

**TENTATIVE AGENDA
WASTE MANAGEMENT BOARD MEETING**

**MONDAY, SEPTEMBER 21, 2020
ELECTRONIC COMMUNICATION MEETING**

Please register for the meeting at: <https://register.gotowebinar.com/register/3560786407943283467>

Persons wishing to speak during the Board Meeting must register by September 17, 2020

CONVENE – 11:00 A.M.

Agenda Item	Presenter	Tab
1. Call to Order		
2. Introductions	Board Members	
3. Review and Approve Minutes (December 9, 2019)		A (pg. 3)
4. Final Exempt – Annual Update 2019, Regulations Governing the Transportation of Hazardous Materials (9VAC20-110)	Harris	B (pg. 7)
5. Final Exempt – HB 1352 Amendment, Virginia Solid Waste Management Regulations (9VAC20-81)	Harris	C (pg. 18)
6. Proposed Regulation - Voluntary Remediation Regulations (9VAC20-160)	Callahan	D (pg. 33)
7. Significant Noncompliance Report	Severs	E (pg. 66)
8. Public Forum		
9. Division Director Report/Updates	Steers	
10. Future Meetings		
Adjourn		

NOTES: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions, or deletions. Questions on the latest status of the agenda or should be directed to Debra A. Harris at (804) 698-4209 or Debra.Harris@deq.virginia.gov.

PUBLIC COMMENTS AT WASTE MANAGEMENT BOARD MEETINGS

The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less. Note, there is no pooling of minutes during the public forum.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Debra A. Harris, Policy and Planning Specialist, Office of Regulatory Affairs, Department of Environmental Quality, 1111 E. Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4209; fax (804) 698-4346; [e-mail: Debra.Harris@deq.virginia.gov](mailto:Debra.Harris@deq.virginia.gov)

In response to COVID-19 health concerns and the Governor's State of Emergency, DEQ has implemented social distancing at all our offices. While all DEQ offices remain open as our important work to safeguard Virginia's environment continues, we kindly ask that you avoid in-person visits and instead contact DEQ staff by phone or email.

Tab A



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

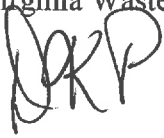
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

MEMORANDUM

TO: Members of the Virginia Waste Management Board

FROM: David K. Paylor 

DATE: August 31, 2020

SUBJECT: Minutes

Attached are the minutes from your meeting on December 9, 2019. Staff will seek your approval of these minutes at your next regular meeting on September 21, 2020.

If you have any questions, please contact Debra Harris at (804) 698-4209 or Debra.Harris@deq.virginia.gov.

Attachment
cc: Cindy Berndt, DEQ

MINUTES
VIRGINIA WASTE MANAGEMENT BOARD MEETING

MONDAY, DECEMBER 9, 2019
3RD FLOOR CONFERENCE ROOM
1111 E. MAIN STREET
RICHMOND, VIRGINIA

Board Members Present:

EJ Scott, Chair
Michael Benedetto

Jeffery Crate
Amarjit Riat

Board Members Absent:

Eric K. Wallace
Steven Yob
Eric DeGroff

Department of Environmental Quality:

David K. Paylor, Director
Cindy M. Berndt
Debra A. Harris

Attorney General's Office:

Christopher E. Bergin, Assistant Attorney General

These minutes summarize activities that took place at this Board meeting. The meeting was convened by the chairperson, Ms. EJ Scott, at 10:00 a.m. and was adjourned at 11:26 p.m.

Minute No. 1 - Minutes.

On a motion by Mr. Riat, and seconded by Mr. Crate, the Board unanimously approved the minutes from the Board's meeting on June 10, 2019.

Minute No. 2 – *Regulated Medical Waste Management Regulations (9VAC20-120) – Amendment 3 – Proposed Regulation*

Ms. Priscilla Rohrer, Solid Waste Compliance Program Coordinator from the Office of Financial Responsibility and Waste Programs, presented an overview of a proposed regulatory amendment to the Board's Regulated Medical Waste Management Regulations, 9VAC20-120. This amendment is using the full standard regulatory process. Ms. Rohrer provided a brief explanation of this standard process to the Board and then explained the purpose of the Regulated Medical Waste Management Regulations (RMW Regulations). Ms. Rohrer explained the background history of these regulations and why an amendment was necessary. She noted that as part of this regulatory process, a regulatory advisory panel (RAP) was used to develop this amendment and the RAP achieved consensus on all discussion topics including regulated medical waste (RMW) definitions and exemptions, storage, disinfection, ventilation, disposal of treated waste, and Category A Waste requirements. Ms. Rohrer also explained that this amendment, due to its reorganization and modernization of standards, will repeal Chapter 120 and will establish a new Chapter 121. The Board was then provided an outline of the proposed regulation and Ms. Rohrer explained each part of the revised regulations. Part I will be the definitions which were revised to remove outdated terms. Part II will include general information include prohibitions and exemptions. Part III will include the standards for the management RMW. Part IV will include the

standards for permitted RMW transfer stations and treatment facilities and this part was reorganized to make the sections more intuitive and consistent in format with the Solid Waste Management Regulations. Ms. Rohrer discussed the requirements including the new requirements for recordkeeping, waste control, training and for modernizing the treatment requirements and standards for treatment in accordance with the industry's best management practices. Ms. Rohrer explained that permits are still not required for RMW generators or transporters. A grace period for existing facilities to come into compliance with any new requirements is also proposed. Ms. Rohrer went over the benefits of this amendment such as greater clarity and ease of use due to the simplification of the structure and organization, simplifying generator requirements, modernizing treatment standards for RMW, and to also better prepare Virginia to deal with emerging disease RMW and Category A waste. The Board asked clarifying questions regarding this amendment including questions on the RAP process, inspections, and Category A waste.

Based on the Board book material, staff presentation, and responses to the Board's questions, the Board, on a motion by Mr. Benedetto and seconded by Mr. Riat, unanimously voted to approve the proposed amendment to Regulated Medical Waste Management Regulations for public comment.

Minute No. 3 - Significant Noncompliance Report.

The Board received a report from Mr. Justin Williams, Acting Office of Enforcement Director, on the Hazardous Waste Significant Non-Compliers and Solid Waste Final Orders for Federal Fiscal Years 2019.

Minute No. 4 - Public Forum.

One citizen, Mr. Kevin Halligan, addressed the Board regarding concerns over solid waste management issues such as waste stream management, the need for a moratorium on permitting of mega-landfills (such as the proposed landfill in Cumberland County), and consideration of the environmental, social and economic impacts of these types of landfills.

Minute No. 5 – Division Director's Report.

The Board received the Division Director's Report from Mr. Justin Williams, Land Protection and Revitalization Division Director. Mr. Williams provided an overview of the land program activities including an update on the coal combustion residuals and the status of an amendment of the Virginia Solid Waste Management Regulations. Mr. Williams also provided information on the impact of the China ban to recycling.

Minute No. 6 - Future Meetings.

No future meetings were set for the Board at this meeting.



Debra A. Harris
Planning and Policy Specialist
Office of Regulatory Affairs

Tab B



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Memorandum

To: Members of the Virginia Waste Management Board

Through: Jeffery Steers, Acting Director [*per email*]
Division of Land Protection and Revitalization

From: Debra A. Harris, Policy and Planning Specialist *DAH*
Office of Regulatory Affairs

Date: August 25, 2020

Subject: Regulations Governing the Transportation of Hazardous Materials, 9VAC20-110
Annual Update 2019

The attached regulatory amendment is presented to the Board for your consideration for adoption. The final exempt action amends the Regulations Governing the Transportation of Hazardous Materials, 9VAC20-110. Each year, the U.S. Department of Transportation makes changes to the federal regulations regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations (49 CFR). As 9VAC20-110 incorporates certain parts of 49 CFR, it is necessary to amend 9VAC20-110 in order to incorporate the federal changes. This amendment will bring the 49 CFR citations in 9VAC20-110 up to date and incorporate the applicable changes to 49 CFR to the most current CFR published in the October 1, 2019 annual edition.

Section 2.2-4006 A 4 (c) of the Code of Virginia allows the Board to adopt this regulatory amendment to 9VAC20-110 as the changes are necessary to conform to changes in the federal regulations. This regulatory amendment will be effective 30 days after publication in the *Virginia Register*. A draft Virginia Regulatory Town Hall document and a table of the CFR changes are attached for your information.

At your Board meeting on September 21, 2020, the DEQ will request that the Board adopt Annual Update 2019 to 9VAC20-110, authorize its publication, and affirm that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

cc: Cindy Berndt, DEQ - Office of Regulatory Affairs

ATTACHMENTS:

- Annual Update 2019 - Draft Virginia Regulatory Town Hall Document (TH-09)
- Annual Update 2019 - Regulatory Text



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC20-110
VAC Chapter title(s)	Regulations Governing the Transportation of Hazardous Materials
Action title	Annual Update 2019
Final agency action date	September 21, 2020
Date this document prepared	August 3, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Virginia's *Regulations Governing the Transportation of Hazardous Materials* under 9VAC20-110, incorporate by reference certain federal regulations from Title 49 of the Code of Federal Regulations (CFR). This amendment will bring these regulations up to date with the latest update to Title 49 of the CFR as published on October 1, 2019. Section 2.2-4006.A.4 (c) of the Administrative Process Act allows the Board to adopt this regulatory amendment as a final exempt action as the changes are necessary to conform to changes in the federal regulations.

Each year the U.S. Department of Transportation (U.S. DOT) makes several changes to the federal rules (see attachment) regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia regulations incorporate the federal regulations, with certain exceptions, it is only necessary to change one item to bring Virginia's regulations up-to-date with the federal changes. The item that must be amended is 9VAC20-110-110, which specifies the date of the federal regulations that are incorporated into Virginia regulations. For the ease of use by the regulated community, this date is always October 1; however, the text is amended to change the year, thus incorporating federal changes

from October 1 of the previously year through September 30 of the new year (in this case, from October 1, 2018 through September 30, 2019).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). “Mandate” is defined as “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Each year, the U.S. DOT makes several changes to the federal rules regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia regulations for transportation of hazardous materials (9VAC20-110) incorporate certain parts of the federal regulations, it is necessary to update 9VAC20-110-110 in order to incorporate U.S. DOT’s most recent rulemakings.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

CFR - Code of Federal Regulations
 Department – Department of Environmental Quality
 U.S. DOT – United States Department of Transportation

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Virginia Waste Management Board adopted this regulatory amendment to 9VAC20-110 on September 21, 2020 as a final regulation and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

Legal Basis

Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

These regulations are issued under authority of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Transportation of Hazardous Materials.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

The purpose of this regulatory action is to amend 9VAC20-110 to incorporate several changes to the federal rules regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia regulations incorporate the federal regulations, with certain exceptions, it is only necessary to change one item to bring Virginia's regulations up-to-date with the federal changes.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Each year the U.S. Department of Transportation (U.S. DOT) makes several changes to the federal rules (see attachment) regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia regulations incorporate the federal regulations, with certain exceptions, it is only necessary to change one item to bring Virginia's regulations up-to-date with the federal changes. The item that must be amended is 9VAC20-110-110, which specifies the date of the federal regulations that are incorporated into Virginia regulations. For the ease of use by the regulated community, this date is always October 1; however, the text is amended to change the year, thus incorporating federal changes from October 1 of the previously year through September 30 of the new year (in this case, from October 1, 2018 through September 30, 2019).

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory changes.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC20-110-100		Incorporates U.S. DOT's regulations under Title 49 of the CFR by reference.	Updated to the most recent annual edition, October 1, 2019. The changes are needed to ensure that the most recent and accurate federal rules are adopted and enforceable by Virginia.

