

US EPA ARCHIVE DOCUMENT

Regulations

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-18, 9VAC20-60-260, 9VAC20-60-261, 9VAC20-60-270).

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6921 et seq.; 40 CFR Parts 260 through 272.

Effective Date: March 2, 2011.

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Summary:

Hazardous Waste Management Regulations, 9VAC20-60, include requirements in the form of incorporated federal regulatory text at Title 40 of the Code of Federal Regulations. The federal regulatory text as it existed on June 30, 2010, was specified as that incorporated. Immediate Final Rule 2008 - 2010 addresses 9VAC20-60-18, 9VAC20-60-260, 9VAC20-60-261, and 9VAC20-60-270. 9VAC20-60-18 was revised by striking the previous prescribed date and adopting the new date of July 1, 2010, thus making it the new date of reference of all incorporated federal regulatory text. 9VAC20-60-260, 9VAC20-60-261, and 9VAC20-60-270 have been amended to revise a Federal Register reference. 9VAC20-60-261 also has been amended to update the Department of Environmental Quality's mailing address and to provide for the adoption of more stringent conditions applicable to comparable fuels that were promulgated concurrently with the "emission comparable fuel" exclusion on December 19, 2008.

9VAC20-60-18. 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 has been published as a final regulation in the Federal Register prior to July 1, ~~2009~~ 2010, with the effective date as

published in the Federal Register notice or ~~March 3, 2010~~ March 2, 2011, whichever is later.

9VAC20-60-260. 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:

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 commenced 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 (9VAC20-60-1495 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 (9VAC20-60-1370 et seq.), the Virginia Hazardous Waste Management Regulations contain provisions analogous to 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, 40 CFR 260.22 and 40 CFR 260.23 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.

11. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 260 as promulgated by U.S. EPA on October 30, 2008, (~~73 FR 64717~~) (73 FR 64757 - 64788) (definition of solid waste rule) are not adopted herein.

9VAC20-60-261. 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 Department of Environmental Quality, ~~Post Office Box 10009, Richmond, Virginia 23240-0009~~ P.O. Box 1105, Richmond, Virginia 23218.
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 9VAC20-60-270 and Part XII (9VAC20-60-1260 et seq.) of this chapter.

5. No hazardous waste from a conditionally exempt small quantity generator shall be managed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless such waste management is in full compliance with all requirements of the Solid Waste Management Regulations (9VAC20-80).

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 provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 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. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 261 as promulgated by U.S. EPA on October 30, 2008, (~~73 FR 64717~~) (73 FR 64757 - 64788) (definition of solid waste rule) are not adopted herein.

~~9. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 261 as promulgated by U.S. EPA on December 19, 2008, (~~73 FR 77953~~) (RCRA Comparable Fuel Exclusion) are not adopted herein.~~

9VAC20-60-270. 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 40 CFR Part 270 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 270 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

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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 provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 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.

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. Validity of the federal HWM permits. This section replaces 40 CFR 270.51, which is not included in the incorporation of 40 CFR Part 270 by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

a. Hazardous waste management facilities located in Virginia which possess an effective final RCRA permit issued by the United States Environmental Protection Agency will be considered to possess a valid Virginia hazardous waste management permit for the duration of the unexpired term of the federal permit, provided that:

(1) The facility remains in compliance with all of the conditions specified in the federal permit;

(2) The operator submits a complete copy of the federal permit to the department no later than the effective date of the federal permit; and

(3) The owner and operator of the facility submit a request to continue the federal permit addressed to the department.

b. Federal permits issued to hazardous waste management facilities located in Virginia by the United States Environmental Protection Agency pursuant to HSWA requirements which constitute the federal portion

of the combined Virginia--United States Environmental Protection Agency 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.

