the applicant will ensure that the Tier I feed rate screening limits provided by 40 CFR 266.106(b) or 40 CFR 266.106(e) will not be exceeded during the averaging period provided by that paragraph;

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(d) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by 40 CFR 266.106(b)(3) through 40 CFR 266.106(b)(5);

(e) Documentation of compliance with the provisions of 40 CFR 266.106(b)(6), if applicable, for facilities with multiple stacks;

(f) Documentation that the facility does not fail the criteria provided by 40 CFR 266.106(b)(7) for eligibility to comply with the screening limits; and

(g) Proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feed stocks.

(4) Waiver of trial burn for particulate matter. When seeking to be permitted under the low risk waste provisions of 40 CFR 266.109(b) which waives the particulate standard (and trial burn to demonstrate conformance with the particulate standard), applicants must submit documentation supporting conformance with 9 VAC 20-60-1010 K 11 a (2) (b) and 9 VAC 20-60-1010 K 11 a (3).

(5) Waiver of trial burn for HCl and Cl<sub>2</sub>. When seeking to be permitted under the Tier I (or adjusted Tier I) feed rate screening limits for total chloride and chlorine provided by 40 CFR 266.107(b)(1) and 40 CFR 266.107(e) that control emissions of hydrogen chloride (HCl) and chlorine gas (Cl<sub>2</sub>) without requiring a trial burn, the owner or operator must submit:

(a) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(b) Documentation of the levels of total chloride and chlorine in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;

(c) Documentation of how the applicant will ensure that the Tier I (or adjusted Tier I) feed rate screening limits provided by 40 CFR 266.107(b)(1) or 40 CFR 266.107(e) will not be exceeded during the averaging period provided by that paragraph;

(d) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by 40 CFR 266.107(b)(3);

(e) Documentation of compliance with the provisions of 40 CFR 266.108(b)(4), if applicable, for facilities with multiple stacks;

(f) Documentation that the facility does not fail the criteria provided by 40 CFR 266.108(b)(3) for eligibility to comply with the screening limits; and

(g) Proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.

(6) Data in lieu of trial burn. The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance 40 CFR 266.104 through 40 CFR 266.107 and 9 VAC 20-60-1050 E by providing the information required by 9 VAC 20-60-1050 E from previous compliance testing of the device in conformance with 40 CFR 266.103, or from compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by 9 VAC 20-60-1050 E must be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating information must be provided. The director shall approve a permit application without a trial burn if he finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under 40 CFR 266.102) operating conditions that will ensure conformance with 40 CFR 266.102(c). In addition, the following information shall be submitted:

(a) For a waiver from any trial burn: (i) a description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from compliance testing, or operational or trial burns are provided to support the contention that a trial burn is not needed; (ii) the design and operating conditions of the boiler or industrial furnace to be used, compared with that for which comparative burn data are available; and (iii) such supplemental information as the director finds necessary to achieve the purposes of this paragraph.

(b) For a waiver of the DRE trial burn, the basis for selection of POHCs used in the other trial or operational burns which demonstrate compliance with the DRE performance standard in 40 CFR 266.104(a). This analysis should specify the constituents in Appendix VIII of 40 CFR Part 261 that the applicant has identified



in the hazardous waste for which a permit is sought, and any differences from the POHCs in the hazardous waste for which burn data are provided.

b. Alternate HC limit for industrial furnaces with organic matter in raw materials. Owners and operators of industrial furnaces requesting an alternative HC limit under 40 CFR 266.104(f) shall submit the following information at a minimum:

- (1) Documentation that the furnace is designed and operated to minimize HC emissions from fuels and raw materials;
- (2) Documentation of the proposed baseline flue gas HC (and CO) concentration, including data on HC (and CO) levels during tests when the facility produced normal products under normal operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;
- (3) Test burn protocol to confirm the baseline HC (and CO) level including information on the type and flow rate of all feedstreams, point of introduction of all feedstreams, total organic carbon content (or other appropriate measure of organic content) of all nonfuel feedstreams, and operating conditions that affect combustion of fuels and destruction of hydrocarbon emissions from nonfuel sources;
- (4) Trial burn plan to:
  - (a) Demonstrate that flue gas HC (and CO) concentrations when burning hazardous waste do not exceed the baseline HC (and CO) level; and
  - (b) Identify the types and concentrations of organic compounds listed in Appendix VIII of 40 CFR Part 261 that are emitted when burning hazardous waste in conformance with procedures prescribed by the director;
- (5) Implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline HC level and procedures to periodically confirm the baseline HC level; and
- (6) Such other information as the director finds necessary to achieve the purposes of this paragraph.

c. Alternate metals implementation approach. When seeking to be permitted under an alternate metals implementation approach under 40 CFR 266.106(f), the owner or operator must submit documentation specifying how the approach ensures compliance with the metals emissions standards of 40 CFR 266.106(c) or 40 CFR 266.106(d) and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide such other information that the director finds necessary to achieve the purposes of this paragraph.

d. Automatic waste feed cutoff system. Owners and operators shall submit information describing the automatic waste feed cutoff system, including any pre-alarm systems that may be used.

e. Direct transfer. Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in 40 CFR 260.10 for the purposes of complying with 40 CFR 266.111) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR 266.111.

f. Residues. Owners and operators that claim that their residues are excluded from regulation under the provisions of 40 CFR 266.112 must submit information adequate to demonstrate conformance with those provisions.

12. For facilities that collect, store, or treat hazardous waste on drip pads, except as otherwise provided by Subpart A of 40 CFR Part 264:

- a. A list of hazardous wastes placed or to be placed on each drip pad.
- b. If an exemption is sought to Subpart F of 40 CFR Part 264, as provided by 40 CFR 264.90, detailed plans and an engineering report describing how the requirements of 40 CFR 264.90 will be met.
- c. Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of 40 CFR 264.573, including the as-built drawings and specifications. This submission must address the following items as specified in 40 CFR 264.571:
  - (1) The design characteristics of the drip pad;
  - (2) The liner system;
  - (3) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;
  - (4) Practices designed to maintain drip pads;



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- (5) The associated collection system;
  - (6) Control of run-on to the drip pad;
  - (7) Control of run-off from the drip pad;
  - (8) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;
  - (9) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned;
  - (10) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;
  - (11) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and nonpressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;
  - (12) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;
  - (13) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals;
  - (14) A description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements 40 CFR 264.573. This information should be included in the inspection plan submitted under 9 VAC 20-60-1010 B 5;
  - (15) A certification signed by an independent, qualified, registered professional engineer, stating that the drip pad design meets the requirements of 40 CFR 264.573(a) through 40 CFR 264.573(f);
  - (16) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under 40 CFR 264.575(a). For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how 40 CFR 264.310(a) and 40 CFR 264.310(b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under 9 VAC 20-60-1010 E.

L. Additional information requirements. The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit, except as otherwise provided in 40 CFR 264.90(b):

1. A summary of the groundwater monitoring data obtained during the interim status period under Subpart F of 40 CFR Part 265, where applicable.
  2. Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including groundwater flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area).
  3. On the topographic map required under 9 VAC 20-60-1010 I, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under 40 CFR 264.95, the proposed location of groundwater monitoring wells as required under 40 CFR 264.97 and, to the extent possible, the information required in 9 VAC 20-60-1010 L 2.
  4. A description of any plume of contamination that has entered the groundwater from a regulated unit at the time that the application is submitted that:
    - a. Delineates the extent of the plume on the topographic map required under 9 VAC 20-60-1010 I;
    - b. Identifies the concentration of each Appendix IX of 40 CFR Part 264 constituent throughout the plume or identifies the maximum concentrations of each Appendix IX of 40 CFR Part 264 constituent in the plume.
  5. Detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of 40 CFR 264.97.
  6. If the presence of hazardous constituents has not been detected in the groundwater at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements 40 CFR 264.98. This submission shall address the following items as specified under that section:
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- a. A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the groundwater;
- b. A proposed groundwater monitoring system;
- c. Background values for each proposed monitoring parameter or constituent, or procedure to calculate such values; and
- d. A description of proposed sampling, analysis and statistical comparison procedures to be used in evaluating groundwater monitoring data.

7. If the presence of hazardous constituents has been detected in the groundwater at the point of compliance at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of 40 CFR 264.99. Except as provided in 40 CFR 264.98(h)(5), the owner or operator shall also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of 40 CFR 264.100, unless the owner or operator obtains written authorization in advance from the director to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with 40 CFR 264.99, the owner or operator shall address the following items:

- a. A description of the wastes previously handled at the facility;
- b. A characterization of the contaminated groundwater, including concentrations of hazardous constituents;
- c. A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with 40 CFR 264.97 and 40 CFR 264.99;
- d. Proposed concentration limits for each hazardous constituent, based on the criteria set forth in 40 CFR 264.94(a), including a justification for establishing any alternate concentration limits;
- e. Detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of 40 CFR 264.97; and
- f. A description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

8. If hazardous constituents have been measured in the groundwater which exceed the concentration limits established under Table 1 of 40 CFR 264.94, or if groundwater monitoring conducted at the time of permit application under Subpart F of 40 CFR Part 265 at the waste boundary indicates the presence of hazardous constituents from the facility in groundwater over background concentrations, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of 40 CFR 264.100. However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the director that alternate concentration limits will protect human health and the environment after considering the criteria listed in 40 CFR 264.94(b). An owner or operator who is not required to establish a corrective action program for this reason shall instead submit sufficient information to establish a compliance monitoring program which meets the requirements of 40 CFR 264.99 and 9 VAC 20-60-1010 L 6. To demonstrate compliance with 40 CFR 264.100, the owner or operator shall address, at a minimum, the following items:

- a. A characterization of the contaminated groundwater, including concentration of hazardous constituents;
- b. The concentration limit for each hazardous constituent found in the groundwater as set forth in 40 CFR 264.94;
- c. Detailed plans and an engineering report describing the corrective action to be taken; and
- d. A description of how the groundwater monitoring program will assess the adequacy of the corrective action.

The permit may contain a schedule for submittal of the information required in 9 VAC 20-60-1010 L 8 c and 9 VAC 20-60-1010 L 8 d provided the owner or operator obtains written authorization from the director prior to submittal of the permit application.

M. Information requirements for solid waste management units.

1. The following information is required for each solid waste management unit at a facility seeking a permit:
  - a. The location of the unit on the topographic map required under 9 VAC 20-60-1010 I.
  - b. Designation of type of unit.
  - c. General dimensions and structural description (supply any available drawings).
  - d. When the unit was operated.

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e. Specification of all wastes that have been managed at the unit, to the extent available.

2. The owner or operator of any facility containing one or more solid waste management units shall submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

3. The owner or operator shall conduct and provide the results of sampling and analysis of groundwater, land surface, and subsurface strata, surface water, or air, which may include the installation of wells, where the director ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.

**9 VAC 20-60-1020. Recordkeeping.**

Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted for a period of at least three years from the date the application is signed.

**9 VAC 20-60-1030. Signatories to permit applications and reports.**

A. Applications. All permit applications shall be signed as follows:

1. For a corporation: By a responsible corporate officer.

2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively.

3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official.

B. Reports. All reports required by permits and other information requested by the director shall be signed by a person described in 9 VAC 20-60-1030 A above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in 9 VAC 20-60-1030 A;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; and

3. The written authorization is submitted to the director.

C. Changes to authorization. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements shall be submitted to the director prior to or together with any reports, information or applications to be signed by an authorized representative.

D. Certification. Any person signing a document under 9 VAC 20-60-1030 A or 9 VAC 20-60-1030 B shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**9 VAC 20-60-1040. Permits by rule.**

Notwithstanding any other provisions of Part XI (9 VAC 20-60-960 et seq.) of this chapter, the following shall be deemed to have an HWM permit if the conditions listed are met:

A. Ocean disposal barges or vessels. The owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal, if the owner or operator:

1. Has a permit for ocean dumping issued under 40 CFR Part 220;

2. Complies with the condition of that permit; and

3. Complies with the following appropriate parts of this chapter with respect to:

a. Identification number;

b. Use of manifest system;

c. Manifest discrepancies;

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- d. Operating record;
- e. Annual report; and
- f. Unmanifested waste report.