A summary of the changes to Title 49 of the CFR, which will be incorporated under this amendment, is attached.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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

**Changes to Title 49 of the CFR by
US DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA)
October 1, 2018 through September 30, 2019**

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
1	10/18/2018 Docket No. PHMSA-2015- 0100 (HM-259)	49 CFR 172 49 CFR 175	83 FR 52878 (10/18/2018)	PHMSA, in consultation with the Federal Aviation Administration, issues this final rule to align the U.S. Hazardous Materials Regulations with current international standards for the air transportation of hazardous materials. These amendments revise certain special provisions, packaging requirements, information to the pilot-in-command requirements, and exceptions for passengers and crewmembers. In addition to facilitating harmonization with international standards, several of the amendments in this rule are responsive to petitions for rulemaking submitted by the regulated community.
2	10/31/2018	49 CFR 172 49 CFR 175	83 FR 54683 (10/31/2018)	Making a correction to a rule appearing on pages 52878 through 52900 in the issue of Thursday, October 18, 2017.
3	12/07/2018 Docket No. PHMSA-2015- 0102 (HM-219A)	49 CFR 171 49 CFR 172 49 CFR 173 49 CFR 176 49 CFR 178 49 CFR 180	83 FR 55792 (11/07/2018)	In this rulemaking, PHMSA is amending the Hazardous Materials Regulations in response to 19 petitions for rulemaking submitted by the regulated community to update, clarify, streamline, or provide relief from miscellaneous regulatory requirements. By adopting these deregulatory amendments, PHMSA is allowing more efficient and effective ways of transporting hazardous materials in commerce while maintaining an equivalent level of safety.
4	03/18/2019 Docket No. PHMSA-2015- 0272 (HM-209A)	49 CFR 107	84 FR 3993 (02/14/2019)	PHMSA is revising the Hazardous Materials Regulations pertaining to the Hazardous Materials Grants Program and the Hazardous Materials Emergency Preparedness Grant. This final rule aligns with the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance") and implements new requirements set forth by the Fixing America's Surface Transportation (FAST) Act of 2015.
5	04/01/2019 Docket No. PHMSA-2014- 0105 (HM-251B)	49 CFR 107 49 CFR 171 49 CFR 173 49 CFR 174	84 FR 6910 (02/28/2019)	PHMSA, in consultation with the Federal Railroad Administration and pursuant to the Fixing America's Surface Transportation Act (FAST Act) of 2015, issues this final rule to revise and clarify requirements for comprehensive oil spill response plans (COSRPs) and to expand their applicability based on petroleum oil thresholds that apply to an entire train consist. Specifically, this final rule: Expands the applicability for COSRPs; modernizes the requirements for COSRPs; requires railroads to share information about high-hazard flammable train (HHFT) operations with State and tribal emergency response commissions to improve community preparedness; and incorporates by reference a voluntary standard. The amendments in this final rule will provide regulatory flexibility and improve response readiness to mitigate effects of rail accidents and incidents involving petroleum oil and HHFTs.
6	03/06/2019 Docket No. PHMSA-2016- 0014 (HM-224I)	49 CFR 172 49 CFR 173	84 FR 8006 (03/06/2019)	PHMSA issues this interim final rule (IFR) to revise the Hazardous Materials Regulations for lithium cells and batteries transported by aircraft. This IFR prohibits the transport of lithium ion cells and batteries as cargo on passenger aircraft; requires lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge aboard cargo-only aircraft when not packed with or contained in equipment; and limits the use of alternative provisions for small lithium cell or battery shipments to one package per consignment. This IFR does not restrict passengers or crew members from bringing personal items or electronic devices containing lithium cells or batteries aboard aircraft, or restrict cargo-only aircraft from transporting lithium ion cells or batteries at a state of charge exceeding 30 percent when packed with or contained in equipment or devices.

**Changes to Title 49 of the CFR by
US DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA)
October 1, 2018 through September 30, 2019**

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
7	07/31/2019	49 CFR 171	84 FR 37059 (07/31/2019)	In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2019 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations.

**Changes to Title 49 of the CFR by
US DOT's Federal Motor Carrier Safety Administration (FMCSA)
October 1, 2018 through September 30, 2019**

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register	Summary
1	10/15/2019 Docket No. FMCSA-2012- 0103	49 CFR 390	84 FR 40272 (08/14/2019)	FMCSA amends its May 27, 2015, final rule on Lease and Interchange of Vehicles; Motor Carriers of Passengers (2015 final rule) in response to petitions for rulemaking. This final rule narrows the applicability of the 2015 final rule by excluding certain contracts and other agreements between motor carriers of passengers that have active passenger carrier operating authority registrations with FMCSA from the definition of lease and the associated regulatory requirements. For passenger carriers that remain subject to the leasing and interchange requirements, FMCSA returns the bus marking requirement to its July 1, 2015, state with slight modifications to add references to leased vehicles; revises the exception for the delayed writing of a lease during certain emergencies; and removes the 24-hour lease notification requirement.
2	09/12/2019 Docket No. FMCSA-2004- 19608	49 CFR 395	84 FR 48077 (09/12/2019)	FMCSA amends its hours-of-service (HOS) requirements applicable to drivers of property-carrying commercial motor vehicles (CMVs) to remove provisions requiring that a 34-hour restart include two periods between 1 a.m. and 5 a.m. and limiting use of a restart to once every 168 hours—provisions that were promulgated in December 2011. In a series of Appropriations Acts, Congress suspended these provisions, pending completion of a naturalistic study comparing the effects of the restart provisions in effect under the 2011 rule versus provisions in effect prior to the 2011 rule's compliance date. The 2017 naturalistic study found no statistically significant benefits from the restart rule. Pursuant to a 2017 Appropriations Act, the 2011 restart rules are therefore void by operation of law. Although not in effect, the provisions remain in the Code of Federal Regulations (CFR), which could cause confusion for some stakeholders.
3	09/30/2019	49 CFR 391 49 CFR 392 49 CFR 395 49 CFR 396	84 FR 51427 (09/30/2019)	FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations. The Agency makes minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The Agency also makes nondiscretionary, ministerial changes that are statutorily mandated.

Part III

Compliance with Federal Regulations

9VAC20-110-110. Compliance.

~~A.~~ Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the U.S. Secretary of Transportation with amendments promulgated as of October 1, ~~2018~~ 2019, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Special Permits. 49 CFR Part 107, Subpart B.
2. Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers in 49 CFR Part 107, Subpart F.
3. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.
4. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.
5. Specifications for Packagings in 49 CFR Part 178.
6. Specifications for Tank Cars in 49 CFR Part 179.
7. Continuing Qualification and Maintenance of Packagings in 49 CFR Part 180.
8. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

~~B. The references to and incorporation by reference of 49 CFR Part 390 into this chapter includes the compliance date extension as promulgated by the United States Department of Transportation's Federal Motor Carrier Safety Administration (83 FR 62505, December 4, 2018).~~

Tab C



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Memorandum

To: Members of the Virginia Waste Management Board

Through: Jeffery Steers, Acting Director [*per email*]
Division of Land Protection and Revitalization

From: Debra A. Harris, Policy and Planning Specialist **DAH**
Office of Regulatory Affairs

Date: August 28, 2020

Subject: Virginia Solid Waste Management Regulations, 9VAC20-81
HB1352 (2020) Amendment – Final Exempt

The attached regulatory amendment is presented to the Board for your consideration for adoption. The final exempt action amends the Virginia Solid Waste Management Regulations, 9VAC20-81. This amendment is necessary as the 2020 General Assembly amended the Virginia Waste Management Act (Act) under Chapter 14 of Title 10.1 of the Code of Virginia. Chapter 621 of the 2020 Acts of Assembly prohibits the disposal of solid waste in an unpermitted facility and provides that the presence of unpermitted solid waste on a person's property is prima facie evidence that the person allowed solid waste to be disposed of on his property without a permit. Based on this action by the General Assembly, this regulatory action amends the list of prohibitions in Section 40 of the Virginia Solid Waste Management Regulations to comport with the Chapter 621 of the 2020 Acts of Assembly (see attached).

Section 2.2-4006 A 4 (a) of the Code of Virginia allows the Board to adopt this regulatory amendment to 9VAC20-81 as the changes are necessary to conform to changes in Virginia statutory law. This regulatory amendment will be effective 30 days after publication in the *Virginia Register*. A draft Virginia Regulatory Town Hall document and Chapter 621 of the 2020 Acts of Assembly are attached for your information.

At your Board meeting on September 21, 2020, the DEQ will request that the Board adopt the regulatory amendment to 9VAC20-81, authorize its publication, and affirm that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

cc: Cindy Berndt, DEQ - Office of Regulatory Affairs

ATTACHMENTS:

- HB1352 (2020) Amendment - Regulatory Text
- HB1352 (2020) Amendment - Draft Virginia Regulatory Town Hall Document (TH-09)
- HB1352 (2020) Amendment – Chapter 621

VIRGINIA WASTE MANAGEMENT BOARD

HB1352 Amendment

9VAC20-81-40. Prohibitions.

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director.

B. No person shall allow waste to be disposed of or otherwise managed on his property except in accordance with this chapter.

C. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.

D. Any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.

E. Management of lead acid batteries.

1. No person shall place a used lead acid battery in mixed municipal solid waste or discard or otherwise dispose of a lead acid battery except by delivery to a battery retailer or wholesaler, or to a secondary lead smelter, or to a collection or reclamation facility authorized under the laws of the Commonwealth or by the United States Environmental Protection Agency.

2. No battery retailer shall dispose of a used lead acid battery except by delivery to:

a. The agent of a battery wholesaler or a secondary lead smelter;

b. A battery manufacturer for delivery to a secondary smelter; or

c. A collection or reclamation facility authorized under the laws of the Commonwealth or by the United States Environmental Protection Agency.

3. No person selling new lead acid batteries at wholesale shall refuse to accept from customers at the point of transfer, used lead acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers.

4. The provisions of subdivisions 1 through 3 of this subsection shall not be construed to prohibit any person who does not sell new lead acid batteries from collecting and reclaiming such batteries.

F. Any locality may, by ordinance, prohibit the disposal of cathode ray tubes (CRTs) in any waste to energy or solid waste disposal facility within its jurisdiction if it has implemented a CRT recycling program that meets the requirements of § 10.1-1425.26 of the Code of Virginia.

G. No person shall dispose of or manage solid waste in an unpermitted facility, including by disposing, causing to be disposed, or arranging for the disposal of solid waste upon a property for which the Director has not issued a permit and that is not otherwise exempt from permitting requirements.



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC20-81
VAC Chapter title(s)	Virginia Solid Waste Management Regulations
Action title	HB 1352 (2020) Amendment
Final agency action date	September 21, 2020
Date this document prepared	August 20, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The 2020 General Assembly amended the Virginia Waste Management Act (Act) under Chapter 14 of Title 10.1 of the Code of Virginia. Chapter 621 of the 2020 Acts of Assembly prohibits the disposal of solid waste in an unpermitted facility and provides that the presence of unpermitted solid waste on a person's property is prima facie evidence that the person allowed solid waste to be disposed of on his property without a permit. Based on this action by the General Assembly, this regulatory action will amend Section 40 of the Virginia Solid Waste Management Regulations to comport with the Chapter 621 of the 2020 Acts of Assembly.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or

board decision). “Mandate” is defined as “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The regulatory amendments were mandated through action of the 2020 General Assembly under Chapter 621 of the 2020 Acts of Assembly (HB 1352).

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

VSWMR – Virginia Solid Waste Management Regulations

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Virginia Waste Management Board adopted this regulatory action on September 21, 2020 as a final regulation and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

Legal Basis

Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

The statutory authority for these regulations is under § 10.1-1402 of the Code of Virginia and the prohibition is mandated by § 10.1-1408.1.G of the Code of Virginia.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

The purpose of this regulatory action is to amend the VSWMR to incorporate changes mandated by the 2020 General Assembly under Chapter 621 of the 2020 Acts of Assembly.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

This regulatory action will amend Section 40 of the Virginia Solid Waste Management Regulations to comport with the Chapter 621 of the 2020 Acts of Assembly by adding the prohibition under § 10.1-1408.1.G of the Code of Virginia. The prohibition added by this regulatory action will prohibit any person

from disposing of or managing solid waste in an unpermitted facility. This prohibition includes unpermitted facilities which may not meet the criteria of an open dump which are prohibited under Section 45 of the VSWMR.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory changes.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC20-81-40		Prohibitions	Added a prohibition under Subsection G. <u>No person shall dispose of or manage solid waste in an unpermitted facility, including by disposing, causing to be disposed, or arranging for the disposal of solid waste upon a property for which the Director has not issued a permit and that is not otherwise exempt from permitting requirements.</u> This change is necessary based on Chapter 621 of the 2020 Acts of Assembly (HB1352).

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternative regulatory methods for incorporating the mandated amendments adopted by the General Assembly.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 621

An Act to amend and reenact §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia, relating to responsible solid waste disposal.

[H 1352]

Approved April 2, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1402. Powers and duties of the Board.

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.
2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.
3. Provide technical assistance and advice concerning all aspects of waste management.
4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.
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 data necessary to conduct the state waste 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 records, manifests and reporting systems required pursuant to federal statute or regulation.
8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste that it deems to be hazardous.
9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.
10. Apply for federal funds and transmit such funds to appropriate persons.
11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.
12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, 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 management of hazardous waste as defined in this chapter, including 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 subdivision, 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 subdivision shall be used exclusively to satisfy the responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste management facilities.
- 15a. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to implement this subdivision. All fees received by the

Board pursuant to this subdivision shall be used exclusively for the hazardous waste management program set forth herein.

15b. Collect fees from large quantity generators of hazardous wastes.

16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste: (i) permit application fees sufficient to defray only costs related to the issuance, reissuance, amendment or modification of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to issue, reissue, amend or modify such permits and (ii) annual fees established pursuant to § 10.1-1402.1:1. All such fees received by the Board shall be used exclusively for the solid waste management program set forth herein. The Board shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and 10.1-1402.3.

17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in accordance with this chapter.

18. 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 threat of release of waste.

19. Take actions to contain or clean up ~~sites~~ *any site* or to issue orders to require cleanup of ~~sites~~ *any site* where (i) solid or hazardous waste, or ~~other substances~~ *another substance* within the jurisdiction of the Board, ~~have~~ *has* been improperly managed or (ii) ~~an open dump has been created~~, and to institute legal proceedings to recover the costs of the containment or clean-up activities from ~~the any responsible parties~~ *any party*. *Such responsible party shall include any party, including the owner or operator or any other person, who caused the site to become an open dump or who caused or arranged for the improper management of such solid or hazardous waste or other substance within the jurisdiction of the Board.*

20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the purpose of responding to solid or hazardous waste incidents and clean-up of sites that have been improperly managed, including sites eligible for a joint federal and state remedial project under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and for investigations to identify parties responsible for such mismanagement.