6. All permit applications and reapplications required by these regulations shall be accompanied by an appropriate permit application fee as specified in Part XII (9VAC20-60-1260 et seq.) of this chapter. Applications or reapplications not accompanied by such fees will not be considered complete. The director shall not issue a permit before receiving a complete application except permits by rule, emergency permits, or continued federal permits. In addition, an application for a permit is not complete until the department receives an application form and any supplemental information, which are completed to the department's 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. In cases where Part A of the application was first submitted to the United States Environmental Protection Agency Administrator, a copy of such submission shall also be sent to the department.

7. Interim status.

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 board so as to pose a substantial present or potential hazard to human health or environment.

b. Unless subject of an exception specified in 40 CFR 270.73, 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:

(1) Failure to submit a completed Part B application on time;

(2) Failure to furnish any information required by this chapter;

(3) Falsification, misrepresentation or failure to fully disclose any information submitted or required to be kept under this chapter;

(4) Violation of this chapter; and

(5) A determination that the facility poses a significant threat to public health or the environment.

c. 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.

(1) To be considered for voluntary termination such request shall:

- (a) Be received by the department prior to the issuance of the request to submit Part B of the permit application in accordance with this section; and
- (b) Be accompanied by a waiver of procedures contained in this section.
- (2) Termination under this part will not be granted to the owner and operator of the facility:
- (a) Which is not in compliance with the standards contained in 9VAC20-60-265; or
- (b) When termination proceedings have been instituted under this section.
- d. 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.
8. 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 this part (Part III) of these regulations. In satisfying this provision, the director may incorporate applicable requirements of Part III directly into the permit or establish other permit conditions that are based on these requirements.
9. In addition to the other general information requirements to be part of the contents of any Part B in 40 CFR 270.14(b), the following information is required for all hazardous waste management facilities, except as provided otherwise:
- a. 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 264.573, 40 CFR 264.574, 40 CFR 264.602, 40 CFR 264.1033, 40 CFR 264.1052, 40 CFR 264.1053, and 40 CFR 264.1058.
- b. Traffic pattern, estimated volume (number, types of vehicles) and control; describe access road surfacing and load bearing capacity; show traffic control signals.
10. A period of 30 days shall elapse between the date of public notice and the date of a public hearing under 40 CFR 270.42(b)(4) and 40 CFR 270.42(c)(4).
11. Notices given under 40 CFR 270.30(l)(1) shall be written.
12. The following additional information is required from owners or operators of facilities that store or treat hazardous waste in waste piles 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):
- a. An explanation of how the standards of 40 CFR 264.250(c) will be complied with; and
- b. Detailed plans and an engineering report describing how the requirements of 40 CFR 264.90(b)(2) will be met.
13. The agencies of the Commonwealth publish notices of regulatory activity, permit hearings and other official notices in the Virginia Register. Any references in incorporated federal text that indicate a publication is to be made in the Federal Register shall be construed to mean the Virginia Register when such publication is to be made by an agency of the Commonwealth.
14. Appeal rights and procedures related to a remedial action plan (RAP) included in 40 CFR 270.155, especially appeals to the EPA Environmental Appeals Board, are not incorporated into these regulations. Appeals of actions related to the content or process of developing a RAP will be governed by the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.
15. The conditions of an expired permit continue in force until the effective date of the new permit if the permittee has submitted a timely reapplication that is a complete application for a new permit; and 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. Permits that are continued remain fully effective and enforceable.
- 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 that has been continued;
- b. Issue a notice of intent to deny the new permit. 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 a permit;
- c. Issue a new permit with appropriate conditions; or
- d. Take other actions authorized by this chapter.
16. Part XII (9VAC20-60-1260 through 9VAC20-60-1285) of this chapter applies to all permitted facilities, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. In addition to permit application fees, a permitted treatment, storage, and disposal facility is assessed an annual fee. A facility that operates under interim status, a facility that is subject to an order or

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agreement, and a large quantity generator are also assessed annual fees.

17. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 270 as promulgated by U.S. EPA on October 30, 2008, (~~73 FR 64717~~) (73 FR 64757 - 64788) (definition of solid waste rule) are not adopted herein.

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