B. Publicly owned treatment works. The owner or operator of a POTW which accepts for treatment hazardous waste, if the owner or operator:

1. Has an NPDES permit;
2. Complies with the conditions of that permit;
3. Complies with the appropriate parts of this chapter with respect to:
  - a. Identification number;
  - b. Use of manifest system;
  - c. Manifest discrepancies;
  - d. Operating record;
  - e. Annual report;
  - f. Unmanifested waste report; and
  - g. Corrective action requirements under 40 CFR 264.101 for NPDES permits issued after November 8, 1984; and
4. If the waste meets all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

**9 VAC 20-60-1050. Special hazardous waste management permits.**

A. Emergency permits. Notwithstanding any other provision of Part XI (9 VAC 20-60-960 et seq.) of this chapter, in the event the director finds an imminent and substantial endangerment to human health or the environment, the director may issue a temporary emergency permit to a facility to allow treatment, storage, or disposal of hazardous waste for a nonpermitted facility or hazardous waste not covered by the permit for a facility with an effective permit. Such permits:

1. May be oral or written. If oral, it shall be followed within five days by a written emergency permit;
2. Shall not exceed 90 days in duration;
3. Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;
4. May be terminated by the director at any time without process if it is determined that termination is appropriate to protect human health or the environment; and
5. Shall be accompanied by a public notice as required by the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and 9 VAC 20-60-1200, including:
  - a. Name and address of the office granting the emergency authorization;
  - b. Name and location of the permitted HWM facility;
  - c. A brief description of the wastes involved;
  - d. A brief description of the action authorized and reasons for authorizing it;
  - e. Duration of the emergency permit; and
6. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of 9 VAC 20-60-264, 9 VAC 20-60-266, and Parts XI (9 VAC 20-60-960 et seq.) and XII (9 VAC 20-60-1260 et seq.) of this chapter.

B. Hazardous waste incinerator permits.

1. For the purpose of determining operational readiness following completion of physical construction, the director shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The director may extend the duration of this operational

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period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to 9 VAC 20-60-1170.

a. Applicants shall submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of 40 CFR 264.343 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in 40 CFR 264.345.

b. The director will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of 40 CFR 264.343 based on his engineering judgment.

2. For the purposes of determining feasibility of compliance with the performance standards of 40 CFR 264.343 and of determining adequate operating conditions under 40 CFR 264.345, the director shall establish conditions in the permit for a new hazardous waste incinerator to be effective during the trial burn.

a. Applicants shall propose a trial burn plan, prepared under 9 VAC 20-60-1050 B 2 b with Part B of the permit application.

b. The trial burn plan shall include the following information:

(1) An analysis of each waste or mixture of wastes to be burned which includes:

(a) Heat value of the waste in the form and composition in which it will be burned.

(b) Viscosity (if applicable), or description of the physical form of the waste.

(c) An identification of any hazardous organic constituents listed in Appendix VIII of 40 CFR Part 261, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Appendix VIII of 40 CFR Part 261 which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified, and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" or their equivalent as determined by the administrator.

(d) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" or their equivalent.

(2) A detailed engineering description of the incinerator for which the permit is sought, including:

(a) Manufacturer's name and model number of incinerator (if available).

(b) Type of incinerator.

(c) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(d) Description of the auxiliary fuel system (type/feed).

(e) Capacity of prime mover.

(f) Description of automatic waste feed cutoff system(s).

(g) Stack gas monitoring and pollution control equipment.

(h) Nozzle and burner design.

(i) Construction materials.

(j) Location and description of temperature, pressure, and flow indicating and control devices.

(3) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) A detailed test schedule for each waste for which the trial burn is planned including dates, duration, quantity of waste to be burned, and other factors relevant to the director's decision under 9 VAC 20-60-1050 B 2 e.

(5) A detailed test protocol, including for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(6) A description of, and planned operating conditions for, any emission control equipment which will be used.

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- (7) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.
- (8) Such other information as the director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of 9 VAC 20-60-1050 B 2 and the criteria in 9 VAC 20-60-1050 B 2 e.
- c. The director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of 9 VAC 20-60-1050 B 2.
- d. Based on the waste analysis data in the trial burn plan, the director will specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs will be specified by the director based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in Subpart D of 40 CFR Part 261, the hazardous waste organic constituent or constituents identified in Appendix VII of 40 CFR Part 261 as the basis for listing.
- e. The director shall approve a trial burn plan if he finds that:
- (1) The trial burn is likely to determine whether the incinerator performance standard required by 40 CFR 264.343 can be met;
  - (2) The trial burn itself will not present an imminent hazard to human health or the environment;
  - (3) The trial burn will help the director to determine operating requirements to be specified under 40 CFR 264.345; and
  - (4) The information sought in 9 VAC 20-60-1050 B 2 e (1) and 9 VAC 20-60-1050 B 2 g cannot reasonably be developed through other means.
- f. During each approved trial burn (or as soon after the burn as is practicable), the applicant shall make the following determinations:
- (1) A quantitative analysis of the trial POHCs in the waste feed to the incinerator;
  - (2) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O<sub>2</sub>) and hydrogen chloride (HCl);
  - (3) A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs;
  - (4) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 CFR 264.343(a);
  - (5) If the HCl emission rate exceeds 1.8 kilograms of HCl per hour (four pounds per hour), a computation of HCl removal efficiency in accordance with 40 CFR 264.343(b);
  - (6) A computation of particulate emissions, in accordance with 40 CFR 264.343(c);
  - (7) An identification of sources of fugitive emissions and their means of control;
  - (8) A measurement of average, maximum, and minimum temperatures and combustion gas velocity;
  - (9) A continuous measurement of carbon monoxide (CO) in the exhaust gas; and
  - (10) Such other information as the director may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in 40 CFR 264.343 and to establish the operating conditions required by 40 CFR 264.345 as necessary to meet that performance standard.
- g. The applicant shall submit to the director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in 9 VAC 20-60-1050 B 2 f. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the director.
- h. All data collected during any trial burn shall be submitted to the director following the completion of the trial burn.
- i. All submissions required by 9 VAC 20-60-1050 B 2 shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under 9 VAC 20-60-1030.
- j. Based on the results of the trial burn, the director shall set the operating requirements in the final permit according 40 CFR 264.345. The permit modification shall proceed according to 9 VAC 20-60-1170.
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3. For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of permit conditions to reflect the trial burn results, the director may establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of 40 CFR 264.345, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the director.

a. Applicants shall submit a statement, with Part B of the permit application, which identifies the conditions necessary to operate in compliance with performance standards of 40 CFR 264.343, during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in 40 CFR 264.345.

b. The director will review this statement and any other relevant information submitted with Part B of the permit application and specify those requirements for this period most likely to meet the performance standards of 40 CFR 264.343 based on his engineering judgment.

4. For the purposes of determining feasibility of compliance with the performance standards of 40 CFR 264.343 and of determining adequate operating conditions under 40 CFR 264.345, the applicant for a permit for an existing hazardous waste incinerator shall prepare and submit a trial burn plan and perform a trial burn in accordance with 9 VAC 20-60-1010 K 5 b and 9 VAC 20-60-1050 B 2 b through 9 VAC 20-60-1050 B 2 i or, instead, submit other information as specified in 9 VAC 20-60-1010 K 5 c. Applicants submitting information under 9 VAC 20-60-1010 K 5 a are exempt from compliance with 40 CFR 264.343 and 40 CFR 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in 9 VAC 20-60-1050 B 2 f, with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the director to establish a later date for submission of the Part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

#### C. Permits for land treatment demonstrations.

1. For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of 40 CFR 264.272, the director may issue a treatment demonstration permit. The permit shall contain only those requirements necessary to meet the standards in 40 CFR 264.272(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction, operation and maintenance of the land treatment unit.

a. The director may issue a two-phase facility permit if he finds that based on information submitted in Part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

b. If the director finds that not enough information exists upon which he can establish permit conditions to attempt to provide for compliance with all of the requirements of Subpart M of 40 CFR Part 264, he shall issue a treatment demonstration permit covering only the field test or laboratory analyses.

2. If the director finds that a phased permit may be issued, he will establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which the director finds may be necessary under 40 CFR 264.272(c). The director will include conditions in the second phase of the facility permit to attempt to meet all Subpart M of 40 CFR Part 264 requirements pertaining to unit design, construction, operation, and maintenance. The director will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

a. The first phase of the permit will be effective as designated by the director.

b. The second phase of the permit will be effective as provided in 9 VAC 20-60-1050 C 4.

3. When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he shall submit to the director a certification, signed by a person authorized to sign a permit application or report under 9 VAC 20-60-1030, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the director approves a later date.

4. If the director determines that the results of the field tests or laboratory analyses meet the requirements of 40 CFR 264.272, he will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with Subpart M of 40 CFR Part 264, based upon the results of the field tests or laboratory analyses.

a. This permit modification may proceed under 9 VAC 20-60-1170, or otherwise will proceed as a modification under 9 VAC 20-60-1150 A 2. If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.

b. If no modifications of the second phase of the permit are necessary, the director will give notice of his final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of final decision on the second phase of the permit. The second phase of the permit then will become effective as specified by the director.

D. Research, development and demonstration permits.

1. The director may issue a research, development and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 9 VAC 20-60-264 or XIII. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

a. Shall provide for the construction of such facilities as necessary, and for operation of the facility for no longer than one year unless renewed as provided in 9 VAC 20-60-1050 D 4;

b. Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the director deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and

c. Shall include such requirements as the director deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure and remedial action), and such requirements as the director deems necessary regarding testing and providing of information to the director with respect to the operation of the facility.

2. For the purpose of expediting review and issuance of permits under 9 VAC 20-60-1050 D, the director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Parts XI and XII of this chapter except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

3. The director may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

4. Any permit issued under 9 VAC 20-60-1050 D may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

E. Permits for boilers and industrial furnaces burning hazardous waste.

1. General. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 CFR 266.103) are subject to 9 VAC 20-60-1050 E 2 through 9 VAC 20-60-1050 E 6. Boilers and industrial furnaces operating under the interim status standards of 40 CFR 266.103 are subject to 9 VAC 20-60-1050 E 7.

2. Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

a. Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time when burning hazardous waste, the director must establish in the pretrial burn period of the permit conditions, including but not limited to, allowable hazardous waste feed rates and operating conditions. The director may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to 9 VAC 20-60-1170.

(1) Applicants must submit a statement, with Part B of the permit application, that suggests the conditions necessary to operate in compliance with the standards of 40 CFR 266.104 through 40 CFR 266.107 during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in 40 CFR 266.102(e).

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(2) The director will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of 40 CFR 266.104 through 40 CFR 266.107 based on his engineering judgment.

b. Trial burn period. For the duration of the trial burn, the director must establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of 40 CFR 266.104 through 40 CFR 266.107 and determining adequate operating conditions under 40 CFR 266.102(e). Applicants must propose a trial burn plan, prepared under 9 VAC 20-60-1050 E 3, to be submitted with Part B of the permit application.

c. Post-trial burn period.

(1) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the director to reflect the trial burn results, the director will establish the operating requirements most likely to ensure compliance with the performance standards of 40 CFR 266.104 through 40 CFR 266.107 based on his engineering judgment.

(2) Applicants must submit a statement, with Part B of the application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of 40 CFR 266.104 through 40 CFR 266.107. This statement should include, at a minimum, restrictions on the operating requirements provided by 40 CFR 266.102(e).

(3) The director will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of 40 CFR 266.104 through 40 CFR 266.107 based on his engineering judgment.

d. Final permit period. For the final period of operation, the director will develop operating requirements in conformance with 40 CFR 266.102(e) that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of 40 CFR 266.104 through 40 CFR 266.107. Based on the trial burn results, the director shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to 9 VAC 20-60-1170.

3. Requirements for trial burn plans. The trial burn plan must include the following information. The director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph:

a. An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feed stocks, as fired, that includes:

(1) Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash; and

(2) Viscosity or description of the physical form of the feed stream.

b. An analysis of each hazardous waste as fired, including:

(1) An identification of any hazardous organic constituents listed in Appendix VIII of 40 CFR Part 261 that are present in the feed stream, except that the applicant need not analyze for constituents listed in Appendix VIII of 40 CFR Part 261 that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The analysis must be conducted in accordance with analytical techniques specified in "Test Methods for Evaluating of Solid Waste, Physical/Chemical Methods," or their equivalent.