21. 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.

22. Notwithstanding any other provision of law to the contrary, regulate the management of mixed radioactive waste.

23. [Expired.]

§ 10.1-1408.1. Permit required; open dumps prohibited.

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director.

B. No application for (i) a new solid waste management facility permit or (ii) application for a permit amendment or variance allowing a category 2 landfill, as defined in this section, to expand or increase in capacity shall be complete unless it contains the following:

1. Certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances. The governing body shall inform the applicant and the Department of the facility's compliance or noncompliance not more than 120 days from receipt of a request from the applicant. No such certification shall be required for the application for the renewal of a permit or transfer of a permit as authorized by regulations of the Board;

2. A disclosure statement, except that the Director, upon request and in his sole discretion, and when in his judgment other information is sufficient and available, may waive the requirement for a disclosure statement for a captive industrial landfill when such a statement would not serve the purposes of this chapter;

3. If the applicant proposes to locate the facility on property not governed by any county, city or town zoning ordinance, certification from the governing body that it has held a public hearing, in accordance with the applicable provisions of § 15.2-2204, to receive public comment on the proposed facility. Such certification shall be provided to the applicant and the Department within 120 days from receipt of a request from the applicant;

4. If the applicant proposes to operate a new sanitary landfill or transfer station, a statement, including a description of the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include publication of a public notice once a week for two consecutive weeks in a

newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time and location of the public meeting the applicant will hold and the name, address and telephone number of a person employed by the applicant, who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The first publication of the public notice shall be at least fourteen days prior to the public meeting date.

The provisions of this subdivision shall not apply to applicants for a permit to operate a new captive industrial landfill or a new construction-demolition-debris landfill;

5. If the applicant is a local government or public authority that proposes to operate a new municipal sanitary landfill or transfer station, a statement, including a description of the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include the formation of a citizens' advisory group to assist the locality or public authority with the selection of a proposed site for the sanitary landfill or transfer station, publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located, and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time and location of the public meeting the applicant will hold and the name, address and telephone number of a person employed by the applicant, who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The first publication of the public notice shall be at least fourteen days prior to the public meeting date. For local governments that have zoning ordinances, such public comment steps as required under §§ 15.2-2204 and 15.2-2285 shall satisfy the public comment requirements for public hearings and public notice as required under this section. Any applicant which is a local government or public authority that proposes to operate a new transfer station on land where a municipal sanitary landfill is already located shall be exempt from the public comment requirements for public hearing and public notice otherwise required under this section;

6. If the application is for a new municipal solid waste landfill or for an expansion of an existing municipal solid waste landfill, a statement, signed by the applicant, guaranteeing that sufficient disposal capacity will be available in the facility to enable localities within the Commonwealth to comply with solid waste management plans developed pursuant to § 10.1-1411, and certifying that such localities will be allowed to contract for and to reserve disposal capacity in the facility. This provision shall not apply to permit applications from one or more political subdivisions for new landfills or expanded landfills that will only accept municipal solid waste generated within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement;

7. If the application is for a new municipal solid waste landfill or for an expansion of an existing municipal solid waste landfill, certification from the governing body of the locality in which the facility would be located that a host agreement has been reached between the applicant and the governing body unless the governing body or a public service authority of which the governing body is a member would be the owner and operator of the landfill. The agreement shall, at a minimum, have provisions covering (i) the amount of financial compensation the applicant will provide the host locality, (ii) daily travel routes and traffic volumes, (iii) the daily disposal limit, and (iv) the anticipated service area of the facility. The host agreement shall contain a provision that the applicant will pay the full cost of at least one full-time employee of the locality whose responsibility it will be to monitor and inspect waste transportation and disposal practices in the locality. The host agreement shall also provide that the applicant shall, when requested by the host locality, split air and water samples so that the host locality may independently test the sample, with all associated costs paid for by the applicant. All such sampling results shall be provided to the Department. For purposes of this subdivision, "host agreement" means any lease, contract, agreement or land use permit entered into or issued by the locality in which the landfill is situated which includes terms or conditions governing the operation of the landfill;

8. If the application is for a locality-owned and locality-operated new municipal solid waste landfill or for an expansion of an existing such municipal solid waste landfill, information on the anticipated (i) daily travel routes and traffic volumes, (ii) daily disposal limit, and (iii) service area of the facility; and

9. If the application is for a new solid waste management facility permit or for modification of a permit to allow an existing solid waste management facility to expand or increase its capacity, the application shall include certification from the governing body for the locality in which the facility is or will be located that: (i) the proposed new facility or the expansion or increase in capacity of the existing facility is consistent with the applicable local or regional solid waste management plan developed and approved pursuant to § 10.1-1411; or (ii) the local government or solid waste management planning unit has initiated the process to revise the solid waste management plan to include the new or expanded facility. Inclusion of such certification shall be sufficient to allow processing of the permit application, up to but not including publication of the draft permit or permit amendment for public comment, but shall not bind the Director in making the determination required by subdivision D 1.

C. Notwithstanding any other provision of law:

1. Every holder of a permit issued under this article who has not earlier filed a disclosure statement shall, prior to July 1, 1991, file a disclosure statement with the Director.

2. Every applicant for a permit under this article shall file a disclosure statement with the Director, together with the permit application or prior to September 1, 1990, whichever comes later. No permit application shall be deemed incomplete for lack of a disclosure statement prior to September 1, 1990.

3. Every applicant shall update its disclosure statement quarterly to indicate any change of condition that renders any portion of the disclosure statement materially incomplete or inaccurate.

4. The Director, upon request and in his sole discretion, and when in his judgment other information is sufficient and available, may waive the requirements of this subsection for a captive industrial waste landfill when such requirements would not serve the purposes of this chapter.

D. 1. Except as provided in subdivision D 2, no permit for a new solid waste management facility nor any amendment to a permit allowing facility expansion or an increase in capacity shall be issued until the Director has determined, after an investigation and analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs and an evaluation of comments by the host local government, other local governments and interested persons, that (i) the proposed facility, expansion, or increase protects present and future human health and safety and the environment; (ii) there is a need for the additional capacity; (iii) sufficient infrastructure will exist to safely handle the waste flow; (iv) the increase is consistent with locality-imposed or state-imposed daily disposal limits; (v) the public interest will be served by the proposed facility's operation or the expansion or increase in capacity of a facility; and (vi) the proposed solid waste management facility, facility expansion, or additional capacity is consistent with regional and local solid waste management plans developed pursuant to § 10.1-1411. The Department shall hold a public hearing within the said county, city or town prior to the issuance of any such permit for the management of nonhazardous solid waste. Subdivision D 2, in lieu of this subdivision, shall apply to nonhazardous industrial solid waste management facilities owned or operated by the generator of the waste managed at the facility, and that accept only waste generated by the facility owner or operator. The Board shall have the authority to promulgate regulations to implement this subdivision.

2. No new permit for a nonhazardous industrial solid waste management facility that is owned or operated by the generator of the waste managed at the facility, and that accepts only waste generated by the facility owner or operator, shall be issued until the Director has determined, after investigation and evaluation of comments by the local government, that the proposed facility poses no substantial present or potential danger to human health or the environment. The Department shall hold a public hearing within the county, city or town where the facility is to be located prior to the issuance of any such permit for the management of nonhazardous industrial solid waste.

E. The permit shall contain such conditions or requirements as are necessary to comply with the requirements of this Code and the regulations of the Board and to protect present and future human health and the environment. To the extent allowed by federal law, any person holding a permit that is intending to upgrade the permitted solid waste management facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, protect waters of the state, including both surface and ground water, and protect air quality shall not be required to obtain a modified or amended permit.

The Director may include in any permit such recordkeeping, testing and reporting requirements as are necessary to ensure that the local governing body of the county, city or town where the waste management facility is located is kept timely informed regarding the general nature and quantity of waste being disposed of at the facility. Such recordkeeping, testing and reporting requirements shall require disclosure of proprietary information only as is necessary to carry out the purposes of this chapter. At least once every ten years, the Director shall review and issue written findings on the environmental compliance history of each permittee, material changes, if any, in key personnel, and technical limitations, standards, or regulations on which the original permit was based. The time period for review of each category of permits shall be established by Board regulation. If, upon such review, the Director finds that repeated material or substantial violations of the permittee or material changes in the permittee's key personnel would make continued operation of the facility not in the best interests of human health or the environment, the Director shall amend or revoke the permit, in accordance

herewith. Whenever such review is undertaken, the Director may amend the permit to include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original permit was based have been changed by statute or amended by regulation or when any of the conditions in subsection B of § 10.1-1409 exist. The Director may deny, revoke, or suspend any permit for any of the grounds listed under subsection A of § 10.1-1409.

F. There shall exist no right to operate a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste or hazardous waste within the Commonwealth. Permits for solid waste management facilities shall not be transferable except as authorized in regulations promulgated by the Board. The issuance of a permit shall not convey or establish any property rights or any exclusive privilege, nor shall it authorize any injury to private property or any invasion of personal rights or any infringement of federal, state, or local law or regulation.

G. No person shall dispose of solid waste in *an open dump* ~~dump~~ *or dispose of or manage solid waste in an unpermitted facility, including by disposing, causing to be disposed, or arranging for the disposal of solid waste upon a property for which the Director has not issued a permit and that is not otherwise exempt from permitting requirements.*

H. No person shall own, operate or allow to be operated on his property an open dump.

I. No person shall allow waste to be disposed of on his property without a permit. Any person who removes trees, brush, or other vegetation from land used for agricultural or forestal purposes shall not be required to obtain a permit if such material is deposited or placed on the same or other property of the same landowner from which such materials were cleared. The Board shall by regulation provide for other reasonable exemptions from permitting requirements for the disposal of trees, brush and other vegetation when such materials are removed for agricultural or forestal purposes.

When promulgating any regulation pursuant to this section, the Board shall consider the character of the land affected, the density of population, and the volume of waste to be disposed, as well as other relevant factors.

J. No permit shall be required pursuant to this section for recycling or for temporary storage incidental to recycling. As used in this subsection, "recycling" means any process whereby material which would otherwise be solid waste is used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as an effective substitute for a commercial product.

K. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of yard waste composting facilities. To accomplish this, the Board is authorized to exempt such facilities from regulations governing the treatment of waste and to establish an expedited approval process. Agricultural operations receiving only yard waste for composting shall be exempt from permitting requirements provided that (i) the composting area is located not less than 300 feet from a property boundary, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated; (iii) the total time for the composting process and storage of material that is being composted or has been composted shall not exceed eighteen months prior to its field application or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural operation notifies the Director in writing of his intent to operate a yard waste composting facility and the amount of land available for the receipt of yard waste. In addition to the requirements set forth in clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation that receives more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or the operator in any twelve-month period shall be exempt from permitting requirements provided (i) the owner and operator submit to the Director an annual report describing the volume and types of yard waste received by such operation for composting and (ii) the operator shall certify that the yard waste composting facility complies with local ordinances. The Director shall establish a procedure for the filing of the notices, annual reports and certificates required by this subsection and shall prescribe the forms for the annual reports and certificates. Nothing contained in this article shall prohibit the sale of composted yard waste for horticultural or agricultural use, provided that any composted yard waste sold as a commercial fertilizer with claims of specific nutrient values, promoting plant growth, or of conditioning soil shall be sold in accordance with Chapter 36 (§ 3.2-3600 et seq.) of Title 3.2. As used in this subsection, "agricultural operation" shall have the same meaning ascribed to it in § 3.2-300.

The operation of a composting facility as provided in this subsection shall not relieve the owner or operator of such a facility from liability for any violation of this chapter.

L. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of facilities for the decomposition of vegetative waste. To accomplish this, the Board shall approve an expedited approval process. As used in this subsection, the decomposition of vegetative waste means a natural aerobic or anaerobic process, active or passive, which results in the decay and chemical breakdown of the vegetative waste. Nothing in this subsection shall be construed to prohibit a city or county from exercising its existing authority to regulate such facilities by requiring, among other things, permits and proof of financial security.

M. In receiving and processing applications for permits required by this section, the Director shall assign top priority to applications which (i) agree to accept nonhazardous recycling residues and (ii) pledge to charge tipping fees for disposal of nonhazardous recycling residues which do not exceed those charged for nonhazardous municipal solid waste. Applications meeting these requirements shall be acted upon no later than six months after they are deemed complete.

N. Every solid waste management facility shall be operated in compliance with the regulations promulgated by the Board pursuant to this chapter. To the extent consistent with federal law, those facilities which were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity, provided that the facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance, and further provided that on or before October 9, 1993, the owner or operator of the solid waste management facility submits to the Director:

1. An acknowledgement that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including postclosure care, corrective action and financial responsibility requirements;

2. A statement signed by a registered professional engineer that he has reviewed the regulations established by the Department for solid waste management facilities, including the open dump criteria contained therein; that he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations; and that, on the basis of his inspection and review, he has concluded that: (i) the facility is not an open dump, (ii) the facility does not pose a substantial present or potential hazard to human health and the environment, and (iii) the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water or ground water in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and

3. A statement signed by the owner or operator (i) that the facility complies with applicable financial assurance regulations and (ii) estimating when the facility will reach its vertical design capacity.

The facility may not be enlarged prematurely to avoid compliance with state or federal regulations when such enlargement is not consistent with past operating practices, the permit or modified operating practices to ensure good management.

Facilities which are authorized by this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall be as follows:

Category 1: Nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility;

Category 2: Nonhazardous industrial waste facilities other than those that are located on property owned or controlled by the generator of the waste disposed of in the facility, provided that the facility accepts only industrial waste streams which the facility has lawfully accepted prior to July 1, 1995, or other nonhazardous industrial waste as approved by the Department on a case-by-case basis; and

Category 3: Facilities that accept only construction-demolition-debris waste as defined in the Board's regulations.

The Director may prohibit or restrict the disposal of waste in facilities described in this subsection which contains hazardous constituents as defined in applicable regulations which, in the opinion of the Director, would pose a substantial risk to health or the environment. Facilities described in category 3 may expand laterally beyond the waste disposal boundaries existing on October 9, 1993, provided that there is first installed, in such expanded areas, liners and leachate control systems meeting the applicable performance requirements of the Board's regulations, or a demonstration is made to the satisfaction of the Director that such facilities satisfy the applicable variance criteria in the Board's regulations.

Owners or operators of facilities which are authorized under this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities under the Board's current regulations and local ordinances. Prior to the expansion of any facility described in category 2 or 3, the owner or operator shall provide the Director with written notice of the proposed expansion at least sixty days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment. The Director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with regulations promulgated by the Board.

Nothing in this subsection shall alter any requirement for groundwater monitoring, financial responsibility, operator certification, closure, postclosure care, operation, maintenance or corrective action imposed under state or federal law or regulation, or impair the powers of the Director pursuant to § 10.1-1409.

O. Portions of a permitted solid waste management facility used solely for the storage of household

hazardous waste may store household hazardous waste for a period not to exceed one year, provided that such wastes are properly contained and are segregated to prevent mixing of incompatible wastes.

P. Any permit for a new municipal solid waste landfill, and any permit amendment authorizing expansion of an existing municipal solid waste landfill, shall incorporate conditions to require that capacity in the landfill will be available to localities within the Commonwealth that choose to contract for and reserve such capacity for disposal of such localities' solid waste in accordance with solid waste management plans developed by such localities pursuant to § 10.1-1411. This provision shall not apply to permit applications from one or more political subdivisions for new landfills or expanded landfills that will only accept municipal solid waste generated within the political subdivision or subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

Q. No application for coverage under a permit-by-rule or for modification of coverage under a permit-by-rule shall be complete unless it contains certification from the governing body of the locality in which the facility is to be located that the facility is consistent with the solid waste management plan developed and approved in accordance with § 10.1-1411.

Tab D



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

MEMORANDUM

To: Members of the Virginia Waste Management Board

Through: Jeff Steers, Director, Division of Land Protection and Revitalization [*per email*]

Through: Chris Evans, Director, Office of Remediation Programs [*per email*]

Through: Meade Anderson, Voluntary Remediation Program Manager [*per email*]

From: Michelle Callahan, Land Policy and Regulatory Coordinator

Subject: Proposed Amendments to the Voluntary Remediation Regulations- 9VAC20-160-10 et seq.

Date: August 11, 2020

Introduction

The staff will bring to the Virginia Waste Management Board (Board) at the September 21, 2020 meeting, a request to approve proposed amendments to the Voluntary Remediation Regulations (9VAC20-160 et seq.) for public comment. This regulation facilitates voluntary cleanup of contaminated sites where remediation has not been clearly mandated by the United States Environmental Protection Agency, the department, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable authority unless jurisdiction of those statutes has been waived. This regulation was originally adopted in 1997 to provide oversight of the voluntary remediation of sites and to establish guidelines for the issuance of certifications of satisfactory completion of remediation once the cleanup is complete. This regulation applies only where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived. Entities that qualify may voluntarily choose to utilize this regulation to conduct remediation of contaminated sites. This regulation provides

enrolled sites with agency oversight of the cleanup and assurance that the remediated site will not later become the subject of a DEQ or EPA enforcement action unless new issues are discovered.

Statutory Authority

The Virginia Code in § 10.1- 1232 directs the Virginia Waste Management Board (Board) to promulgate regulations that facilitate voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. Section 10.1-1402(11) of the Virginia Code authorizes the Board to promulgate and enforce regulations necessary to carry out its powers and duties, the intent of the Virginia Waste Management Act and the federal acts.

The Voluntary Remediation Regulations are a state regulation and there is no equivalent corresponding federal regulation.

Background

The Voluntary Remediation Program (VRP) utilizes the Voluntary Remediation Regulations to work with property owners to address contamination and facilitate the redevelopment and revitalization of sites. Historically federal funding has provided the bulk of the fiscal support for the VRP however funding has declined significantly since 2002. Registration and annual fees are used to defray a portion of the department's costs of the program. As of December 30, 2019, there are 143 sites enrolled in the VRP. All of these sites have paid a registration fee to participate in the VRP. Seventy-two of the enrolled sites were enrolled prior to July 1, 2014 and were assessed a single registration fee of 1% of the remediation costs, not to exceed \$5,000. Sites enrolled in the VRP prior to July 1, 2014 are not assessed annual fees for their continued participation in the program. Some of these 72 sites have been enrolled in the VRP for over 23 years and agency staff are continuing to expend time to oversee the activities of the site. Agency personnel costs for some individual sites are estimated to have cost the agency as much as \$150,000. Of the 71 sites enrolled on or after July 1, 2014, 63 have not completed the VRP and remain enrolled and are assessed an annual fee for their continued participation in the VRP.

The VRP is partially funded by federal funding which has continued to decrease. The VRP costs approximately \$1.4 million annually. Sites participating in the program have been assessed different fees based on their enrollment date.

Proposed Amendments

This amendment proposes changes to the fee structure utilized to support the VRP. All sites continuing to participate in the program will be transitioned to an annual phase 3 registration fee. New sites enrolling in the program will be assessed phase 1 and phase 2 registration fees, and then phase 3 annual registration fees. An annual adjustment of fees for inflation is also being included in the regulation. Phase 1 and Phase 3 registration fees are also proposed to increase.

Additional revisions are proposed to definitions, clarifications of public notice requirements, and clarifications to the language of the eligibility and waiver requirements to encourage additional sites' participation in the program. Amending this regulation will allow VRP oversight of property owners to continue remediation of sites which ultimately protects the health, safety, and welfare of citizens as well as resolving environmental liability issues that facilitates redevelopment of sites and economic development.

Notice of Intended Regulatory Action and Regulatory Advisory Panel

A Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register of Regulations on October 28, 2019.

Proposed amendments to the Voluntary Remediation Regulations were developed through a public participation process that involved a 7-member Regulatory Advisory Panel (RAP) of stakeholders which met on February 21, 2020. Staff worked with the members of the RAP to develop the proposed amendments. A list of the members of the RAP is included as an attachment to this memo.

Staff Recommendation

After making a presentation on the proposed amendments and answering any questions the Board may have, staff will ask the Board to approve the proposed amendments to the Voluntary Remediation Regulations (9VAC20-160-10 et seq.) and proceed to public comment.

Attachments

- Proposed Regulation Agency Background Document (Form TH-02)
- Project 3011: Proposed Amendments to the Voluntary Remediation Regulations (9VAC20-160 et seq.)
- Voluntary Remediation Regulations Regulatory Advisory Panel Members

Contact Information:

Meade Anderson

(804) 698-4179

j.meade.anderson@deq.virginia.gov

Michelle Callahan

(804) 698-4014

michelle.callahan

**VOLUNTEERS FOR THE VOLUNTARY REMEDIATION PROGRAM REGULATORY
ADVISORY PANEL (RAP)**

The following individuals are volunteering for the Voluntary Remediation Program RAP:

Environmental Consultants

Andrew E. Kassoff

EEE Consulting

James D. Succop

ECS MID-ATLANTIC, LLC

Attorneys

James A. Thornhill

Wire Gill LLP

Channing J. Martin

Williams Mullen

Charles L. Williams

Gentry Locke

Local Governments

Wayne Leftwich

City of Roanoke, VA

Non Profit

Chris Yenson

Commonwealth Catholic - Charities Housing Corporation



townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	Waste Management Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC20-160
VAC Chapter title(s)	Voluntary Remediation Regulations
Action title	Amendment to address eligibility and fees
Date this document prepared	August 11, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulation facilitates voluntary cleanup of contaminated sites where remediation has not been clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, the State Water Control Law, or other applicable authority unless jurisdiction of those statutes has been waived.

The Voluntary Remediation Program (VRP) works with property owners to address contamination and facilitate the redevelopment of sites. Historically federal funding has provided the bulk of the fiscal support for the VRP, however funding has declined significantly since 2002. Registration and annual fees are used to defray a portion of the department's costs of the program. As of December 30, 2019, there are 143 sites enrolled in the VRP. All of these sites have paid a registration fee to participate in the VRP. Seventy-two of the enrolled sites were enrolled prior to July 1, 2014 and were assessed a single registration fee of 1% of the remediation costs, not to exceed \$5,000. Sites enrolled in the VRP prior to July 1, 2014 are not assessed annual fees for their continued participation in the program. Some of these 72 sites have been enrolled in the VRP for over 23 years and agency staff are continuing to expend time

to oversee the activities of the site. Agency personnel costs for some individual sites are estimated to have cost the agency as much as \$150,000. Of the 71 sites enrolled on or after July 1, 2014, 63 have not completed the VRP and remain enrolled and are assessed an annual fee for their continued participation in the VRP.

This proposed regulatory amendment requires all sites continuing to participate in the VRP pay annual fees. In order to support the continuance of the VRP, registration fees are proposed to increase and include an annual adjustment for inflation.

Additional proposed amendments include revisions to the definitions, clarification of public notice requirements, and clarification to the language of the eligibility and waiver requirements to encourage additional sites participation in the program.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

- Board- Virginia Waste Management Board
- CERCLA- Comprehensive Environmental Response, Compensation and Liability Act
- RCRA- Resource Conservation and Recovery Act
- VRP- Voluntary Remediation Program

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

This amendment is an agency initiated action due to sustained decreases in federal funding. The registration fee adjustments are necessary to ensure that funding is available to sustain and support the VRP's mission of facilitating the voluntary remediation of contaminated sites. Participation in the VRP is voluntary and is not mandated. Originally adopted in 1997, this regulation provides oversight of voluntary remediation of contaminated sites and established guidelines for the issuance of certifications of satisfactory completion of remediation once the cleanup is complete.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Virginia Code in § 10.1- 1232 directs the Virginia Waste Management Board (Board) to promulgate regulations that facilitate voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, the State Water Control Law, or other applicable authority. Section 10.1-1402(11) of the Virginia Code authorizes the Board to promulgate and enforce regulations necessary to carry out its powers and duties, the intent of the Virginia Waste Management Act and the federal acts.

The Voluntary Remediation Regulations are a state regulation and there is no equivalent corresponding federal regulation. This regulation applies only where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived. Entities that qualify may choose to utilize this regulation to conduct remediation of contaminated sites. This regulation provides enrolled sites with agency oversight of the cleanup and assurance that the remediated site will not later become the subject of a DEQ enforcement action unless new issues are discovered.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The goal of the VRP is to facilitate the remediation of sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, the State Water Control Law, or other applicable authority. The remediation of sites protects the health, safety, and welfare of citizens as well as resolving environmental liability issues while facilitating redevelopment of sites and economic development. Currently, sites enrolled prior to July 1, 2014 are not assessed annual fees for their continued participation in the VRP. Some of these sites have been enrolled in the VRP for over 23 years and agency staff are continuing to expend time to oversee the activities of the site. Agency personnel costs for some individual sites are estimated to have cost the agency as much as \$150,000.

The purpose of this amendment is to require all sites enrolled in the program pay an annual registration fee to defray a portion of the department's costs of the program. VRP registration fees are proposed to increase and be annually adjusted for inflation.

Additional proposed amendments include revisions to the definitions, clarifications of public notice requirements, and clarification to the language of the eligibility and waiver requirements to encourage additional sites participation in the program.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the United States Environmental Protection Agency, the department, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the

Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived. The agency proposes requiring all sites continuing to participate in the program to pay annual fees. The agency proposes raising the registration fee amount and adjusting the fees annually for inflation.

A more detailed discussion is provided in the “Detail of Changes” section below.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

This regulation is a voluntary program and has no negative economic impact on small businesses; and poses no disadvantage to private citizens, the regulated community or to the Commonwealth. The VRP provides the opportunity for reasonable cleanup goals and protects human health and the environment. These cleanups facilitate the sale and reuse of industrial and commercial properties, provide economic benefits for the buyer and seller, and reduce green space development. Communities in the Commonwealth benefit when these projects are completed. The cleanup of a contaminated site affects surrounding properties by increasing property values, tax revenues, employment opportunities and community pride. The citizens, businesses, and local governments of the Commonwealth all derive benefits from the VRP.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The Voluntary Remediation Regulations are a state regulation and there is no equivalent corresponding federal regulation. This regulation applies only where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived. Entities that qualify may choose to utilize this regulation to conduct remediation of contaminated sites.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or

regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agency are particularly affected by the regulation or the proposed amendments.

Localities Particularly Affected

No localities are particularly affected by the regulation or the proposed amendments.

Other Entities Particularly Affected

No other entities are particularly affected by the regulation or the proposed amendments.