(2) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating of Solid Waste, Physical/Chemical Methods" or other equivalent.

(3) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.

c. A detailed engineering description of the boiler or industrial furnace, including:

(1) Manufacturer's name and model number of the boiler or industrial furnace;

(2) Type of boiler or industrial furnace;

(3) Maximum design capacity in appropriate units;

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- (4) Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;
  - (5) Capacity of hazardous waste feed system;
  - (6) Description of automatic hazardous waste feed cutoff systems;
  - (7) Description of any air pollution control system; and
  - (8) Description of stack gas monitoring and any pollution control monitoring system.
- d. A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.
  - e. A detailed test schedule for each hazardous waste for which the trial burn is planned, including dates, duration, quantity of hazardous waste to be burned, and other factors relevant to the director's decision under 9 VAC 20-60-1050 E 2 b.
  - f. A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in 40 CFR 266.104 through 40 CFR 266.107.
  - g. A description of, and planned operating conditions for, any emission control equipment that will be used.
  - h. Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.
  - i. Such other information as the director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in 9 VAC 20-60-1050 E 2 b.
4. Trial burn procedures.
    - a. A trial burn must be conducted to demonstrate conformance with the standards of 40 CFR 266.104 through 40 CFR 266.107 under an approved trial burn plan.
    - b. The director shall approve a trial burn plan if he finds that:
      - (1) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards 40 CFR 266.104 through 40 CFR 266.107;
      - (2) The trial burn itself will not present an imminent hazard to human health and the environment;
      - (3) The trial burn will help the director to determine operating requirements to be specified under 40 CFR 266.102(e); and
      - (4) The information sought in the trial burn cannot reasonably be developed through other means.
    - c. The applicant must submit to the director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in 9 VAC 20-60-1050 E 3. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the director.
    - d. All data collected during any trial burn must be submitted to the director following completion of the trial burn.
    - e. All submissions required by this paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under 9 VAC 20-60-1030.
  5. Special procedures for DRE trial burns. When a DRE trial burn is required under 40 CFR 266.104(a), the director will specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial Principal Organic Hazardous Constituents (POHCs) those compounds for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the director based on information including his estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from waste listed in Subpart D of 40 CFR Part 261, the hazardous waste organic constituents identified in Appendix VII of 40 CFR Part 261 as the basis for listing.
  6. Determinations based on trial burn. During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:
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a. A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);

b. When a DRE trial burn is required under 40 CFR 266.104(a):

(1) A quantitative analysis of the trial POHCs in the hazardous waste feed;

(2) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs; and

(3) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 CFR 266.104(a);

c. When a trial burn for chlorinated dioxins and furans is required under 40 CFR 266.104(e), a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;

d. When a trial burn for particulate matter, metals, or HCl/Cl<sub>2</sub> is required under 40 CFR 266.105, 40 CFR 266.106(c) or 40 CFR 266.106(d), or 40 CFR 266.107(b)(2) or 40 CFR 266.107(c), a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl<sub>2</sub>), and computations showing conformance with the applicable emission performance standards;

e. When a trial burn for DRE, metals, or HCl/Cl<sub>2</sub> is required under 40 CFR 266.104(a), 40 CFR 266.106(c) or 40 CFR 266.106(d), or 40 CFR 266.107(b)(2) or 40 CFR 266.107(c), a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

f. An identification of sources of fugitive emissions and their means of control;

g. A continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and

h. Such other information as the director may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in 40 CFR 266.104 through 40 CFR 266.107 and to establish the operating conditions required by 40 CFR 266.102(e) as necessary to meet those performance standards.

7. Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of 40 CFR 266.104 through 40 CFR 266.107 and of determining adequate operating conditions under 40 CFR 266.103, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of 40 CFR 266.103 must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in 9 VAC 20-60-1010 K 11 a (6). Applicants who submit a trial burn plan and receive approval before submission of the Part B permit application must complete the trial burn and submit the results specified in 9 VAC 20-60-1050 E 6 with the Part B permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the director to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn plan with Part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to the permit issuance to be specified by the director.

#### **9 VAC 20-60-1060. Conditions applicable to all permits.**

The following conditions apply to all hazardous waste management permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be given in the permit.

A. Duty to comply. The permittee shall comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit (see 9 VAC 20-60-1050 A). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of Title 10.1 of the Code of Virginia, and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. Duty to reapply. If the permittee wishes to continue a regulated activity after the expiration date of his permit, he shall apply for and obtain a new permit.

C. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

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D. Duty to mitigate. In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

E. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with permit conditions.

F. Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

G. Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege. Possession of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Commonwealth or local law or regulations.

H. Duty to provide information. The permittee shall furnish to the Commonwealth within a reasonable time, any pertinent information which the director may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by the permittee.

I. Inspection and entry. The permittee shall allow the director or an authorized representative, upon the presentation of credential and other documents as may be required by law, to:

1. Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records shall be kept under the conditions of the permit;
2. Have access to and copy, at reasonable times, any records that shall be kept under the conditions of the permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by this chapter, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. The permittee shall retain records of all monitoring information, including all calibrations and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by 40 CFR 264.73(b)(9), and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, certification or application. This period may be extended by request of the director at any time. The permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.
3. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individuals who performed the sampling or measurements;
  - c. The dates analyses were performed;
  - d. The individuals who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.

K. Signatory requirement. All applications, reports, or information submitted to the director shall be signed and certified as specified in 9 VAC 20-60-1030.

L. Reporting requirements.

1. Planned changes. The permittee shall give written notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility.



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2. Anticipated noncompliance. The permittee shall give advance written notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new HWM facility, the permittee may not commence treatment, storage, or disposal of hazardous waste; and for a facility being modified the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in 9 VAC 20-60-1170, until:

a. The permittee has submitted to the director by certified mail or hand delivery a letter signed by the permittee and a professional engineer registered by the Commonwealth stating that the facility has been constructed or modified in compliance with the permit; and

b. (1) The director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(2) Within 15 days of the date of submission of the letter in 9 VAC 20-60-1060 L 2 a, if the permittee has not received notice from the director of his intent to inspect, prior inspection is waived and the permittee may commence treatment, storage or disposal of hazardous waste.

3. Transfers. This permit is not transferable to any person except after notice to the director. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.

4. Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit.

5. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

6. Twenty-four-hour reporting.

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

b. The following shall be included as information which shall be reported orally within 24 hours:

(1) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

(2) Any information of a release or discharge of hazardous waste, or of a fire or explosion from an HWM facility, which could threaten the environment or human health outside the facility. The description of the occurrence and its cause shall include:

(a) Name, address and telephone number of the owner or operator;

(b) Name, address and telephone number of the facility;

(c) Date, time and type of incident;

(d) Name and quantity of materials involved;

(e) The extent of injuries, if any;

(f) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(g) Estimated quantity and disposition of recovered material that resulted from the incident.

c. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. The director may waive the five-day notice requirement in favor of a written report within 15 days.

7. Manifest discrepancy report. If a significant discrepancy in a manifest is discovered, the permittee shall attempt to reconcile that discrepancy. If not resolved within 15 days, the permittee shall submit a letter report including a copy of the manifest to the director.

8. Unmanifested waste report. An unmanifested waste report shall be submitted to the director within 15 days of receipt of unmanifested waste.

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9. Biennial report. A biennial report shall be submitted covering facility activities during the previous odd numbered calendar year. See 40 CFR 264.75.

10. Other noncompliance. The permittee shall report all instances of noncompliance not reported under 9 VAC 20-60-1060 L 4, 9 VAC 20-60-1060 L 5, and 9 VAC 20-60-1060 L 6, at the time monitoring reports are submitted. The reports shall contain the information listed in 9 VAC 20-60-1060 L 6.

11. Other information. Where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, he shall promptly submit such facts or information.

**9 VAC 20-60-1070. (Reserved.)**

**9 VAC 20-60-1080. Establishing permit conditions.**

A. 1. General. In addition to conditions required in all permits, the director shall establish conditions as required on a case-by-case basis, for the duration of permits, schedules of compliance, monitoring, and to provide for and assure compliance with all applicable requirements of this chapter.

2. Each HWM permit issued under Part XI (9 VAC 20-60-960 et seq.) of this chapter shall contain terms and conditions as the director determines necessary to protect human health and the environment.

B. An applicable requirement is a Commonwealth statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit.

1. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in 9 VAC 20-60-1150.

2. (Reserved.)

C. New or reissued permits, and to the extent allowed under 9 VAC 20-60-1150, modified or revoked and reissued permits, shall incorporate each of the applicable requirements in 9 VAC 20-60-1080 and 9 VAC 20-60-1130.

D. Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be given in the permit.

**9 VAC 20-60-1090. Duration of permits.**

A. Hazardous waste management permits shall be effective for a fixed term not to exceed 10 years.

B. Except as otherwise provided in 9 VAC 20-60-980 H, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The director may issue any permit for a duration that is less than the full allowable term under this section.

D. Each permit for a land disposal facility shall be reviewed by the director five years after the date of permit issuance or reissuance and shall be modified as necessary as provided in 9 VAC 20-60-1150.

**9 VAC 20-60-1100. Effect of a permit.**

A. Compliance with an HWM permit during its term constitutes compliance, for purposes of enforcement, with the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia) except for those requirements not included in the permit which become effective by federal and Virginia statute, or which are promulgated under 9 VAC 20-60-268 or 40 CFR Part 268, restricting the placement of hazardous wastes in or on the land or are promulgated under 9 VAC 20-60-264 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans and will be implemented through the procedures of 9 VAC 20-60-1170 Class \*A permit modifications. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter, or the permit may be modified upon the request of the permittee as set forth in 9 VAC 20-60-1140 and 9 VAC 20-60-1170.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Commonwealth or local law or regulations.

**9 VAC 20-60-1110. Transfer of permits.**

A. A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under 9 VAC 20-60-1110 B or 9 VAC 20-60-1150 B 2) to identify the new permittee and incorporate such other requirements as may be necessary under this chapter.

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B. Changes in the ownership or operation control of a facility may be made as a minor modification with prior written approval of the director in accordance with 9 VAC 20-60-1170. The new owner or operator shall submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees shall also be submitted to the director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Subpart H of 40 CFR Part 264 (Financial Requirements) until the new owner or operator has demonstrated that he is complying with the requirements of that section. The new owner or operator shall demonstrate compliance with Subpart H of 40 CFR Part 264 requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the director by the new owner or operator of compliance with Subpart H of 40 CFR Part 264, the director shall notify the old owner or operator that he or she no longer needs to comply with Subpart H of 40 CFR Part 264 as of the date of demonstration.

**9 VAC 20-60-1120. Schedule of compliance.**

A. The permit may, when appropriate, specify a schedule of compliance leading to compliance with this chapter.

1. Any schedules of compliance under this part shall require compliance as soon as possible.
2. Except as otherwise provided, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
  - a. The time between interim dates shall not exceed one year;
  - b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages of completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.
3. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, a permittee shall notify the director, in writing, of his compliance or noncompliance with the interim or final requirements.

B. Alternate schedules of compliance. An HWM permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste, and, in case of treatment or storage facilities, closing pursuant to applicable requirements, or, in case of disposal facilities, closing and conducting post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:
    - a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
    - b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.
  2. If the decision to cease conducting regulated activities is made before the issuance of a permit whose terms will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.
  3. If the permittee is undecided whether to cease conducting regulated activities, the director may issue or modify a permit to contain two schedules as follows:
    - a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities.
    - b. One schedule shall lead to timely compliance with applicable requirements.
    - c. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements.
    - d. Each permit containing two schedules shall include a requirement that, after the permittee has made a final decision under 9 VAC 20-60-1120-B 3 a, he shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.
  4. The applicant's or permittee's decisions to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the director, such as a resolution of the board of directors of a corporation.
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**9 VAC 20-60-1130. Requirements for recording and reporting of monitoring results.****A. The permit shall specify:**

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate.
2. Required monitoring, including type, intervals and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring.
3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9 VAC 20-60-264 and 9 VAC 20-60-266. Reporting shall be not less frequent than specified in this part.

B. Each permit shall include permit conditions necessary to achieve compliance with the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia) and regulations, including each of the applicable requirements specified in Part III (9 VAC 20-60-124 et seq.) of these regulations. In satisfying this provision, the director may incorporate applicable requirements of Part III of these regulations directly into the permit or establish other permit conditions that are based on these requirements.

**9 VAC 20-60-1140. Modification, revocation and reissuance, or termination of permits.**

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 9 VAC 20-60-1150, 9 VAC 20-60-1160, and 9 VAC 20-60-1170. All requests shall be in writing and shall contain facts or reasons supporting the request. If a permit modification is requested by the permittee, the director shall approve or deny the request according to the procedure in 9 VAC 20-60-1170.

B. If the director decides the request is not justified, he shall send the requester a brief response giving a reason for the decision.

C. If the director tentatively decides to modify or revoke and reissue a permit, he shall prepare a draft permit incorporating the proposed changes. The director may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the director shall require the submission of a new application.

1. In a permit modification under 9 VAC 20-60-1150, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under 9 VAC 20-60-1140, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

2. Minor modifications as specified in 9 VAC 20-60-1170 are not subject to the above requirements.

D. If the director tentatively decides to terminate a permit, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 9 VAC 20-60-1180.

**9 VAC 20-60-1150. Modification or revocation and reissuance of permits.**

When the director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see 9 VAC 20-60-1060), receives a request for revocation and reissuance under 9 VAC 20-60-1140 or conducts a review of the permit file), he may determine whether or not one or more of the causes listed in 9 VAC 20-60-1150 A and 9 VAC 20-60-1150 B for modification or revocation and reissuance or both exist. If cause exists, the director may modify or revoke and reissue the permit accordingly, subject to the limitations of 9 VAC 20-60-1150 C, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked or reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under 9 VAC 20-60-1150 or 9 VAC 20-60-1170, the director shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification satisfies the criteria in 9 VAC 20-60-1170 for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and other appropriate procedures followed. All updated applications for modification or revocation and reissuance will be accompanied by an appropriate permit application fee as specified in Part XII (9 VAC 20-60-1260 et seq.) of this chapter.

A. Causes for modification. The following are causes for modification but not revocation and reissuance (except when the permittee requests or agrees) of permits.

1. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

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2. Information. If the director has received information pertaining to circumstances or conditions existing at the time the permit was issued that was not included in the administrative record and would have justified the application of different permit conditions, the permit may be modified accordingly if in the judgment of the director such modification is necessary to prevent significant adverse effects on public health or the environment.

3. New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations or by judicial decision after the permit was issued.

a. The director may modify the permit when the standards or regulations on which the permit was based have been changed by statute or amended standards or regulations.

b. The permittee may request modification when:

(1) The permit condition requested to be modified was based on a promulgated hazardous waste regulation; and

(2) The Commonwealth has revised, withdrawn or modified that portion of the regulation on which the permit condition was based.

c. For judicial decision, a court of competent jurisdiction has remanded and stayed Commonwealth regulations, if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee in accordance with 9 VAC 20-60-1140.

4. The director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

5. The director may modify a permit:

a. When modification of a closure or post-closure plan is required under 40 CFR 264.112(c) and 40 CFR 264.118(d).

b. After the director receives the notification of expected closure under 40 CFR 264.113, when he determines that extension of the 90- or 180-day periods under that part, modification of the 30-year post-closure period under 40 CFR 264.117(a), continuation of the security requirements under 40 CFR 264.117(b), or permission to disturb the integrity of the containment system under 40 CFR 254.117(c) are unwarranted.

c. When the permittee has filed a request under 40 CFR 264.147(d) for a variance to the level of financial responsibility or when the director demonstrates under 40 CFR 264.147(d) that an upward adjustment of the level of financial responsibility is required.

d. When the corrective action program specified in the permit under 40 CFR 264.100 has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable period of time.

e. To include a detection monitoring program meeting the requirements of 40 CFR 264.98, when the owner or operator has been conducting a compliance monitoring program under 40 CFR 264.99 or a corrective action program under 40 CFR 264.100 and the compliance period ends before the end of the post-closure care period for the unit.

f. When a permit requires a compliance monitoring program under 40 CFR 264.99, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard.

g. When a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

6. Notwithstanding any other provision in 9 VAC 20-60-1150, when a permit for a land disposal facility is reviewed by the director under 9 VAC 20-60-1090 D, the director shall modify the permit as necessary to assure that the facility continues to comply with all the currently applicable requirements elsewhere in these regulations.

B. Cause for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under 9 VAC 20-60-1160, and the director determines that a modification or revocation and reissuance is appropriate.

2. The director has received notification of proposed transfer of permit as required in 9 VAC 20-60-1060 L 3.

C. Facility siting. The suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that an endangerment to human health or the environment exists which was unknown at the time of permit issuance.

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**9 VAC 20-60-1160. Termination of permits.**

A. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

1. Noncompliance by the permittee with any condition of the permit;
2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

B. The director shall follow the applicable procedures of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) in terminating any permit under this part.

**9 VAC 20-60-1170. Permit modification at the request of the permittee.**

A. Minor modifications.

1. Except as provided in 9 VAC 20-60-1170 A 2, the permittee may put into effect minor modifications listed in Appendix 11.2 of this part under the following conditions:

a. The permittee shall notify the director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notice shall specify the changes being made to permit conditions or supporting documents referenced by the permit and shall explain why they are necessary. Along with the notice, the permittee shall provide the applicable information required by 9 VAC 20-60-1000, 9 VAC 20-60-1010, and 9 VAC 20-60-1050. A proposed facility mailing list containing the names and addresses of persons, organizations, agencies of local government and appropriate units of state government shall accompany the notice. The director may inform the permittee of additional entries he may require. The notice shall be accompanied by appropriate fees in accordance with Part XII (9 VAC 20-60-1260 et seq.) of this chapter.

b. The permittee shall send a notice of the modification to all persons on the facility mailing list. This notification shall be made within 90 calendar days after the change is put into effect. For the minor modifications that require prior director approval, the notification shall be made within 90 calendar days after the director approves the request.

c. Any person may request the director to review, and the director may for cause reject, any minor modification. The director shall inform the permittee by certified mail that a minor modification has been rejected, explaining the reasons for the rejection. If a minor modification has been rejected, the permittee shall comply with the original permit conditions.

2. Minor permit modifications identified in Appendix 11.2 of this part by an asterisk may be made only with the prior written approval of the director.

3. For a minor permit modification, the permittee may elect to follow the procedures in 9 VAC 20-60-1170 B 1 for substantive modifications instead of the minor permit modification procedures. The permittee shall inform the director of this decision in the notice required in 9 VAC 20-60-1170 B.

B. Substantive modifications.

1. For substantive modifications listed in Appendix 11.2 of this part, the permittee shall submit a modification request to the director that:

- a. Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;
- b. Identifies that the modification is a substantive modification;
- c. Explains why the modification is needed;
- d. Provides the applicable information required by 40 CFR 270.13 through 40 CFR 270.22, 40 CFR 270.62, 40 CFR 270.63 and 40 CFR 270.66; and
- e. Provides the proposed facility mailing list containing the names and addresses of persons, organizations, agencies of local government and appropriate units of state government. The director may inform the permittee of additional entries he may require.

2. The permittee shall send a notice of the modification request to all persons on the facility mailing list and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published



within seven days after the date of submission of the modification request, and the permittee shall provide to the director evidence of the mailing and publication. The notice shall include:

- a. Announcement of a 60-day comment period, in accordance with 9 VAC 20-60-1170 B 5, and the name and address of this department where comments shall be sent;
  - b. Announcement of the date, time, and place for a public meeting held in accordance with 9 VAC 20-60-1170 B 4;
  - c. Name and telephone number of the permittee's contact person;
  - d. Name and telephone number of a contact person at the Department of Environmental Quality;
  - e. Location where copies of the modification request and any supporting documents can be viewed and copied; and
  - f. The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department of Environmental Quality."
3. The permittee shall place a copy of the permit modification request and support any documents in a location accessible to the public in the vicinity of the permitted facility.
4. The permittee shall hold a public meeting not earlier than 30 days after the publication of the notice required in 9 VAC 20-60-1170 B 2 and no later than 15 days before the close of the 60-day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.
5. The public shall be provided 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Department of Environmental Quality.
6. Administrative procedure.
- a. No later than 60 days after receipt of the notification request and the appropriate fees in accordance with Part XII of this chapter, whichever is later, the director will determine whether the information submitted under 9 VAC 20-60-1170 B 1 d is adequate to formulate a decision. If found to be inadequate, the permittee will be requested to furnish additional information within 30 days of the request by the director to complete the modification request record.
  - b. No later than 90 days after receipt of the notification request and the appropriate fees in accordance with Part XII of this chapter or 30 days after the completion of the record, whichever is later, the director will:
    - (1) Approve the modification request, with or without changes, and modify the permit accordingly;
    - (2) Deny the request;
    - (3) Determine that the modification request shall follow the procedures in 9 VAC 20-60-1170 C for major modifications for the following reasons:
      - (a) There is significant public concern about the proposed modification; or
      - (b) The complex nature of the change requires the more extensive procedures for major modifications;
    - (4) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days; or
    - (5) Notify the permittee that he will decide on the request within the next 30 days.
  - c. If the director notifies the permittee of a 30-day extension of a decision, the director will, upon the completion of the extended period:
    - (1) Approve the modification request, with or without changes, and modify the permit accordingly;
    - (2) Deny the request;
    - (3) Determine that the modification request shall follow the procedures in 9 VAC 20-60-1170 C for major modifications for the following reasons:
      - (a) There is significant public concern about the proposed modification; or
      - (b) The complex nature of the change requires the more extensive procedures for major modifications;
    - (4) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days.

d. If the director fails to make one of the decisions specified in 9 VAC 20-60-1170 B 6 b or 9 VAC 20-60-1170 B 6 c by the end of the appropriate decision period, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days. The authorized activities shall be conducted as described in the permit modification request and shall be in compliance with all appropriate standards of 9 VAC 20-60-264. If the director approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in 9 VAC 20-60-1170 B 6 b, 9 VAC 20-60-1170 B 6 c or 9 VAC 20-60-1170 B 6 d, such action cancels the temporary or automatic authorization.

e. (1) In the case of an automatic authorization under 9 VAC 20-60-1170 B 6 d, or a temporary authorization under 9 VAC 20-60-1170 B 6 b (4) or 9 VAC 20-60-1170 B 6 c (4), if the director has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee shall within seven days of that time send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(a) The permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(b) Unless the director acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(2) If the owner or operator fails to notify the public by the date specified in 9 VAC 20-60-1170 B 6 e (1), the effective date of the permanent authorization will be deferred until 50 days after the owner or operator notifies the public.

f. Except as provided in 9 VAC 20-60-1170 B 6 h, if the director does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as major, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless later modified, revoked and reissued, or terminated under 9 VAC 20-60-1140 through 9 VAC 20-60-1170. The activities authorized under 9 VAC 20-60-1170 B shall be conducted as described in the permit modification request and shall be in compliance with all appropriate standards of 9 VAC 20-60-265.

g. In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as major, the director will consider all written comments submitted to the department during the public comment period and will respond in writing to all significant comments in his decision.

h. With the written consent of the permittee, the director may extend indefinitely or for a specified period the time periods for final approval or denial of a modification request or for reclassifying a modification as major.

7. The director may deny or change the terms of a substantive permit modification request under 9 VAC 20-60-1170 B 6 b, 9 VAC 20-60-1170 B 6 c, or 9 VAC 20-60-1170 B 6 d for the following reasons:

a. The modification request is incomplete;

b. The requested modification does not comply with the appropriate requirements of 9 VAC 20-60-264 or other applicable requirements; or

c. The conditions of the modification fail to protect human health and the environment.

8. The permittee may perform any construction associated with a substantive permit modification request beginning 60 days after the submission of the request unless the director establishes a later date for commencing construction and informs the permittee in writing before day 60.

9. The director shall notify persons on the facility mailing list and appropriate units of State and local government within 10 days if:

a. A decision to grant or deny a major modification request; or

b. Automatic authorization of a substantive modification goes into effect.