For purposes of "Locality Particularly Affected" under the Board's statutes

The regulation applies throughout the Commonwealth and no other state agency, locality, or other entity are particularly affected by the regulation or the proposed amendments.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>The VRP costs approximately \$1.4 million annually. Originally federal funding was utilized to support the VRP. Federal funding of the VRP has been steadily declining. In 2019, \$486,000 in federal funding was received for the VRP and Brownfield program. VRP fees are being revised to provide a sustainable funding source for the VRP.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>The VRP is a voluntary program and localities may choose to enroll in the program.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Localities would continue to be able to participate in the VRP and receive a certificate.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>The VRP is a voluntary program and participation in the program is not required. Historically program participants have been real estate investors, real estate developers, corporations seeking to divest property and resolve liability and private property owners, All of these entities would be subject to the annual phase 3 registration fees if they continue to participate in the program. New sites entering the program would be subject to one time phase 1 and phase 2 fees in addition to the phase 3 annual fees.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Currently there are 143 sites participating in the VRP. The agency anticipates that approximately 20 sites that entered the VRP prior to 2014 will terminate participation in the program due to the new phase 3 fees. Staff estimate that of the 143 of sites currently participating in the program 100 are estimated to be small businesses employing 500 or less employees. Participation in the VRP is voluntary and not required.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>The fees associated with the VRP are being revised. Seventy two sites that were previously not subject to phase 3 annual registration fees will now be required to pay these fees to continue to participate in the program. The phase 3 annual registration fee in this amendment is \$10,500.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Federal funding for the VRP has steadily declined. The changes to the registration fees are being proposed to provide a sustainable source of revenue to operate the VRP that is paid by all participants. Sites are currently assessed registration fees based upon when the site enrolled in the VRP. Currently there are seventy two sites that entered the voluntary program prior to 2014 that have not been required to pay annual phase 3 registration fees. The maximum fees these sites have paid to participate in the program has been \$5,000. Some sites have been enrolled in the VRP for greater than 23 years, and DEQ staff have continued to oversee these remediation projects.</p>

Since participation in the VRP is voluntary, there are no fiscal impacts on parties unless they choose to participate in the program. Sites choose to participate in the VRP to obtain a certification of satisfactory completion of remediation which provides them from immunity from enforcement under state law for past releases of hazardous substances and petroleum.

Individuals, businesses or other entities likely effected by the proposed amendments are only sites “where remediation has not been clearly mandated by the United States EPA, the Department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, The Resource Conservation and Recovery Act, the Virginia Waste Management Act, the State Water Control Law, or applicable statutory or common law or where jurisdiction of those statutes has been waived” Since this is a voluntary program, no parties are required to participate in the program, and the department is unable to determine how many parties would be affected by the proposed amendments.

Individuals, businesses and other entities may choose to apply for eligibility in the program if interested in performing voluntary cleanup at a site. The department is not aware of any difference in the impact of the proposed amendments on small or large businesses, nor is the department aware of any negative impact the proposed amendments will have on small businesses.

As of May 1, 2019, there are 143 sites enrolled in the VRP. It is estimated that 20 new sites will enter the program annually. Thus the proposed amendments will affect the 143 sites currently enrolled and those sites that are expected to enter the program.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no known alternatives that would achieve the stated purpose of the program in a less burdensome and intrusive manner. Virginia Code in § 10.1- 1232 directs the Board to promulgate regulations this regulation. The Voluntary Remediation Program is for voluntary cleanup of contaminated sites where remediation is not clearly mandated by the United States Environmental Protection Agency, the department, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived by specific laws.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This is a voluntary program. There are no known alternatives that would achieve the stated purpose of the program in a less burdensome and intrusive manner.

**Periodic Review and
Small Business Impact Review Report of Findings**

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The current regulation continues to be needed. This regulation facilitates voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. This voluntary program encourages remediation of contaminated sites in the Commonwealth.

No comments were received during the public comment period following the publication of the NOIRA for this regulatory action concerning the content of the regulation.

The subject matter of the regulation is complex in nature and the regulation details the requirements of the program. The Voluntary Remediation Regulations are a voluntary state regulation and there is no corresponding federal regulation. Participants enter the program voluntarily to clean up contaminated sites where remediation is not clearly mandated. This regulation was last amended in 2019. Prior to that amendment, the regulation was amended in 2014 in response to changes in state law. This voluntary program encourages remediation of sites in the Commonwealth. Entities may choose to participate in this program and small businesses are not adversely impacted by this regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No comments on the content of the regulation were received during the public comment period following the publication of the NOIRA for this regulatory action. Seven individuals requested to serve on the Regulatory Development Panel for the amendment of this regulation during the comment period. These seven individuals were appointed by the agency director to the Regulatory Development Panel.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

In addition to any other comments, the Waste Management Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Waste Management Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Michelle Callahan at michelle.callahan@deg.virginia.gov, 804-698-4014, fax 804-698-4234, Virginia Department of Environmental Quality, 14th floor, 1111 East main Street, Richmond, Virginia 23219 or P.O. Box 1105, Richmond, Virginia 23218. Comments may also be submitted through the Public Forum feature of the [Virginia Regulatory Town Hall website](http://www.townhall.virginia.gov) (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Table 1: Changes to Existing VAC Chapter(s)

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
10		Definitions	The following terms are being deleted since they are not used in the regulation: "Engineering controls", "Environmental covenant", and "Institutional controls".
10		The term "Authorized agent" is defined.	The definition of "authorized agent" is revised to clarify who is authorized to fulfill the requirements of the program.
10		The term "Covenant" is defined.	The definition of "covenant" is defined to provide clarification of its use throughout the chapter.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
10		The term "Hydraulic gradient" is defined.	The definition of "hydraulic gradient" is being added to the regulation in support of its use in section 70 - work to be performed.
10		The term "Land use controls" is defined.	The definition of "land use controls" is revised to provide clarification of its use throughout the chapter.
10		The term "Risk management" is defined.	The definition of "risk management" is being added to the regulation in support of its use in section 70- Work to be performed.
30(C), (D), and (E)		Eligibility criteria	This section is revised for language consistency throughout the chapter and ease of readability. The subsections are revised to clarify what sites may be eligible to participate in the program. Language has been revised to make it clear that if a waiver is issued its use is conditional upon completing participation in the program and receiving a Certificate. Language has been added to identify the MOU between EPA and DEQ. The MOU addresses sites which may be eligible to participate in the program.
55		Registration fees for applications received prior to January 29, 2014.	This section is being repealed. A new section (§57) has been added that identifies registration fee instructions for applications received prior to July 1, 2014.
	160-57	Transition to new fee structure for participants that paid registration fees for applications received prior to July 1, 2014.	This new section address the transition of participants that enrolled in the voluntary remediation program prior to July 1, 2014 to the new fee structure. Participants that enrolled in the program prior to July 1, 2014 are required to notify the department within 60 days of the effective date of this amendment if they will continue to participate in the program or are terminating participation in the program. Participants that enrolled prior to July 1, 2014 and continue to participate in the program will be required to submit annual phase 3 registration fees.
-60		Registration fees for applications received on or after January 29,2014 and prior to July 1, 2014	This section is being repealed. A new section (§57) has been added that identifies registration fee instructions for applications received prior to July 1, 2014.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
65		Registration fees	This section is being retitled from "Registration fees for applications received on or after July 1, 2014" to "Registration fees".
65 A		Registration fees	Registration fees will be adjusted annually for inflation using the Consumer Price Index.
65 B		Registration fees- Phase 1	Phase 1 registration fees are being increased from \$2,000 to \$3,000.
65 D		Registration fees- Phase 3	Phase 3 registration fees are being increased from \$4,500 to \$10,500. All sites participating in the program on November 1 will be assessed a phase 3 registration fee due by March 1 of the following year. Previously only participating sites that enrolled after July 1, 2014 were assessed this fee.
65 H		Amendments to a site's certificate	References to "declaration of restrictive" covenants has been removed since that term is no longer used in the regulation. The term "covenant" is now used throughout the regulation. Fees for amendments that require technical review will now be 1/2 of the phase 3 registration fee. Since the amendment fee is based on the phase 3 registration fee, the amendment fee will be adjusted annually for inflation.
70		Work to be performed	This section includes revised language that improves readability. Participants may include risk management proposals in the risk assessment. The risk assessment must include an uncertainty analysis that discusses any remaining risk.
90		Remediation levels	Risk management has been added to the risk assessment evaluation and language clarifications.
100		Termination	Amended language in this section removes and revises citations referenced throughout the chapter.
110		Certification of satisfactory completion of remediation	Amended language in this section removes and revises citations referenced throughout the chapter and clarifies terms used in the definition section of the chapter. References to "declaration of restrictive" covenants has been removed since that term is no longer used in the regulation. The term "covenant" is now used throughout the regulation.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
120		Public Notice	This section is revised to include public notice prior to amending a certificate that involves additional remedial work or changes to land use controls. Not all amendments to certificates will require public notice. For example, amendments to the certificate reflecting a name change will not require public notice.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on the institution of the family and family stability is anticipated with this regulatory action.

Project 6078 - NOIRA

**VIRGINIA WASTE MANAGEMENT BOARD
CH160 Amendment Addressing Eligibility and Fees**

**CHAPTER 160
VOLUNTARY REMEDIATION REGULATIONS**

9VAC20-160-10. Definitions.

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

"Adjacent property" means either properties meeting at a shared property boundary or parcels of land that are not widely separated, including at a point or corner, or separated only by one or more relatively narrow linear features. Such linear features may include roadways, railways, and narrow bodies of water.

"Applicant" means a person who has applied to the program but is not a participant.

"Authorized agent" means any person who is authorized ~~in writing~~ by the applicant, site owner or participant to fulfill the requirements of this program.

"Board" means the Virginia Waste Management Board.

"Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including a known or likely human carcinogen or a probable or possible human carcinogen under an U.S. Environmental Protection Agency (EPA) weight-of-evidence classification system.

"Certificate" means a written certification of satisfactory completion of remediation issued by the department pursuant to § 10.1-1232 of the Code of Virginia.

"Completion" means fulfillment of the commitment agreed to by the participant as part of this program.

"Contaminant" means any man-made or man-induced alteration of the chemical, physical, or biological integrity of soils, sediments, air and surface water, or groundwater including such alterations caused by any hazardous substance (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC § 9601(14)), hazardous waste (as defined in 9VAC20-60), solid waste (as defined in 9VAC20-81), petroleum (as defined in Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law), or natural gas.

"Cost of remediation" means all costs incurred by the participant pursuant to activities necessary for completion of voluntary remediation at the site, based on an estimate of the net present value (NPV) of the combined costs of the site investigation, report development, remedial system installation, operation and maintenance, and all other costs associated with participating in the program and addressing the contaminants of concern at the site.

"Covenant" means a servitude that imposes land use controls.

"Department" means the Department of Environmental Quality of the Commonwealth of Virginia or its successor agency.

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

~~"Engineering controls" means physical modification to a site or facility to reduce or eliminate potential for exposure to contaminants. These include stormwater conveyance systems, pump and treat systems, slurry walls, vapor mitigation systems, liner systems, caps, monitoring systems, and leachate collection systems.~~

~~"Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations pursuant to the Uniform Environmental Covenants Act (§ 10.1-1238 et seq. of the Code of Virginia).~~

"Hazard index" or "HI" means the sum of more than one hazard quotient for multiple contaminants or multiple exposure pathways or both. The HI is calculated separately for chronic, subchronic, and shorter duration exposures.

"Hazard quotient" means the ratio of a single contaminant exposure level over a specified time period to a reference dose for that contaminant derived from a similar period.

"Hydraulic gradient" means the change in total hydraulic head, measured at two or more points within an underground layer of water-bearing permeable materials, divided by the distance over which the change occurs."

"Incremental upper-bound lifetime cancer risk" means a conservative estimate of the incremental probability of an individual developing cancer over a lifetime as a result of exposure to the potential carcinogen. Upper-bound lifetime cancer risk is likely to overestimate "true risk."

~~"Institutional controls" means legal or contractual restrictions on property use that remain effective after remediation is completed and are used to reduce or eliminate the potential for exposure to contaminants. The term may include deed, land use, and water use restrictions and environmental covenants.~~

"Land use controls" means legal, contractual or physical restrictions on the use of, or access to, a site property to reduce or eliminate potential for exposure to contaminants or prevent activities that could interfere with the effectiveness of remediation. ~~Land use controls include engineering and institutional controls.~~

"Monitored natural attenuation" means a remediation process that monitors the natural or enhanced attenuation process.

"Natural attenuation" means the processes by which contaminants break down naturally in the environment. Natural attenuation processes include a variety of physical, chemical, or biological processes that, under favorable conditions, act without human intervention to reduce the mass, toxicity, mobility, volume, or concentrations of contaminants in soil or groundwater.

"Noncarcinogen" means a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicological data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.

"Owner" means any person currently owning or holding legal or equitable title or possessory interest in a property, including the Commonwealth of Virginia, or a political subdivision thereof, including title or control of a property conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means.

"Participant" means a person who has received confirmation of eligibility and has remitted payment of the phase 2 registration fee.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Post-certificate monitoring" means monitoring of environmental or site conditions stipulated as a condition of issuance of the certificate.

"Program" means the Virginia Voluntary Remediation Program.