C. Major modifications.

1. For major modifications listed in Appendix 11.2 of this part, the permittee shall submit a modification request to the director that:

a. Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

b. Identifies that the modification is a major modification;

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c. Explains why the modification is needed;

d. Provides the applicable information required by 40 CFR 270.13 through 40 CFR 270.22, 40 CFR 270.62, 40 CFR 270.63 and 40 CFR 270.66; and

e. Provides the proposed facility mailing list containing the names and addresses of persons, organizations, and agencies of local government and appropriate units of state government. The director may inform the permittee of additional entries he may require.

2. The permittee shall send a notice of the modification request to all persons on the facility mailing list and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within seven days after the date of submission of the modification request, and the permittee shall provide to the director evidence of the mailing and publication. The notice shall include:

a. Announcement of a 60-day comment period, in accordance with 9 VAC 20-60-1170 C 5, and the name and address of this department where comments shall be sent;

b. Announcement of the date, time, and place for a public meeting held in accordance with 9 VAC 20-60-1170 C 4;

c. Name and telephone number of the permittee's contact person;

d. Name and telephone number of a contact person at the Department of Environmental Quality;

e. Location where copies of the modification request and any supporting documents can be viewed and copied; and

f. The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department of Environmental Quality."

3. The permittee shall place a copy of the permit modification request and any support documents in a location accessible to the public in the vicinity of the permitted facility.

4. The permittee shall hold a public meeting not earlier than 30 days after the publication of the notice required in 9 VAC 20-60-1170 C 2 and no later than 15 days before the close of the 60-day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

5. The public shall be provided 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Department of Environmental Quality.

6. At the conclusion of the 60-day comment period, the director shall grant or deny the permit modification request according to the permit modification procedures of 9 VAC 20-60-1140 and 9 VAC 20-60-1150, and other pertinent sections of 9 VAC 20-60-124 and Part XI (9 VAC 20-60-960 et seq.) of this chapter.

7. The director shall notify persons on the facility mailing list and appropriate units of State and local government within 10 days if:

a. A decision to grant or deny a major modification request; or

b. Automatic authorization of a substantive modification goes into effect.

D. Other modifications.

1. In the case of modifications not explicitly listed in Appendix 11.2 of this part, the permittee may submit a major modification request, or he may request a determination by the director that the modification should be reviewed and approved as a minor or substantive modification. If the permittee requests that the modification be classified as a minor or a substantive modification, he shall provide the department with the necessary information to support the requested classification.

2. The director will make the determination described in 9 VAC 20-60-1170 D 1 as promptly as practicable. In determining the appropriate classification for a specific modification, the director will consider the similarity of the modification to other modifications in Appendix 11.2 of this part and the following criteria:

a. Minor modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of minor modifications, the director may require prior approval.

b. Substantive modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

- (1) Common variations in the types and quantities of the wastes managed under the facility permit;
- (2) Technological advancements; and
- (3) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

c. Major modifications substantially alter the facility or its operation.

E. Temporary authorizations.

1. Upon request of the permittee, the director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with the requirements of 9 VAC 20-60-1170 E. Temporary authorizations shall have a term of not more than 180 days.

2. a. The permittee may request a temporary authorization for:

(1) Any substantive modification meeting the criteria in 9 VAC 20-60-1170 E 3 b; and

(2) Any major modification that meets the criteria in 9 VAC 20-60-1170 E 3 b (1) or 9 VAC 20-60-1170 E 3 b (2); or that meets the criteria in 9 VAC 20-60-1170 e 3 b (3) through 9 VAC 20-60-1170 E 3 b (5) and provides improved management or treatment of a hazardous waste already listed in the facility permit.

b. The temporary authorization request shall include:

(1) A description of the activities to be conducted under the temporary authorization;

(2) An explanation of why the temporary authorization is necessary; and

(3) Sufficient information to ensure compliance with 9 VAC 20-60-264 standards.

c. The permittee shall send a notice about the temporary authorization request to all persons on the facility mailing list. This notification shall be made within seven days of submission of the authorization request.

3. The director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the director shall find:

a. The authorized activities are in compliance with the standards of 9 VAC 20-60-264.

b. The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(1) To facilitate timely implementation of closure or corrective action activities;

(2) To allow treatment or storage in tanks or containers, or in containment buildings, of restricted wastes in accordance with 40 CFR Part 268;

(3) To prevent disruption of ongoing waste management activities;

(4) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(5) To facilitate other changes to protect human health and the environment.

4. A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a substantive or a major permit modification for the activity covered in the temporary authorization, and:

a. The reissued temporary authorization constitutes the director's decision on a substantive permit modification in accordance with 9 VAC 20-60-1170 B 6 b (4) or 9 VAC 20-60-1170 B 6 c (4); or

b. The director determines that the reissued temporary authorization involving a major permit modification request is warranted to allow the authorized activities to continue while the modification procedures of 9 VAC 20-60-1170 C are conducted.

F. Appeals of permit modification decisions.

1. The director's decision to grant or deny a substantive or a major permit modification request under 9 VAC 20-60-1170 may be appealed under the case decision provisions of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

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2. An automatic authorization that goes into effect under 9 VAC 20-60-1170 B 6 d or 9 VAC 20-60-1170 B 6 f may be appealed under the case decision procedures of the Virginia Administrative Process Act; however, the permittee may continue to conduct the activities pursuant to the automatic authorization until the appeal has been granted.

G. Newly regulated wastes and units.

1. The permittee is authorized to continue to manage wastes listed or identified as hazardous under 9 VAC 20-60-261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if:

- a. The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;
- b. The permittee submits a minor modification request on or before the date on which the waste or unit becomes subject to the new requirements;
- c. The permittee is in compliance with the applicable standards of 9 VAC 20-60-265 and 9 VAC 20-60-266;
- d. The permittee also submits a complete substantive or major permit modification request within 180 days after the effective date of the rule listing or identifying the waste, or subjecting the unit to this chapter;
- e. In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 9 VAC 20-60-265 groundwater monitoring and financial responsibility requirements on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, he will lose authority to operate under 9 VAC 20-60-1170.

2. New wastes or units added to a facility's permit under 9 VAC 20-60-1170 G do not constitute expansions for the purpose of the 25% capacity expansion limit for substantive modifications.

**9 VAC 20-60-1180. Draft permits.**

A. Once an application is complete, the director shall tentatively decide whether to prepare a draft permit or to deny the application.

B. If the director tentatively decides to deny the permit application, he shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under 9 VAC 20-60-1180. If the director's final decision is that the tentative decision to deny the permit was incorrect, he shall withdraw the notice of intent to deny and proceed to prepare a draft permit.

C. If the director decides to prepare a draft permit, he shall prepare a draft permit that contains the following information:

1. All conditions under 9 VAC 20-60-1060 and 9 VAC 20-60-1080;
2. All compliance schedules under 9 VAC 20-60-1120;
3. All monitoring requirements under 9 VAC 20-60-1130; and
4. Standards for treatment, storage, and disposal and other permit conditions under 9 VAC 20-60-1060.

D. Draft permits prepared by the director will be accompanied by a fact sheet if required by 9 VAC 20-60-1190.

**9 VAC 20-60-1190. Fact sheet.**

A. A fact sheet shall be prepared for every draft permit for a major HWM facility or activity and for every draft permit which the director finds is the subject of significant public interest or raises major issues. The director may prepare a fact sheet for any draft permit when he deems it to be appropriate.

1. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit.
2. The director shall send this fact sheet to the applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity which is the subject of the draft permit;
2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;



3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;
4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;
5. A description of the procedures for reaching a final decision on the draft permit including:
  - a. The beginning and ending dates of the comment period and the address where comments will be received;
  - b. Procedures for requesting a hearing and the nature of that hearing; and
  - c. Any other procedures by which the public may participate in the final decision.
6. Name and telephone number of a person to contact for additional information.

**9 VAC 20-60-1200. Public notice of permit actions and public comment period.**

- A. Scope. The director shall give public notice that the following actions have occurred:
  1. A draft permit has been prepared; or
  2. A hearing has been scheduled.
- B. Timing.
  1. Public notice of the preparation of a draft permit or the intent to deny a permit application shall allow at least 45 days for public comment.
  2. Public notice of a public hearing shall be given at least 30 days before the hearing.
- C. Methods. Public notice of activities described in 9 VAC 20-60-1200 shall be given by the following methods:
  1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subsection may waive his rights to receive notice for any classes and categories of permits):
    - a. The applicant;
    - b. Any other agency which the director knows has issued or is required to issue a permit for the same facility or activity, and to each state agency having any authority under the state law with respect to the construction or operation of such facility;
    - c. Federal and Commonwealth agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, Commonwealth Historic Preservation Officers, and other appropriate government authorities;
    - d. Any unit of local government having jurisdiction over the area where the facility is proposed to be located and the appropriate regional solid waste planning agency;
    - e. Persons on a mailing list developed by:
      - (1) Including those who request in writing to be on the list;
      - (2) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
      - (3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in appropriate publications of the Commonwealth;
  2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations; and
  3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- D. Contents.
  1. All public notices issued under this part shall contain the following minimum information:
    - a. Name and address of the office processing the permit action for which notice is being given;
    - b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
    - c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;



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d. The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or fact sheet, and the application;

e. A brief description of the comment procedures required and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision; and

f. Any additional information which is necessary or proper.

2. In addition to the general public notice described in 9 VAC 20-60-1200 D 1, the public notice of a hearing shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the hearing; and

c. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

E. In addition to the general public notice, all persons identified in 9 VAC 20-60-1200 C 1 a through 9 VAC 20-60-1200 C 1 c shall be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).

#### **9 VAC 20-60-1210. Public comments and requests for public hearings.**

During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in 9 VAC 20-60-1240.

#### **9 VAC 20-60-1220. Public hearings.**

A. The director shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing during the public comment period specified in 9 VAC 20-60-1200 B 1.

B. In addition to hearings required in 9 VAC 20-60-1220 A, the director may hold a public hearing at his discretion, whenever, for instance, such a hearing might clarify one or more issues involved in permit decision.

C. Whenever a public hearing is scheduled:

1. Public notice of the hearing shall be given as specified in 9 VAC 20-60-1200 B; and

2. Shall be held in the locality convenient to the nearest population center to the proposed facility.

#### **9 VAC 20-60-1230. Obligation to raise issues and provide information during the public comment period.**

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All supporting materials shall be included in full and not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of Commonwealth or federal statutes and regulations, documents of general applicability, or other generally available reference materials. Commentors shall make supporting material not already included in the administrative record available to the Commonwealth as directed by the director.

#### **9 VAC 20-60-1240. Response to comments.**

A. Any time that any final permit decision is issued, the director shall issue a response to comments when a final permit is issued. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

B. The response to comments shall be available to the public.

#### **9 VAC 20-60-1250. Permit denial.**

The director may, pursuant to the procedures of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

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APPENDIX 11.2.  
CLASSIFICATION OF PERMIT MODIFICATIONS.

Modifications	Subsection of 9 VAC 20-60-1170
<b>A. General Permit Provision</b>	
1. Administrative and informational changes	A
2. Correction of typographical errors	A
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	A
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	A
b. Other changes	C
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the director	*A
b. Extension of the final compliance date	C
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the director	*A
7. Changes in ownership or operational control of a facility, provided the procedures of 9 VAC 20-60-1110 B are followed	*A
<b>B. General Facility Standards.</b>	
1. Changes to waste sampling or analysis methods:	
a. To conform with agency guidance or regulations	A
b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods	A
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive waste	*A
d. Other changes	C
2. Changes to analytical quality assurance/control plan:	
a. To conform with agency guidance or regulations	A
b. Other changes	C
3. Changes in procedures for maintaining the operating record	A
4. Changes in frequency or content of inspection schedules	B
5. Changes in the training plan:	
a. That do not affect the type or decrease the amount of training given to employees	A
b. Other changes	C
6. Contingency plan:	
a. Changes in emergency procedures (i.e., discharge or release response procedures)	B
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed	A
c. Removal of equipment from emergency equipment list	B
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan	A

7. Construction quality assurance plan:	
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specification	A
b. Other changes	B
C. Groundwater Protection	
1. Changes to wells:	
a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system	C
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well	A
2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the director	*A
3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred	B
4. Changes in point of compliance	B
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):	
a. As specified in the groundwater protection standard	C
b. As specified in the detection monitoring program	B
6. Changes to a detection monitoring program as required by 40 CFR 264.98(j), unless otherwise specified in this appendix	B
7. Compliance monitoring program:	
a. Addition of compliance monitoring program as required by 40 CFR 264.98(h)(4) and 40 CFR 264.99	C
b. Changes to a compliance monitoring program as required by 40 CFR 264.99(k), unless otherwise specified in this appendix	B
8. Corrective action program:	
a. Addition of a corrective action program as required by 40 CFR 264.99(i)(2) and 40 CFR 264.100	C
b. Changes to a corrective action program as required by 40 CFR 264.100(h), unless otherwise specified in this appendix	B
D. Closure	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the director	*A
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the director	*A
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the director	*A
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the director	*A
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix	B
f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 40 CFR 264.113(d) and 40 CFR 264.113(e)	B

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| 2. Creation of a new landfill unit as part of closure   | C  |
| 3. Addition of the following new units to be used temporarily for closure activities:   |    |
| a. Surface impoundments   | C  |
| b. Incinerators   | C  |
| c. Waste piles that do not comply with 40 CFR 264.250(c)  | C  |
| d. Waste piles that comply with 40 CFR 264.250(c)   | B  |
| e. Tanks or containers (other than specified below)   | B  |
| f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the director  | *A |
| E. Post-Closure   |    |
| 1. Changes in name, address, or phone number of contact post-closure plan in  | A  |
| 2. Extension of post-closure care period  | B  |
| 3. Reduction in the post-closure care period  | C  |
| 4. Changes to the expected year of final closure, where other permit conditions are not changed   | A  |
| 5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure  | B  |
| F. Containers   |    |
| 1. Modification or addition of container units:   |    |
| a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in subdivisions F 1 c and F 4 a of this appendix   | C  |
| b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in subdivisions F 1 c and F 4 a of this appendix  | B  |
| c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 9 VAC 20-60-268, with prior approval of the director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027 and F028) | *A |
| 2. a. Modification of a container unit without increasing the capacity of the unit  | B  |
| b. Addition of a roof to a container unit without alteration of the containment system  | A  |
| 3. Storage of different wastes in containers, except as provided in subdivision F 4 of this appendix:   |    |
| a. That require additional or different management practices from those authorized in the permit  | C  |
| b. That do not require additional or different management practices from those authorized in the permit   | B  |
| NOTE: See 9 VAC 20-60-1170 G for modification procedures to be used for the management of newly listed or identified wastes.  |    |
| 4. Storage or treatment of different wastes in containers:  |    |
| a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 9 VAC 20-60-268. This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027 and F028)                                   | *A |
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b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028)	*A
<b>G. Tanks</b>	
1. a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in subdivisions G 1 c, G 1 d and G 1 e of this appendix	C
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in subdivisions G 1 d and G 1 e of this appendix	B
c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation	B
d. After prior approval of the director, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation	*A
e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 9 VAC 20-60-268, with prior approval of the director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028)	*A
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit	B
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- 10% of the replaced tank provided:	
--The capacity difference is no more than 1500 gallons,	
--The facility's permitted tank capacity is not increased, and	
--The replacement tank meets the same conditions in the permit	A
4. Modification of a tank management practice	B
5. Management of different wastes in tanks:	
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in subdivision G 5 c of this appendix	C
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided in subdivision G 5 d of this appendix	B
c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 9 VAC 20-60-268	*A
The modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028)	
d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028)	A
<b>H. Surface Impoundments</b>	
1. Modification or addition of surface impoundment units that result in increasing the facility's	C

surface impoundment storage or treatment capacity	
2. Replacement of a surface impoundment unit	C
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system	B
4. Modification of a surface impoundment management practice	B
5. Treatment, storage, or disposal of different wastes in surface impoundments:	
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	C
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit	B
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 9 VAC 20-60-268, and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028)	A
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028)	A
6. Modifications of unconstructed units to comply with 40 CFR 264.221(c), 40 CFR 264.222, 40 CFR 264.223, and 40 CFR 264.226(d)	*A
7. Changes in response action plan:	
a. Increase in action leakage rate	C
b. Change in a specific response reducing its frequency or effectiveness	C
c. Other changes	B
I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste pile units complying with 40 CFR 264.250(c):	
1. Modification or addition of waste pile units:	
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity	C
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity	B
2. Modification of waste pile unit without increasing the capacity of the unit	B
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit	B
4. Modification of a waste pile management practice	C
5. Storage of treatment of different wastes in waste piles:	
a. That require additional or different management practices or different design of the unit	C
b. That do not require additional or different management practices or different design of the unit	B
6. Conversion of an enclosed waste pile to a containment building unit	2
J. Landfills and Unenclosed Waste Piles	
1. Modification or addition of landfill units that result in increasing the facility's disposal capacity	C



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2. Replacement of a landfill	C
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system	C
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system	B
5. Modification of a landfill management practice	B
6. Landfill different wastes:	
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	C
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	B
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 9 VAC 20-60-268, and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028)	A
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028)	A
7. Modifications of unconstructed units to comply with 40 CFR 264.251(c), 40 CFR 264.252, 40 CFR 264.252, 40 CFR 264.253, 40 CFR 264.254(c), 40 CFR 264.301(c), 40 CFR 264.303(c), and 40 CFR 264.304	A
8. Changes in response action plan:	
a. Increase in action leakage rate	C
b. Change in a specific response reducing its frequency or effectiveness	C
c. Other changes	B
K. Land Treatment	
1. Lateral expansion of or other modification of a land treatment unit to increase areal extent	C
2. Modification of run-on control system	B
3. Modify run-off control system	C
4. Other modifications of land treatment unit component specifications or standards required in permit	B
5. Management of different wastes in land treatment units:	
a. That require a change in permit operating conditions or unit design specifications	C
b. That do not require a change in permit operating conditions or unit design specifications	B
6. Modification of a land treatment unit management practice to:	
a. Increase rate or change method of waste application	C
b. Decrease rate of waste application	A
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions	B
8. Modification of a land unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution to animal feeds resulting from such crops	C

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| 9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR 264.278(g)(2)  | C  |
| 10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements  | C  |
| 11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements  | B  |
| 12. Changes in background values for hazardous constituents in soil and soil-pore liquid  | B  |
| 13. Changes in sampling, analysis, or statistical procedure   | B  |
| 14. Changes in land treatment demonstration program prior to or during the demonstration  | B  |
| 15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the director's prior approval has been received  | *A |
| 16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the director | *A |
| 17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration   | C  |
| 18. Changes in vegetative cover requirements for closure  | B  |
- L. Incinerators, Boilers, and Industrial Furnaces
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|---|---|
| 1. Changes to increase by more than 25% any of the following limits authorized in the permit: a thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means   | C |
| 2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means   | B |
| 3. Modification of an incinerator, boiler or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl <sub>2</sub> or particulate from the combustion gases, or by changing other features of the incinerator, boiler or industrial furnace that could affect its capability to meet the regulatory performance standards. The director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means | C |
| 4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The director may require a new trial burn to demonstrate compliance with the regulatory performance standards  | B |
| 5. Operating requirements:  |   |
| a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or  | C |
-

operating parameters for the air pollution control system. The director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls	C
c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit	B
6. Burning different wastes:	
a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	C
b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit	B
7. Shakedown and trial burn:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn	B
b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the director	*A
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the director	*A
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the director	*A
8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit	B
M. Containment Buildings	
1. Modification or addition of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity	C
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity	B
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit	B
3. Replacement of a containment building with a containment building that meets the same design standards provided:	
a. The unit capacity is not increased	A
b. The replacement containment building meets the same conditions in the permit	A
4. Modification of a containment building management practice	B
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices	C
b. That do not require additional or different management practices	B
N. Corrective Action	
1. Approval of a corrective action management unit pursuant to 40 CFR 264.552	C

2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 CFR 264.553

B

\* Minor modifications requiring prior approval by the director.

PART XII.  
HAZARDOUS WASTE MANAGEMENT PERMIT APPLICATION FEE REGULATIONS.

**9 VAC 20-60-1260. Purpose, scope, and applicability.**

A. The purpose of this part is to establish a schedule of fees collected by the department in the support of its permit issuance programs required by Parts VII (9 VAC 20-60-420 et seq.) and XI (9 VAC 20-60-960 et seq.) of this chapter.

B. Part XII (9 VAC 20-60-1260 et seq.) of this chapter applies to all persons required to submit a permit application ("applicants") under 9 VAC 20-60-420 E and 9 VAC 20-60-970 unless specifically exempt under 9 VAC 20-60-1260 G. The fees shall be assessed in accordance with 9 VAC 20-60-1270.

C. When the director finds it necessary to modify any permit under 9 VAC 20-60-1140 or 9 VAC 20-60-1150, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-60-1270 D even if the director shall have initiated the modification action.

D. When the director finds it necessary to revoke and reissue any permit in accordance with 9 VAC 20-60-1150 B 1, the holder of that permit shall be considered an applicant for a new permit and shall be assessed a fee in accordance with 9 VAC 20-60-1270 C.

E. If the director finds it necessary either to revoke and reissue a permit in accordance with 9 VAC 20-60-1150 B 2 or to perform a minor modification of a permit in accordance with 9 VAC 20-60-1170, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-60-1270 E.

F. When the director finds it necessary to issue an emergency treatment, storage, or disposal permit in accordance with 9 VAC 20-60-1050 A, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-60-1270 F. No permit application fee will be assessed to the holders of the emergency transportation permits issued in accordance with 9 VAC 20-60-450 H.

**G. Exemptions.**

1. The owners and operators of HWM treatment, storage, and disposal facilities who have submitted Part A of their application as required by 9 VAC 20-60-980 D 1 and who have qualified for interim status in accordance with 9 VAC 20-60-990 are exempt from the requirements of Part XII of this chapter until a Part B application for the entire facility or a portion of the facility has been requested or voluntarily submitted in accordance with 9 VAC 20-60-980 D 2. The owner and operator of an HWM facility submitting a Part B application will be considered an applicant for a new permit.

2. The owners and operators of HWM facilities which are deemed to possess a permit by rule in accordance with 9 VAC 20-60-1040 are exempt from the requirements of Part XII of this chapter.

3. Hazardous waste generators that accumulate wastes on-site in accordance with 40 CFR 262.34 are not subject to regulations contained in Part XII of this chapter since HWM permits are not required for such accumulations.

H. The effective date of Part XII of this chapter is October 1, 1984.

**9 VAC 20-60-1270. Determination of application fee amount.**

**A. General.**

1. Each application for a new permit and each application for a modification to a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of 9 VAC 20-60-1270.

2. The amount of the permit application fee is based on the costs directly associated with the permitting program required by Parts VII (9 VAC 20-60-420 et seq.) and XI (9 VAC 20-60-960 et seq.) of this chapter and includes costs for personnel and contractual effort and the prorated costs of supplies, equipment, communications and office space. The fee schedules are shown in Appendix 12.1 of this part. These schedules will be re-evaluated annually and the results of such re-evaluations will be used to recommend to the Virginia Waste Management Board the necessary adjustments.

**B. Transporter fees.**

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1. Application fees for the transporter permits are shown in Table 12.1-1 of Appendix 12.1 of this part. Based on the greater regulatory effort associated with the issuance of permits to the transporters without terminals or other facilities in the Commonwealth, the out-of-state transporters are charged higher fees.

2. Since Part VII of this chapter does not provide for a modification procedure, all transporter permit applications are considered to be for new permits.

C. New HWM facility permits.

1. All applicants for new hazardous waste treatment, storage, and disposal facility permits are assessed a base fee shown in Table 12.1-2 of Appendix 12.1 of this part.

2. Applicants for a facility permit which includes one or more of the hazardous waste treatment, storage or disposal units or processes that require groundwater protection in accordance with Subpart F of 40 CFR Part 264, Subpart K of 40 CFR Part 264, Subpart L of 40 CFR Part 264, Subpart M of 40 CFR Part 264, and Subpart N of 40 CFR Part 264, as applicable, ("land-based TSD units") are assessed a supplementary fee shown in Table 12.1-2 of Appendix 12.1 of this part, in addition to the base fee specified 9 VAC 20-60-1270 C 1 and any other supplementary fee that may be appropriate.