"Property" means a parcel of land defined by the boundaries in the deed.

"Reference dose" means an estimate of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious effects during a lifetime.

"Registration fee" means the fees paid to apply for, obtain eligibility for, enroll in, and participate in the Voluntary Remediation Program.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any contaminant into the environment.

"Remediation" means actions taken to clean up, mitigate, correct, abate, minimize, eliminate, control, contain, or prevent a release of a contaminant into the environment in order to protect human health and the environment. Remediation may include, when appropriate and approved by the department, land use controls, natural attenuation, and monitored natural attenuation.

"Remediation level" means the concentration of a contaminant with applicable land use controls that is protective of human health and the environment.

"Restricted use" means any use other than residential.

"Risk" means the probability that a contaminant will cause an adverse effect in exposed humans or to the environment.

"Risk assessment" means the process used to determine the risk posed by contaminants released into the environment. Elements include identification of the contaminants present in the environmental media, assessment of exposure and exposure pathways, assessment of the toxicity of the contaminants present at the site, characterization of human health risks, and characterization of the impacts or risks to the environment.

"Risk management" means the process of identifying, evaluating, and selecting actions to reduce risk to human health and the environment.

"Site" means any property or portion thereof, as agreed to and defined by the participant and the department, which contains or may contain contaminants being addressed under this program.

"Termination" means the formal discontinuation of participation in the Voluntary Remediation Program without obtaining a certificate.

"Unrestricted use" means the designation of acceptable future use for a site at which the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site in all media.

9VAC20-160-30. Eligibility criteria.

A. Applicants and proposed sites shall meet eligibility criteria as defined in this section.

B. Eligible applicants are any persons who own, operate, have a security interest in, or enter into a contract for the purchase or use of an eligible site. Those who wish to voluntarily remediate a site may apply to participate in the program. Any person who is an authorized agent of any of the parties identified in this subsection may apply to participate in the program.

Applicants who are not site owners must demonstrate that they have access to the property at the time of payment of the phase 2 registration fee in accordance with 9VAC20-160-60 and must maintain such right of access until a certificate is issued or participation in the program is terminated pursuant to 9VAC20-160-100.

C. Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the U.S. Environmental Protection Agency, the department, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived.

1. A site on which an ~~eligible party~~ applicant or another person has performed remediation of a release is ~~potentially~~ may be eligible for the program (i) if the actions can be

documented in a way so that the actions are shown to be equivalent to the requirements for this chapter, and (ii) provided the site meets applicable remediation levels.

2. ~~Petroleum~~A site containing petroleum or oil releases not mandated for remediation under Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law may be eligible for participation in the program.

3. ~~Where~~A site where an applicant ~~raises~~establishes a genuine issue based on documented evidence as to the legal or factual applicability of regulatory programs in subsection D of this section, the site may be eligible for the program. Such evidence may include a demonstration that:

a. It is not clear whether the release involved a waste material ~~or a virgin material~~; for which remediation has been clearly mandated;

b. It is not clear ~~that whether~~ the release ~~occurred after~~is subject to the relevant regulations ~~became effective~~; listed in subsection D of this section; or

c. It is not clear ~~that whether~~ the release ~~occurred at a regulated unit~~is a new release or an existing release.

D. For the purposes of this chapter, remediation has been clearly mandated if any of the following conditions exist, unless jurisdiction for such mandate has been waived: Any such waiver is conditioned on and subject to the applicant enrolling in and completing the program and obtaining a certificate:

1. Remediation of the release is the subject of a permit issued by the U.S. Environmental Protection Agency or the department, a closure plan, an administrative order, a court order, or a consent order, or the site is on the National Priorities List;

2. The site is one at which the release occurred one or more of the following exists:

~~(i)~~ a. the release is subject to the Virginia Hazardous Waste Management Regulations (9VAC20-60) (VHWMR);₁

b. is a permitted facility;₁

c. is applying for or should have applied for a permit;₁ or

d. is under interim status or should have applied for interim status, or was previously under interim status, and ~~(ii)~~ is thereby subject to requirements of the VHWMR;

3. The site at which the release occurred has been determined by the department prior to the application submittal date to be an open dump or unpermitted solid waste management facility under 9VAC20-81-45 of the Solid Waste Management Regulations and such conditions still exist that made the site an open dump or unpermitted solid waste management facility;

4. The department determines that the release poses an imminent and substantial threat to human health or the environment; or

5. Remediation of the release is otherwise the subject of a response action or investigation required by local, state, or federal law or regulation.

E. The department may determine that a site ~~under subdivision D 3 of this section may~~is eligible to participate in the program provided that if such participation complies with the substantive requirements of the applicable regulations is deemed acceptable under a memorandum of agreement between the department and the U. S. Environmental Protection Agency and such participation otherwise complies with the substantive requirements of the program.

9VAC20-160-55. Registration fees for applications received prior to January 29, 2014.(Repealed.)

~~A. For applicants that submitted an application that was received by the department prior to January 29, 2014, the registration fee submitted and any registration fee refund sought shall be in accordance with the requirements of this section. On and after July 1, 2014, any addition of acreage to a site participating in the program based upon an application subject to registration fees under this section shall require a new application for the additional acreage, which shall be subject to registration fees pursuant to the requirements of 9VAC20-160-65. If the participant elects to subdivide the site or conduct a phased remediation project requiring multiple certificates for the site, the additional site shall be subject to phase 2 registration fees as required by 9VAC20-160-65-C 1 b and phase 3 registration fees as required by 9VAC20-160-65-D 6.~~

~~B. The registration fee shall be at least 1.0% of the actual cost of the remediation at the site, not to exceed \$5,000. To determine the appropriate registration fee, the applicant shall provide an estimate of the anticipated total cost of remediation and remit that amount. As an alternative to providing an estimate, the applicant may elect to pay the maximum registration fee.~~

~~C. If the participant did not elect to remit the maximum registration fee, the participant shall provide the department with the actual total cost of the remediation prior to issuance of a certificate. The department shall calculate any balance adjustment to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certificate. Any overpayment to be refunded to the participant shall be remitted by the department with issuance of the certificate.~~

~~D. If the participant elected to remit the maximum registration fee and an overpayment has been made, the department shall refund any balance owed to the participant after receiving the actual total cost of remediation. If no remedial cost summary is provided to the department within 60 days of the participant's receipt of the certificate, the participant will have waived the right to a refund.~~

9VAC20-160-57. Transition to new fee structure for participants that paid registration fees for applications received prior to July 1, 2014.

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, applications submitted prior to July 1, 2014 were required to submit a registration fee of at least 1% of the actual cost of remediation at the site, not to exceed \$5,000. Registration fees submitted by participants prior to July 1, 2014 are held in an account until a certificate is issued. Participants that submitted a registration fee prior to July 1, 2014 shall notify the department by [insert date 60 days after effective date of the regulation] which of the following options they select:

1. Continue participation in the program.

a. If the participant remitted the maximum \$5,000 registration fee and an overpayment has been made, the participant shall provide the department with the actual costs of remediation by [insert date 60 days after the effective date of the regulation]. The department shall refund any balance owed to the participant after receiving that actual cost of remediation. If no remedial cost summary is provided to the department by [insert date 60 days after the effective date of this regulation], the participant will have waived the right to a refund; or

b. If the participant did not remit the maximum \$5,000 registration fee, the participant shall provide the department with the actual total cost of remediation by [insert date 60 days after the effective date of this regulation]. The department shall calculate any balance adjustment to be made to the registration fee. The department shall refund any balance owed to the participant after receiving that actual cost of remediation. Any negative balance owed to the department shall be paid by the participant within 60 days of notification by the department to continue to participate in the program.

Continued participation in the program means the participant waives the right to a refund.

2. Terminate participation in the program. The participant shall notify the department they are terminating participation in the program. No portion of the registration fee will be refunded if participation is terminated pursuant to 9VAC20-160-100.

B. Participants that submitted applications prior to July 1, 2014 that have not been issued a certificate are required to submit phase 3 registration fees in accordance with 9VAC20-160-65 D to continue participation in the program.

9VAC20-160-60. Registration fees for applications received on or after January 29, 2014, and prior to July 1, 2014. (Repealed.)

~~A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program. For applicants submitting an application that is received by the department on or after January 29, 2014, and prior to July 1, 2014, the registration fee submitted and any registration fee refund sought shall be in accordance with the requirements of this section. On and after July 1, 2014, any addition of acreage to a site participating in the program based upon an application subject to registration fees under this section shall require a new application for the additional acreage, which shall be subject to registration fees pursuant to the requirements of 9VAC20-160-65. If the participant elects to subdivide the site or conduct a phased remediation project requiring multiple certificates for the site, the additional site shall be subject to phase 2 registration fees as required by 9VAC20-160-65 C 1 b and phase 3 registration fees as required by 9VAC20-160-65 D 6.~~

~~B. The preliminary registration fee shall be \$5,000. Payment shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.~~

~~C. Failure to remit the required registration fee within 90 days of the date of eligibility determination shall result in the loss of eligibility status of the applicant. The applicant must reestablish applicant eligibility for participation in the program and the eligibility of the site, unless the department agrees to extend the period for remitting the registration fee. Once eligibility is lost for failure to remit the registration fee pursuant to this subsection, the applicant shall submit a new application in order to reestablish applicant eligibility for participation in the program and the eligibility of the site and shall be subject to the registration fees under the provisions of 9VAC20-160-65.~~

~~D. Upon completion of remediation and issuance of the certificate pursuant to 9VAC20-160-110, the participant whose final cost of remediation is less than \$500,000 may seek a refund of a portion of the preliminary registration fee. The refund amount shall be reconciled as the difference between the preliminary registration fee and the final registration fee amounts.~~

~~1. In order to receive a refund, the participant shall provide the department with a summary of the final cost of remediation within 60 days of issuance of a certificate. The final registration fee amount for such projects shall be calculated as 1.0% of the final cost of remediation. The department shall review the summary, calculate the refund amount due, and issue a refund to the participant.~~

~~2. If no summary of the final cost of remediation is provided to the department within 60 days of issuance of the certificate, the final registration fee amount shall be equal to the preliminary registration fee amount, and no portion of the preliminary registration fee shall be refunded.~~

~~3. Concurrence with the summary of the final cost of remediation does not constitute department verification of the actual cost incurred.~~

~~E. No portion of the preliminary registration fee will be refunded if participation is terminated pursuant to the provisions of 9VAC20-160-100.~~

9VAC20-160-65. Registration fees for applications received on or after July 1, 2014.

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program. ~~For applications received by the department on and after July 1, 2014, the~~The registration fee shall be remitted in three phases as required by this section.

1. Registration fees shall be adjusted annually on November 1 by the change in the Consumer Price Index. The annual adjustment of the registration fees shall be based upon the annual registration fee amount for the preceding calendar year and the change in the CPI value published by the U.S. Department of Labor for all-urban consumers over the 12-month period ending on April 30 of the calendar year preceding the calendar year in which the registration fee is assessed.

2. The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0.

3. Registration fees shall be rounded to the nearest dollar.

4. All fees included in this regulation shall be adjusted annually using the process described in subdivisions A 1 through A 3 of this section.

B. Phase 1 of the registration fee shall be an application fee ~~in the amount of \$2,000.~~ The initial phase 1 registration fee is \$3,000.

1. Payment of the phase 1 registration fee is required for each application received by the department on or after July 1, 2014.

2. The phase 1 registration fee is due when the application is submitted and shall be made payable to the Treasurer of Virginia.

3. The phase 1 registration fee shall be submitted separately from the application package and remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.

4. An application is not administratively complete until the phase 1 registration fee is received by the department. Review of an application for eligibility in accordance with 9VAC20-160-30 and 9VAC20-160-40 shall not commence until the application is administratively complete.

C. Phase 2 of the registration fee shall be an eligibility fee ~~in the amount of \$7,500.~~ The initial phase 2 registration fee is \$7,500.

1. Payment of the phase 2 registration fee shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Upon receipt of the phase 2 registration fee, the site and applicant shall be considered by the department to be participating in the program.

a. A phase 2 registration fee shall be required from the applicant for each site that has been determined to be eligible for participation in the program based upon an application received by the department on or after July 1, 2014.

b. A separate phase 2 registration fee is required for each section of a phased remediation project that requires a separate eligibility determination or for any site that requires a separate certificate issued for that section pursuant to 9VAC20-160-110. In the event that the phased remediation work continues beyond November 1, then

phase 3 registration fees shall also be billed and remitted annually until project completion in accordance with subsection D of this section.

c. No phase 2 registration fee shall be required for a site that has been determined to be eligible for participation in the program based upon an application received by the department prior to July 1, 2014, unless the site requires more than a single certificate to be issued.

d. If multiple certificates are issued at the same time for different portions of a project pursuant to 9VAC20-160-110, a phase 1 fee shall be due for each certificate after the first.

2. Payments of phase 2 registration fees shall (i) be made payable to the Treasurer of Virginia, (ii) include the Voluntary Remediation Program (VRP) ID number assigned by the department, and (iii) be remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218. The phase 2 registration fees shall be remitted to the department within 90 days after date of the eligibility determination unless the department agrees to extend the period for remitting the phase 2 registration fee.