3. Applicants for a facility permit which includes one or more hazardous waste incineration, boiler, or industrial furnace units or processes regulated in accordance with Subpart O of 40 CFR Part 264 are assessed a supplementary fee shown in Table 12.2-2 of Appendix 12.1 of this part, in addition to the base fee specified in 9 VAC 20-60-1270 C 1 and any other supplementary fee that may be appropriate.

4. Applicants for a facility permit for storage of hazardous wastes in containers, tanks or drip pads, or both, subject to Subpart I of 40 CFR Part 264, Subpart J of 40 CFR Part 264, and Subpart W of 40 CFR Part 264 will not be assessed any supplementary fees unless required to close and perform post-closure care as landfills as provided for in 40 CFR 264.197(b) and 40 CFR 264.571(b).

5. The transporter permits are separate permits and require a separate administrative action. Applicants for new treatment, storage, and disposal facility permits who also apply for a transporter permit will be assessed separate fees in accordance with 9 VAC 20-60-1270 B.

D. Modifications to existing HWM facility permits.

1. Except as provided for in 9 VAC 20-60-1270 E, all applicants for a modification of an existing HWM facility permit are assessed a modification base fee shown in Table 12.1-3 of Appendix 12.1 of this part.

2. Applicants for a modification which includes or involves the addition of hazardous wastes not currently in the permit are assessed a supplementary modification fee shown in Table 12.1-3 of Appendix 12.1 of this part, in addition to the base fee specified in 9 VAC 20-60-1270 D 1 and any other supplementary fee that may be appropriate.

3. Applicants for a modification which includes or involves the addition of one or more new hazardous waste land-based TSD units or processes; or requires a substantive change in the design of the existing land-based TSD units or processes, are assessed a supplementary modification fee shown in Table 12.1-3 in addition to the base fee specified in 9 VAC 20-60-1270 D 1 and any other supplementary fee that may be appropriate. For the purpose of 9 VAC 20-60-1270 D, it will be deemed that a substantive change is required whenever a change in the design of the groundwater protection system or whenever a new land treatment demonstration permit specified in 9 VAC 20-60-1050 C is necessary.

4. Applicants for a modification which includes or involves the addition of one or more hazardous waste incineration units or processes, or requires a substantive change in the design of an existing incineration unit or process, are assessed a supplementary modification fee shown in Table 12.1-3 of Appendix 12.1 of this part, in addition to the base fee specified in 9 VAC 20-60-1270 D 1 and any other supplementary fee that may be appropriate. For the purposes of 9 VAC 20-60-1270 D, it will be deemed that a substantive change is required whenever a change occurs that necessitates the performance of a trial burn in accordance with 9 VAC 20-60-1050 B.

5. Applicants for a modification which includes or involves new treatment, storage or disposal units, processes or areas, or requires a substantive change in the design of any existing hazardous waste treatment, storage or disposal units, processes or areas, neither of which is a hazardous waste land-based TSD or incineration unit, are assessed a supplementary modification fee shown in Table 12.1-3 of Appendix 12.1 of this part, in addition to the base fee specified in 9 VAC 20-60-1270 D 1 and any other supplementary fee that may be appropriate. For the purposes of 9 VAC 20-60-1270 D, expansion of an existing container storage facility is not considered to be a substantive change.

6. Applicants for a modification which is not a minor modification as specified in 9 VAC 20-60-1170 and which is not subject to the requirements of 9 VAC 20-60-1270 D 2 through 9 VAC 20-60-1270 D 5, are assessed a

supplementary modification fee shown in Table 12.1-3 of Appendix 12.1 of this part, in addition to the base fee specified in 9 VAC 20-60-1270 D 1.

7. Applicants for numerous modifications subject to several supplementary fees will not be assessed a permit application fee in excess to the one required for a new permit for a comparable HWM facility.

E. Minor modifications of existing HWM facility permits. All applicants for minor modification of an existing HWM facility permit provided for in 9 VAC 20-60-1170 are assessed a fee shown in Table 12.1-4 of Appendix 12.1 of this part.

F. Emergency permits. Applicants for an emergency hazardous waste treatment, storage or disposal permit as provided for in 9 VAC 20-60-1050 A are assessed a fee shown in Table 12.1-5 of Appendix 12.1 of this part, unless the director shall determine that a lesser fee is appropriate at the time the permit is issued.

#### 9 VAC 20-60-1280. Payment of fees.

##### A. Due date.

1. Except as specified in 9 VAC 20-60-1280 A 2 and 9 VAC 20-60-1280 A 3, all permit application fees are due on the day of application and must accompany the application.

2. All holders of a Virginia HWM facility permit issued prior to the effective date of this part shall submit the application fees as required by the conditions specified in that permit.

3. All applicants for an HWM facility permit or for a modification of an existing permit who have submitted their application prior to the effective date of this part and who have not been issued such a permit or a modification to a permit by that date, shall submit the appropriate application fee within 60 days of the effective date of Part XII (9 VAC 20-60-1260 et seq.) of this chapter or by the effective date of the permit or the modification to the permit, whichever is sooner.

B. Method of payment. Acceptable payment is cash or check made payable to the Commonwealth of Virginia, Department of Environmental Quality.

C. Incomplete payments. All incomplete payments will be deemed nonpayments.

D. Late payment. No applications will be deemed to be complete (see 9 VAC 20-60-980 C) until proper payment is received by the department.

#### APPENDIX 12.1. PERMIT APPLICATION FEE SCHEDULE.

The effective date of this appendix is October 1, 1984.

##### Schedule of Fees.

Table 12.1-1. Transporter Fees.

Transporters with terminals or other facilities within the Commonwealth.	\$80
Other transporters.	\$120

Table 12.1-2. New TSD Facility Fees.

Base fee for all facilities.	\$9,720
Supplementary fee for one or more land-based TSD units.	\$22,590
Supplementary fee for one or more incineration, boiler, or industrial furnace units.	\$14,490

Table 12.1-3. Permit Modification Fees.

Base fee for all modifications.	\$50
Addition of new wastes.	\$1,330
Addition of or substantive change to one or more land-based TSD units.	\$25,920
Addition of or substantive change to one or more incineration, boiler, or industrial furnace units.	\$19,430
Addition of or substantive change to other treatment, storage or disposal units, processes or areas.	\$8,080
Nonsubstantive changes.	\$1,330

Table 12.1-4. Minor Permit Modification Fees.

Minor permit modification fee.	\$50
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Table 12.1-5. Emergency Permit Fees.

Emergency permit fee.	\$1,330
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### Illustrative Examples

#### Example 1.

The applicant is submitting a Part B application for an HWM permit for a facility consisting of several surface impoundments, a land treatment process and an ancillary tank and container storage facility. The required fee is calculated as follows:

Base Fee.	\$9,720
Supplementary fee for land-based TSD units.	\$22,590
Tank storage facility (see 9 VAC 20-60-1270 C 4).	\$0
Total fee.	\$32,310

#### Example 2.

After an HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to change the manufacturing process and apply for a modification to allow for an addition of several new hazardous streams to be treated in two new incinerators. The required modification fee is calculated from Table 12.1-3 as follows:

Base fee.	\$50
Addition of new wastes.	\$1,330
Addition of new incineration units.	\$19,430
Total modification fee.	\$20,810

The fee for a comparable new permit calculated on the basis of Table 12.1-2 is as follows:

Base fee.	\$9,720
Supplementary fee for land-based units.	\$22,590
Supplementary fee for incineration units.	\$14,490
Storage facility.	\$0
Total fee.	\$46,800

which is larger than the required modification fee, so that the provisions of 9 VAC 20-60-1270 D 7 do not apply and the proper fee is \$20,810.

#### Example 3.

After an HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to expand their container storage facility for a storage of additional new waste streams, and apply for a permit modification. The required modification fee is calculated from Table 12.1-3 as follows:

Base fee.	\$50
Addition of a new waste.	\$1,330
Fee for non-substantive change.	\$1,330
Total modification fee.	\$2,710

### PART XIII. (REPEALED.)

9 VAC 20-60-1290. (Reserved.)

9 VAC 20-60-1300. (Reserved.)

9 VAC 20-60-1310. (Repealed.)

9 VAC 20-60-1320. (Reserved.)

9 VAC 20-60-1330 through 9 VAC 20-60-1360. (Repealed.)

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PART XIV.  
RULEMAKING PETITIONS AND PROCEDURES.

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**9 VAC 20-60-1370. General.**

A. Any person affected by this chapter may petition the director to exclude a waste at a facility or to change the identification and listing of a solid or hazardous waste, subject to the provisions of this part. Any petition submitted to the director is also subject to the provisions of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

B. The director will not accept any petition relating to delisting of hazardous wastes, equivalent testing or analytical methods. Such petitions shall be submitted to the administrator in accordance with 40 CFR 260.21.

C. Each petition shall be submitted to the director by certified mail and shall include, in addition to any other provisions required by this part, at least the following:

1. The petitioner's name and address;
2. A statement of the petitioner's interest in the proposed action;
3. A description of the proposed action;
4. A statement of the need and justification for the proposed action, including any supporting tests, studies or other information.

**9 VAC 20-60-1380. Changes to identification and listing of hazardous wastes.**

A. General changes.

1. The administrator may from time to time add or delete wastes listed in Subpart D of 40 CFR Part 261.
2. The petitions to exclude wastes listed in Subpart D of 40 CFR Part 261 which are subject to federal jurisdiction shall be addressed directly to the administrator in accordance with the requirements contained in Subpart C of 40 CFR Part 260.

B. (Reserved.)

**9 VAC 20-60-1390. Changes in classifications as a solid waste.**

A. Variances.

1. The administrator may from time to time exclude recycled wastes from being considered a solid waste for the purpose of the regulation of hazardous wastes under Title 40 of the Code of Federal Regulations.
2. The petitions to exclude wastes are subject to federal jurisdiction and shall be addressed directly to the administrator in accordance with the requirements contained in Subpart C of 40 CFR Part 260.

B. (Reserved.)

**9 VAC 20-60-1400. Changes in process classification.**

A. Variance to be classified as a boiler. In accordance with the standards and criteria in the definition of "boiler" and the procedures in 9 VAC 20-60-1420 B or 9 VAC 20-60-1420 C the director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler after considering the following criteria:

1. The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;
2. The extent to which the combustion chamber and energy recovery equipment are of integral design;
3. The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;
4. The extent to which exported energy is utilized;
5. The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and
6. Other factors, as appropriate.

B. (Reserved.)

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**9 VAC 20-60-1410. Changes in the required management procedures.**

**A. Reclamation of precious metals.**

1. The director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in 40 CFR 261.6(a)(2)(iii) should be regulated under 40 CFR 261.6(b) and 40 CFR 261.6(c) rather than under provisions of 20 VAC 20-60-266. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the director will consider the following factors:

- a. The types of materials accumulated or stored and the amounts accumulated or stored;
- b. The method of accumulation or storage;
- c. The length of time the materials have been accumulated or stored before being reclaimed;
- d. Whether any contaminants are being released into the environment, or are likely to be so released; and
- e. Other relevant factors. The procedures for this decision are set forth in 9 VAC 20-60-1420 D.

**B. Variance from containment requirements for tanks.**

1. The owner or operator may obtain a variance from the requirements of 40 CFR 265.193 or 40 CFR 264.193 if the director finds, as a result of a demonstration by the owner or operator, either:

- a. That alternative design and operating practices, together with location characteristics, will prevent the migration of hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system; or
- b. That in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment.

2. New underground tank systems may not, per a demonstration in accordance with 9 VAC 20-60-1410 B 5, be exempted from the secondary containment requirements of this section.

3. Application for a variance as allowed in 9 VAC 20-60-1410 B 1 does not waive compliance with the requirements of 40 CFR 265.193 or 40 CFR 264.193 for new tank systems.

4. In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the director will consider:

- a. The nature and quantity of the wastes;
- b. The proposed alternate design and operation;
- c. The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and
- d. All other factors that would influence the quality and mobility of the hazardous waste constituents and the potential for them to migrate to groundwater or surface water.