3. Failure to remit the required phase 2 registration fee in accordance with subdivision 2 of this subsection within 90 days after the date of eligibility determination shall result in the loss of eligibility status of the applicant and the site. After such loss of eligibility, the applicant must reestablish eligibility in order to participate in the program.

a. The department shall mail notification of nonpayment of the phase 2 registration fee and pending loss of eligibility at least 30 days prior to loss of the applicant's and the site's eligibility.

b. If eligibility is lost as a result of failure to remit a phase 2 registration fee, the applicant shall pay new phase 1 and phase 2 registration fees as part of reestablishing eligibility.

D. Phase 3 of the registration fee shall be an annual program cost defrayment fee ~~in the amount of \$4,500. The initial phase 3 registration fee is \$10,500. If a~~ Any site (i) that has been determined to be eligible for participation in the Voluntary Remediation Program ~~based upon an application received by the department on or after July 1, 2014, and (ii) is participating in the Voluntary Remediation Program, shall be assessed~~ a phase 3 registration fee ~~shall be assessed~~ for that site as follows:

1. On November 1 of each calendar year, any site participating in the program on that day shall be assessed a phase 3 registration fee if the application on which the eligibility determination was based was received by the department in a calendar year prior to that year.

a. For example, any eligible site participating in the program on November 1, 2017, based upon an application that had been received by the department in calendar year 2016 will be assessed a phase 3 registration fee to be billed on March 1, 2018.

~~b. For any site where the application was received prior to July 1, 2014, the site is not subject to a phase 3 registration fee unless the site requires multiple certificates (e.g., the original site was divided and certificates are issued at separate times).~~

~~c. b.~~ Sites that are not participating in the program, including sites that have not yet been determined to be eligible to participate in the program, sites that have had a certificate issued pursuant to 9VAC20-160-110 prior to November 1, and sites that have been terminated from participation in the program pursuant to 9VAC20-160-100 prior to November 1 are not subject to a phase 3 registration fee assessment for that calendar year and will not be billed on March 1 of the following year.

2. The phase 3 registration fee is not prorated for participation in the program for portions of calendar years.
3. The phase 3 registration fee assessed for an eligible site shall be billed to the applicant on March 1 of the calendar year following the November 1 assessment.
4. The assessed phase 3 registration fee is due on April 1 of the billing year and shall (i) be made payable to the Treasurer of Virginia, (ii) include the VRP ID number assigned by the department, and (iii) be remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.
5. The phase 3 registration fees shall be remitted to the department by the due date specified in subdivision 4 of this subsection unless extended by the department.
 - a. Failure to remit a required phase 3 registration fee within 30 days of the due date shall be cause for termination from the program in accordance with 9VAC20-160-100 A 4.
 - b. The department shall mail notification of nonpayment of the phase 3 registration fee and intent to terminate participation in accordance with 9VAC20-160-100 to the participant at least 30 days prior to termination.
6. ~~No phase 3 registration fee shall be assessed for a site participating in the program based upon an application received by the department prior to July 1, 2014, unless the participant elected to subdivide the site or conduct a phased remediation project requiring multiple certificates for the site. Sites participating in the program that submitted an application to the department prior to July 1, 2014 are required to submit phase 3 annual registration fees assessed as of November 1 to participate in the program.~~
7. Any assessed phase 3 fees shall be remitted to the department before a certificate is issued.

E. The total amount of fees collected by the board shall defray the actual reasonable costs of the program. The director shall take whatever action is necessary to ensure that this limit is not exceeded.

F. No portion of Voluntary Remediation Program registration fees collected pursuant to this section shall be refunded.

G. If a site has been terminated from the program in accordance with 9VAC20-160-100, a new application shall be submitted before the site will be considered for a new eligibility determination and reenrollment into the program. The applicant shall also remit new phase 1 and phase 2 registration fees in accordance with this section and no monetary credit will be given for any fees submitted prior to termination.

H. Amendments to a site's certificate or the associated ~~declaration of restrictive covenants~~ issued by the department pursuant to 9VAC20-160-110 shall be subject to registration fees based on the amendments requested. The land owner shall submit a certificate amendment request to the department describing the changes being requested. The department will review the request and notify the land owner of any additional information required and the amount of the registration fee to be remitted as follows:

1. For amendments to the certificate or the associated ~~declaration of restrictive covenants~~ not requiring a technical review by the department, only a phase 1 registration fee shall be required.
2. For amendment requests that require technical review by the department, ~~no phase 1 registration fee~~ payment in the amount of one half of the phase 3 registration fee shall be required, but a reduced phase 2 registration fee in the amount of \$4,500 shall be required. In the event that the amendment request also meets the phase 3 registration fee criteria in subsection D of this section based upon the date that the department received the

amendment request being the date of the application for such purpose, phase 3 registration fees shall also be billed and remitted.

I. For a site that has been determined to be eligible for participation in the program based upon an application received by the department, a request to change the participant for such site received by the department will not in and of itself subject the site to the fees under this section.

9VAC20-160-70. Work to be performed.

A. The Voluntary Remediation Report shall consist of the following components: a site characterization, a risk assessment, a remedial plan, a demonstration of completion, and documentation of public notice. Each separate component of the Voluntary Remediation Report shall be submitted as listed in this subsection:

1. The site characterization component shall provide an understanding of the site conditions including the identification and description of ~~each area~~known or suspected areas of concern (or ~~source~~potential source(s) of contaminant(s)); a determination of the sources; the nature and extent of releases to all media, including ~~a map~~maps of hydraulic gradient and groundwater flow direction; the onsite and offsite vertical and horizontal ~~extent~~extents of contaminants present at concentrations above levels consistent with 9VAC20-160-90; and a discussion of the potential risks posed by the release. If remedial activities have occurred prior to enrollment, this information shall be included.

2. The risk assessment component shall contain an evaluation of the risks to human health and the environment posed by the release, including an assessment of risk to offsite properties; a proposed set of remediation level objectives consistent with 9VAC20-160-90 that are protective of human health and the environment; ~~and either recommended remediation actions to achieve the proposed objectives; and recommended~~ risk management activities or a demonstration that no action is necessary. The risk assessment shall include an uncertainty analysis that discusses any remaining risk.

3. The remedial action plan component shall propose the specific remedial activities, a schedule for those activities, any permits required to initiate and complete the remediation, and specific design plans for implementing remediation that will achieve the remediation level objectives specified in the risk assessment component of the report. Control or elimination of continuing onsite sources of releases to the environment shall be discussed. Land use controls and any permits required for the remediation process should be discussed as appropriate. If no remedial action is necessary, the remedial action plan shall discuss the reasoning for no action.

4. The demonstration of completion component shall include the following, as applicable:

a. A detailed summary of the remediation implemented at the site, including a discussion of the remediation systems installed and a description of the remediation activities that occurred at the site.

b. A detailed summary of how the established site-specific objectives have been achieved, including (i) a description of how onsite releases (or sources) of contamination have been eliminated or controlled, and exposure pathways controlled, (ii) confirmational sampling results demonstrating that the remediation level objectives have been achieved and that the migration of contamination has been stabilized.

c. A description of any site restrictions including land use controls that are proposed for the certificate.

d. A demonstration that all other criteria for completion of remediation have been satisfied.

e. A statement signed by the participant or authorized agent that to the best of the participant's knowledge, the activities performed at the site pursuant to this chapter have been in compliance with applicable regulations.

5. The documentation of public notice component is required to demonstrate that public notice has been provided in accordance with 9VAC20-160-120. Such documentation shall, at a minimum, consist of copies of all of the documents required pursuant to the provisions of subsection E of 9VAC20-160-120.

B. It is the participant's responsibility to ensure that the investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) comply with all applicable federal, state, and local laws and regulations.

C. All work, to include sampling and analysis, shall be performed in accordance with Test Methods for Evaluating Solid Waste, USEPA SW-846, revised March 2009, or other media-specific methods approved by the department and completed using appropriate quality assurance and quality control protocols. All analyses shall be performed by laboratories certified by the Virginia Environmental Laboratory Accreditation Program (VELAP). Laboratory certificates of analysis shall be included with applicable reports.

D. While participating in the program, the participant shall notify the department in writing within 30 days of any change in property ownership and if the participant changes, then the new participant shall notify the department within 30 days of the change.

E. While participating in the program, the participant shall notify the department in writing within 30 days of any change in ~~agent for the property owner or the participant.~~ the name or address of the participant, the authorized agent, or the site owner.

9VAC20-160-90. Remediation levels.

A. The participant, with the concurrence of the department, shall consider impacts to human health and the environment in establishing remediation levels.

B. Remediation levels based on human health shall be developed after appropriate site characterization data have been gathered as provided in 9VAC20-160-70. Remediation levels may be derived from the three-tiered approach provided in this subsection. Any tier or combination of tiers may be applied to establish remediation levels for contaminants present at a given site.

1. Tier I remediation levels are based on media backgrounds levels. These background levels shall be determined from a portion of the property or a nearby property or other areas as approved by the department that have not been impacted by the contaminants of concern.

2. Tier II remediation levels are derived assuming that there will be no restrictions on the use of groundwater, surface water, and soil on the site.

a. Tier II groundwater remediation levels shall be based on the most beneficial use of groundwater. The most beneficial use of groundwater is for a potable water source, unless demonstrated otherwise by the participant and accepted by the department. Therefore, they shall be based on (i) federal maximum contaminant levels (MCLs) or action levels for lead and copper as established by the Safe Drinking Water Act (42 USC § 300 (f)) and the National Primary Drinking Water Regulations (40 CFR Part 141) or, in the absence of a MCL, (ii) tap water values derived using the methodology provided in the Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 2009, using an acceptable individual carcinogenic risk of 1×10^{-5} and an individual noncarcinogen hazard quotient of 0.1.

b. Tier II soil remediation levels shall be determined as the lower of the ingestion or cross-media transfer values, according to the following:

(1) For ingestion, values derived using the methodology provided in the Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 2009.

(a) For carcinogens, the soil ingestion concentration for each contaminant, reflecting an individual upper-bound lifetime cancer risk of 1×10^{-5} .

(b) For noncarcinogens, 0.1 of the soil ingestion concentration, to account for multiple systemic toxicants at the site. For sites where there are fewer than 10 contaminants exceeding 0.1 of the soil ingestion concentration, the soil ingestion concentration may be divided by the number of contaminants such that the resulting hazard index does not exceed 1.0.

(2) For cross-media transfer, values derived from the USEPA Soil Screening Guidance (OSWER, July 1996, Document 9355.4-23, EPA/540/R-96/018) and USEPA Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites (OSWER, December 2002, Document 9355.4-24) shall be used as follows:

(a) The soil screening level for transfer to groundwater, with adjustment to a hazard quotient of 0.1 for noncarcinogens, if the value is not based on a MCL; or

(b) The soil screening level for transfer to air, with adjustment to a hazard quotient of 0.1 for noncarcinogens and a risk level of 1×10^{-5} for carcinogens, using default residential exposure assumptions.

(c) For noncarcinogens, for sites where there are fewer than 10 contaminants exceeding 0.1 of the soil screening level, the soil screening level may be divided by the number of contaminants such that the resulting hazard index does not exceed 1.0.

(3) Values derived under subdivisions 2 b (1) and (2) of this subsection may be adjusted to allow for updates in approved toxicity factors as necessary.

c. Tier II remediation levels for surface water shall be based on the Virginia Water Quality Standards (WQS) as established by the State Water Control Board (9VAC25-260), according to the following:

(1) The chronic aquatic life criteria shall be compared to the appropriate human health criteria and the lower of the two values selected as the Tier II remediation level.

(2) For contaminants that do not have a Virginia WQS, the federal Water Quality Criteria (WQC) may be used if available. The chronic federal criterion continuous concentration (CCC) for aquatic life shall be compared to the appropriate human health based criteria and the lower of the two values selected as the Tier II remediation level.

(3) If neither a Virginia WQS nor a federal WQC is available for a particular contaminant detected in surface water, the participant should perform a literature search to determine if alternative values are available. If alternative values are not available, the detected contaminants shall be evaluated through a site-specific risk assessment.

3. Tier III remediation levels are based upon site-specific assumptions about current and potential exposure scenarios for the population or populations of concern and characteristics of the affected media and can be based upon a site-specific risk assessment; and risk management. Land-use controls can be considered.

a. In developing Tier III remediation levels, and unless the participant proposes ~~other guidance~~ an alternative methodology that is acceptable to the department, the participant shall use, for all media and exposure routes, the methodology specified in Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual (Part A), Interim Final, USEPA, December 1989 (EPA/540/1-89/002) and (Part

B, Development of Preliminary Remediation Goals) Interim, USEPA, December 1991 (Publication 9285.7-01B) with modifications as appropriate to allow for site-specific conditions. ~~The participant may use other methodologies approved by the department.~~

b. For a site with carcinogenic contaminants, the remediation goal for individual carcinogenic contaminants shall be an incremental upper-bound lifetime cancer risk of 1×10^{-5} . The remediation levels for the site shall not result in an incremental upper-bound lifetime cancer risk exceeding 1×10^{-4} considering multiple contaminants and multiple exposure pathways, unless the use of a MCL for groundwater that has been promulgated under 42 USC § 300g-1 of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (40 CFR Part 141) results in a cumulative risk greater than 1×10^{-4} .

c. For noncarcinogens, the hazard index shall not exceed a combined value of 1.0.

d. In setting remediation levels, the department may consider risk assessment methodologies approved by another regulatory agency and current at the time of the Voluntary Remediation Program site characterization.