5. In deciding whether to grant a variance, based on a demonstration of no substantial present or potential hazard, the director will consider:

- a. The potential adverse effects on groundwater, surface water, and land quality taking into account:
    - (1) The physical and chemical characteristics of the waste in the tank system, including its potential for migration;
    - (2) The hydrogeological characteristics of the facility and surrounding land;
    - (3) The potential for health risks caused by human exposure to waste constituents;
    - (4) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
    - (5) The persistence and permanence of the potential adverse effects;
  - b. The potential adverse effects of a release on groundwater quality, taking into account:
    - (1) The quantity and quality of groundwater and the direction of groundwater flow;
    - (2) The proximity and withdrawal rates of water in the area;
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- (3) The current and future uses of groundwater in the area; and
  - (4) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
  - c. The potential adverse effects of a release on surface water quality, taking into account:
    - (1) The quantity and quality of groundwater and the direction of groundwater flow;
    - (2) The patterns of rainfall in the region;
    - (3) The proximity of the tank system to surface waters;
    - (4) The current and future uses of surface waters in the area any water quality standards established for those surface waters; and
    - (5) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality; and
  - d. The potential adverse effects of a release on the land surrounding the tank system, taking into account:
    - (1) The patterns of rainfall in the region; and
    - (2) The current and future uses of the surrounding land.
6. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of 9 VAC 20-60-1410 B 4 at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), shall:
- a. Comply with the requirements of 40 CFR 265.196 or 40 CFR 264.196, except 40 CFR 265.196(d) or 40 CFR 264.196(d); and
  - b. Decontaminate or remove contaminated soil to the extent necessary to:
    - (1) Enable the tank system, for which the variance was granted, to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release; and
    - (2) Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and
  - c. If contaminated soil cannot be removed or decontaminated in accordance with 9 VAC 20-60-1410 B 6 b, comply with the requirements of 40 CFR 265.197(b) or 40 CFR 264.197(b), as applicable;
7. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of 9 VAC 20-60-1410 B 4, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall:
- a. Comply with the requirements of 40 CFR 265.196(a) through 40 CFR 265.196(d) or 40 CFR 264.196(a) through 40 CFR 264.196(d); and
  - b. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if groundwater has been contaminated, the owner or operator shall comply with the requirements of 40 CFR 265.197(b) or 40 CFR 264.197(b);
  - c. If repairing, replacing, or reinstalling the tank system provide secondary containment in accordance with the requirements of 40 CFR 265.193(a) through 40 CFR 265.193(f) or 40 CFR 264.193(a) through 40 CFR 264.193(f) or reapply for a variance from secondary containment and meet the requirements for new tank systems in 40 CFR 265.192 or 40 CFR 264.192 if the tank system is replaced. The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed, and groundwater or surface water has not been contaminated.
- C. Petitions to allow land disposal of a waste prohibited under 9 VAC 20-60-268.
- 1. Any person seeking an exemption from a prohibition under 9 VAC 20-60-268 for the disposal of a restricted hazardous waste in a particular unit or units shall submit a petition to the EPA administrator in accordance with 40 CFR 268.6.
  - 2. (Reserved.)
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**9 VAC 20-60-1420. Administrative procedures.**

A. Procedures for variances to be classified as a boiler. The director will use the following procedures in evaluating applications for variances to classify particular enclosed controlled flame combustion devices as boilers:

1. The applicant must apply to the director for the variance. The application must address the relevant criteria contained in 9 VAC 20-60-1400.
2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any).

B. Variances. The director will use the following procedures in evaluating applications for variances submitted under 9 VAC 20-60-1390 and 9 VAC 20-60-1400.

1. The applicant shall apply to the director. The application shall address the relevant criteria contained in 9 VAC 20-60-1390 and 9 VAC 20-60-1400.
2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any), and will publish it in the newspaper in the locality where the applicant is located.

C. Changes in management procedures.

1. Recycling activities. In determining whether to regulate recycling activities in a manner differing from procedures described in 40 CFR 261.6(a)(2)(iv), the director will fulfill all the requirements of Article 3 (§ 9-6.14:11 et seq. of the Code of Virginia) of the Administrative Process Act. In addition to the process required by the APA, the director will:

a. If a generator is accumulating the waste, issue a notice setting forth the factual basis for the decision and stating that the person shall comply with applicable requirements of 9 VAC 20-60-262. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the director will hold a public hearing. The director will provide notice of the hearing to the public and allow public participation at the hearing. The director will issue a final order after the hearing stating whether or not compliance with 9 VAC 20-60-262 is required. The order becomes effective in 30 days, unless the director specifies a later date or unless review under Article 4 (§ 9-6.14:15 et seq. of the Code of Virginia) of the Administrative Process Act is requested.

b. If the person is accumulating the recyclable material at a storage facility, issue a notice stating that the person shall obtain a permit in accordance with all applicable provisions of Parts III (9 VAC 20-60-124 et seq.), XI (9 VAC 20-60-960 et seq.), and XII (9 VAC 20-60-1260 et seq.) of this chapter. The owner or operator of the facility shall apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the director's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the director's determination. The questions of whether the director's decision was proper will remain open for consideration during the public comment period discussed under 9 VAC 20-60-1210 and in any subsequent hearing.

2. Variance from secondary containment. The following procedures shall be followed in order to request a variance from secondary containment:

a. The director shall be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in 40 CFR 265.193(g), (or 40 CFR 264.195(g)), and 9 VAC 20-60-1410 B according to the following schedule:

- (1) For existing tank systems, at least 24 months prior to the date that secondary containment shall be provided in accordance with 40 CFR 265.193(a) or 40 CFR 264.193(a); and
- (2) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

b. As part of the notification, the owner or operator shall also submit to the director a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in 9 VAC 20-60-1410 B 4 or 9 VAC 20-60-1410 B 5.

c. The demonstration for a variance shall be completed and submitted to the director within 180 days after notifying the director of intent to conduct the demonstration.

d. In case of facilities regulated under 9 VAC 20-60-265:

(1) The director will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The director also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(2) The director will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the 90-day time period will begin when the director receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in 9 VAC 20-60-1420 D 2 d (1) is extended, the 90-day time period will be similarly extended.

e. In case of facilities regulated under 9 VAC 20-60-264, if a variance is granted to the permittee, the director will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

#### **9 VAC 20-60-1430. Petitions to include additional hazardous wastes.**

##### **A. General.**

1. Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of 9 VAC 20-60-273 and Part XVI (9 VAC 20-60-1495 et seq.) of this chapter may petition for a regulatory amendment under this part.

2. To be successful, the petitioner shall demonstrate to the satisfaction of the director that regulation under the universal waste regulations of 9 VAC 20-60-273 and Part XVI of this chapter:

- a. Is appropriate for the waste or category of waste;
- b. Will improve management practices for the waste or category of waste; and
- c. Will improve implementation of the hazardous waste program.

The petition shall include the information required by 9 VAC 20-60-1370 C. The petition should also address as many of the factors listed in 9 VAC 20-60-1430 B as are appropriate for the waste or category of waste addressed in the petition.

3. The director will grant or deny a petition using the factors listed in 9 VAC 20-60-1430 B. The decision will be based on the weight of evidence showing that regulation under 9 VAC 20-60-273 and Part XVI of this chapter is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

4. The director may request additional information needed to evaluate the merits of the petition.

5. If the director adds new hazardous wastes to the list contained in 9 VAC 20-60-273 and in Part XVI of these regulations, management of these wastes under the universal waste regulations would only be allowed within the Commonwealth or other states that have added those particular wastes to their regulations. Shipments of such wastes to a state where universal waste standards do not apply to that waste would have to comply with the full hazardous waste requirements of Parts I through XV of this chapter.

##### **B. Factors to Consider.**

1. The waste or category of waste, as generated by a wide variety of generators, is listed in Subpart D of 40 CFR Part 261, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Subpart C of 40 CFR Part 261. (When a characteristic waste is added to the universal waste regulations of 9 VAC 20-60-273 and Part XVI of this chapter by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries). Thus, only the portion of the waste stream that does exhibit one



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or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of 9 VAC 20-60-273 and Part XVI of this chapter;

2. The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);
3. The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;
4. Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;
5. The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to 9 VAC 20-60-273 or Part XVI of this chapter; and applicable requirements of the Virginia Regulations Governing the Transportation of Hazardous Materials, 9 VAC 20-110-10 et seq.) would be protective of human health and the environment during accumulation and transport;
6. Regulation of the waste or category of waste under 9 VAC 20-60-273 will increase the likelihood that the waste will be diverted from nonhazardous waste management systems (e.g., the municipal waste stream, nonhazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with the Virginia Hazardous Waste Management Regulations;
7. Regulation of the waste or category of waste under will improve implementation of and compliance with the hazardous waste regulatory program; and
8. Such other factors as may be appropriate.

PART XV. (REPEALED.)

**9 VAC 20-60-1440 through 9 VAC 20-60-1480. (Repealed.)**

PART XVI.

ADDITIONAL UNIVERSAL WASTE MANAGEMENT PROVISIONS.

**9 VAC 20-60-1495. General provisions.**

A. Hazardous wastes defined to be universal wastes in the texts incorporated by reference at 9 VAC 20-60-260 and 9 VAC 20-60-273 and hazardous wastes as defined in 9 VAC 20-60-1505 shall be universal wastes for the purposes of these regulations, the Virginia Hazardous Waste Management Regulations.

B. A universal waste may be managed under the general provisions as hazardous waste or under the special provisions as universal waste. The generator shall determine under which provisions the waste shall be managed and subsequent management shall be consistent with that determination by the generator.

**9 VAC 20-60-1505. Additional universal wastes - mercury-containing lamps.**

A. "Mercury-containing lamp" means an electric lamp into which mercury was intentionally introduced by the manufacture for the operation of the lamp. "Electric lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Electric lamps include, but are not limited to: incandescent lamps, fluorescent lamps, high pressure sodium lamps, high intensity discharge lamps, mercury vapor lamps, metal halide lamps, and neon lamps.

B. A used mercury-containing lamp becomes a waste on the date the handler permanently removes it from its fixture. An unused mercury-containing lamp becomes a waste on the date the handler discards it.

C. In addition to the provisions of Part III (9 VAC 20-60-124 et seq.) of this chapter and other parts of these regulations pertaining to universal wastes, the following special requirements apply to universal wastes that are mercury-containing lamps:

1. All handlers (both small quantity handlers and large quantity handlers) of universal waste must manage universal waste mercury-containing lamps in accordance with the requirement of 9 VAC 20-60-273 that apply to all universal wastes.
2. All handlers (both small quantity handlers and large quantity handlers) of universal waste must manage mercury-containing lamps so as to prevent releases of any universal waste or component thereof to the environment. This includes, but is not limited to:

- a. Containing unbroken lamps in packaging that will minimize breakage during normal handling conditions;
- b. Containing broken lamps in packaging that will minimize releases of lamp fragments and residues;
- c. Managing lamps so as to minimize breakage;
- d. Immediately containing all releases of residue from the lamps; and
- e. Determining if any material resulting from a release, clean-up residues from a spill or breakage, or other solid waste generated from handling the lamps is hazardous waste in accordance with 9 VAC 20-60-261. If these wastes are found to be hazardous waste, they shall be managed under the requirements for hazardous waste contained in these regulations.

3. Universal waste mercury-containing lamps may be crushed or intentionally broken on-site to reduce their volume; however, breaking, crushing, handling, and storage must occur in a safe and controlled manner that minimize the release of mercury to the workplace and the environment and must comply with 29 CFR 1910.1000. The procedure for breaking, crushing, handling and storing of the lamps must be documented and use a mechanical unit specifically designed for the process and incorporating the containment and filtration of process air flows to remove mercury-containing vapors and dusts.

4. In addition to the labeling and marking requirements of 9 VAC 20-60-273, universal waste mercury-containing lamps and containers of mercury-containing lamps must be labeled or marked clearly and legibly "Universal Waste Mercury-containing Lamps," "Waste Mercury-containing Lamps" or "Used Mercury-containing Lamps."

#### FORMS

1993 Hazardous Waste Report (EPA), EPA Form 8700-13 A/B (eff. 8/93).

Uniform Hazardous Waste Manifest (EPA), EPA Form 8700-22.

Notification of Regulated Waste Activity (EPA), EPA Form 8700-12 (eff. 11/93).

#### DOCUMENT INCORPORATED BY REFERENCE

Companies Holding Certification of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, Circular 570, U.S. Department of Treasury.