C. The participant shall determine if ecological receptors are present at the site or in the vicinity of the site and if they are impacted by releases from the site.

1. At sites where ecological receptors are of concern and there are complete exposure pathways, the participant shall perform a screening level ecological evaluation demonstrating that remediation levels developed under the three-tiered approach described in this section are also protective of such ecological receptors.

2. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment demonstrating that remediation levels developed under the three-tiered approach described in this section are also protective of ecological receptors. If the remediation levels developed for human health are not protective of ecological receptors, the remediation levels shall be adjusted accordingly.

9VAC20-160-100. Termination.

A. Participation in the program shall be terminated:

1. When evaluation of new information obtained during participation in the program results in a determination by the department that the site is ineligible or that a participant has taken an action to render the site ineligible for participation in the program. If such a determination is made, the department shall notify the participant that participation has been terminated and provide an explanation of the reasons for the determination. Within 30 days, the participant may submit additional information, or accept the department's determination.

2. Upon 30 days written notice of withdrawal by the participant.

3. Upon the participant's failure to make reasonable progress towards completion of the program, as determined by the department, and the participant's subsequent failure to respond appropriately within 30 days to the department's written request for an update of program-related activities and a projected timeline to fulfill the program requirements.

4. Upon failure to submit required registration fees in accordance with ~~9VAC20-160-55 (for applications received prior to January 29, 2014), 9VAC20-160-60 (for applications received on or after January 29, 2014, and prior to July 1, 2014), 9VAC20-160-57 or 9VAC20-160-65 (for applications received on or after July 1, 2014).~~ The department shall mail notification of the department's intent to terminate participation in the program to the participant at least 30 days prior to terminating the site's participation in the program. If the participant fails to remit the required fee within 30 days of the date of such notification,

the site's participation in the program shall be terminated. The department reserves the right to collect unpaid fees due to the department pursuant to 9VAC20-160-57 and 9VAC20-160-65.

B. The department shall be entitled to receive and use, upon request, copies of any and all information developed by or on behalf of the participant as a result of work performed pursuant to participation in the program, after application has been made to the program whether the program is satisfactorily completed or terminated.

9VAC20-160-110. Certification of satisfactory completion of remediation.

A. The department shall issue a certificate when:

1. The participant has demonstrated that migration of contamination has been stabilized;
2. The participant has demonstrated that the site has met the applicable remediation levels and will continue to meet the applicable remediation levels in the future for both onsite and offsite receptors;
3. All provisions of the final remedial action plan as applicable have been ~~completed~~; implemented;
4. All applicable requirements of this chapter have been completed;
5. The department accepts all work submitted, as set forth in 9VAC20-160-70; and
6. All registration fees due to the department pursuant to ~~9VAC20-160-55, 9VAC20-160-60, 9VAC20-160-57~~ and 9VAC20-160-65 have been received by the department.

B. The issuance of the certificate shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), or other applicable Virginia law for the releases described in the certificate.

C. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls that require ongoing management may be employed to achieve this classification.

D. For sites that do not achieve the unrestricted use classification, land use controls may be proffered in order to develop remediation levels based on restricted use. The restrictions imposed upon a site may be media-specific, may vary according to site-specific conditions, and may be applied to limit present and future use. All controls necessary to attain the restricted use classification shall be described in the certificate as provided in this section and defined in a ~~declaration of restrictive covenants~~ covenant. Land use controls accepted by the department for use at the site are considered remediation for the purposes of this chapter.

E. If a use restriction is specified in the certificate, the participant shall cause the certificate and a ~~declaration of restrictive covenants~~ covenant to be recorded among the land records in the office of the clerk of the circuit court for the jurisdiction in which the site is located within 90 days of execution of the certificate by the department, unless a longer period is specified in the certificate. If the certificate does not include any use restriction, recordation of the certificate is at the option of the participant. The immunity accorded by the certificate shall apply to the participant and current or future property owner and shall run with the land identified as the site.

F. The immunity granted by issuance of the certificate shall be limited to the known releases as described in the certificate. The immunity is further conditioned upon satisfactory performance by the participant of all obligations required by the department under the program and upon the veracity, accuracy, and completeness of the information submitted to the department by the

participant relating to the site. Specific limitations of the certificate shall be enumerated in the certificate. The immunity granted by the certificate shall be dependent upon the identification of the nature and extent of contamination as presented in the Voluntary Remediation Report.

G. The certificate shall specify the conditions for which immunity is being accorded, including:

1. A summary of the information that was considered;
2. Any restrictions on future use;
3. Any local land use controls on surrounding properties that were taken into account;
4. Any proffered land use controls; and
5. Any post-certificate monitoring.

H. The certificate may be revoked by the department in any of the following situations, provided that (i) the department has given the owner written notice of the deficiency and (ii) the owner has failed to cure the deficiency within 60 days of the date of the written notice or some longer period granted by the department.

1. In the event that conditions at the site, unknown at the time of issuance of the certificate, pose a risk to human health or the environment;
2. In the event that the certificate was based on information that was false, inaccurate, or misleading; or
3. In the event that the conditions of the certificate have not been met or maintained.

I. The certificate is not and shall not be interpreted to be a permit or a modification of an existing permit or administrative order issued pursuant to state law, nor shall it in any way relieve the participant of its obligation to comply with any other federal or state law, regulation, or administrative order. Any new permit or administrative order, or modification of an existing permit or administrative order, must be accomplished in accordance with applicable federal and state laws and regulations.

J. The issuance of the certificate shall not preclude the department from taking any action authorized by law for failure to meet a requirement of the program or for liability arising from future activities at the site that result in the release of contaminants.

K. The issuance of the certificate by the department shall not constitute a waiver of the Commonwealth's sovereign immunity unless otherwise provided by law.

9VAC20-160-120. Public notice.

A. The participant shall give public notice of the voluntary remediation. The notice shall be made after the department accepts the site characterization component of the Voluntary Remediation Report and the proposed or completed remediation and shall occur prior to the department's issuing a certificate- or prior to issuing an amendment to the certificate that has additional remedial work or changes in land use controls. Such notice shall be paid for by the participant.

B. The participant shall:

1. Provide written notice to the local government in which the facility is located;
2. Provide written notice to all adjacent property owners and other owners whose property has been affected by contaminants as determined pursuant to the provisions of subdivision A 1 of 9VAC20-160-70; and
3. Publish a notice once in a newspaper of general circulation in the area affected by the voluntary action.

C. A comment period of at least 30 days must follow issuance of the notices pursuant to this section. The department, at its discretion, may increase the duration of the comment period to 60

days. The contents of each public notice required pursuant to subsection B of this section shall include:

1. The name and address of the participant and the location of the proposed voluntary remediation;
2. A brief description of the general nature of the release, any remediation, and any proposed land use controls;
3. The address and telephone number of a specific person familiar with the remediation from whom information regarding the voluntary remediation may be obtained; and
4. A brief description of how to submit comments.

D. The participant shall send all commenters a letter acknowledging receipt of written comments and providing responses to the same.

E. The participant shall provide the following as documentation of public notice required in subdivision A 5 of 9VAC20-160-70:

1. A signed statement that the participant has provided public notice as required by subsection B of this section;
2. A copy of the public notice and a list of names and addresses of all persons to whom the notice was sent; and
3. Copies of all written comments received during the public comment period, copies of acknowledgment letters, and copies of any response to comments, as well as an evaluation of the comment's impact on the planned or completed remedial action or actions.

Tab E

**REPORT TO THE VIRGINIA WASTE MANAGEMENT BOARD
ON HAZARDOUS WASTE SIGNIFICANT NON-COMPLIERS, HAZARDOUS WASTE AND SOLID WASTE
FINAL ORDERS
FOR FEDERAL FISCAL YEAR: 2020**

(First Three Quarters of Federal Fiscal Year 2020: October 1, 2019-July 10, 2020)

**Tiffany Severs, Enforcement Division Director
tiffany.severs@deq.virginia.gov; (804) 698-4512**

September 1, 2020

The Resource Conservation and Recovery Act (RCRA) gives EPA the authority to control hazardous waste from the "cradle-to-grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste.

“Significant Non-Compliers (SNCs)...are those [alleged] violators that have caused actual exposure or a substantial likelihood of exposure to hazardous waste (“HW”) or HW constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements....” Hazardous Waste Civil Enforcement Response Policy, December 2003.

VSQG: Very Small Quantity Generator

SQG: Small Quantity Generator

LQG: Large Quantity Generator

SAA: Satellite Accumulation Area

TSDf: Treatment Storage and Disposal Facilities

UW: Universal Waste

HW: Hazardous Waste

BRRO: Blue Ridge Regional Office

NRO: Northern Regional Office

PRO: Piedmont Regional Office

SWRO: Southwest Regional Office

TRO: Tidewater Regional Office

VRO: Valley Regional Office

Active HW SNC Cases – Table A

Region	Location	Case Name	Brief Description of Alleged Violations	Status
BRRO	Pittsylvania	A.C. Furniture Inc.	Failure to make HW determination. Burying waste without a permit. Improper disposal of hazardous waste. UW violations.	Consent Order under development. Company filed for bankruptcy, February 2020.
BRRO	Amherst	Cooper Steel of Virginia/Lynchburg Steel Company, LLC	Failure to make HW determination. Exceeding HW accumulation time. Container labeling violations. Treatment standards violation. Manifest violations.	Consent Order under development.
BRRO	Pulaski	KTI Truck Service, LLC	Failure to make HW determination. Labeling Violations.	Consent Order under development.
BRRO	Altavista	Moore's Electrical and Mechanical	Failure to notify crushing lamps, failure to isolate, failure to label	Consent Order under development
BRRO	Martinsville	Southern Finishing	Failure to determine, improper labeling, improper storage	Consent Order under development.
BRRO	Blacksburg	Wolverine Advanced Materials, Inc.	Accumulation time limits Violation. Container Violations. Contingency plan Violations. Manifest Violations. Training Violations. UW Violations.	Consent Order under development.
NRO	Fairfax	Fairfax County Public Schools	Failure to notify of waste activity and LQG status. Failure to pay LQG fee. Failure to submit biennial report. Accumulation timeframe violation. Failure to properly identify wastes. Container violations. Training and contingency violations. Manifest violations. UW violations.	Consent Order drafted, under internal review.
NRO	Loudon	Hyper Auto Colors	Failure to make HW determination. Transport Violations. Proper disposal Violations.	Held Informal Fact Finding
NRO	Quantico	Quantico-US Marine Corps	Failure to make HW determination. Labeling Violations.	Consent Order under development.

PRO	Gloucester Co.	Advanced Finishing Systems, Inc.	Lack of document certification; secondary containment not lined; improper containment sizing; improper coding on manifests; CP incomplete.	Consent Order under development.
PRO	Ashland	Commonwealth Galvanizing Company, LLC	Lack of training. Insufficient Contingency Plan. Improperly stored Universal Waste; Incomplete Manifests.	Consent Order under development.
PRO	Henrico	Custom Ornamental Iron	Failure to make HW determination. Exceeding HW accumulation time. Container labeling violations.	Consent Order under development.
PRO	Sandston	Dominion Packaging	Failure to determine, improper labeling	Consent Order under development.
PRO	Essex	FDP Virginia, Inc.	Failure to make HW determination. Accumulation time limits violation. Container violations. Inspection violations. Contingency plan violations. UW violations.	Consent Order under development.
PRO	Chesterfield	FedEx Freight RCH	Failure to notify of waste activity and LQG status. Failure to pay LQG fee. Labeling violations. Contingency plan violations. Manifest violations.	Consent Order under negotiation with responsible party.
PRO	Richmond	Glenwood Ridge Apartments	Failure to determine	Consent Order under development.
PRO	Chesterfield	HCA Chippenham Hospital	Training Violations. Container Violations. UW Violations.	Consent Order under negotiation with responsible party.
PRO	Henrico	HCA Henrico Doctors Hospital	HW storage violations. Container Violations. UW Violations. Contingency Violations.	Consent Order under negotiation with responsible party.
PRO	Hopewell	HCA John Randolph Medical Center	Training Violations. Manifest Violations. Failure to pay fee and submit biennial report. Contingency Violations. UW Violations.	Consent Order under negotiation with responsible party.
PRO	Sussex	IndMar Coatings Corporation	Container Violations. UW Violations. Manifest Violations. Biennial Report Violations. Contingency Violations.	Debarment complete
PRO	Farmville	Mottley Foils, Inc.	Failure to notify as LQG. Manifest violations. UW Violations.	Consent Order under negotiation with responsible party.

PRO	Emporia	Oran Safety Glass, Inc.	Accumulation time limits Violation. Failure to notify of waste activity. Container Violations. Contingency plan Violations. Manifest Violations.	Consent Order under development.
SWRO	Wythe Co.	FreightWorks, LLC	Failure to register; incomplete manifests.	Consent order under internal review.
SWRO	Bristol	Taff & Frye Co.	Improper management of HW. Failure to notify of waste activity. Release of HW. Manifest violations.	Consent Order under negotiation with responsible party.
SWRO	Abingdon	Wolf Hills Fabricator LLC	Failure to make HW determination. Manifest Violations. Labeling Violations. Contingency plan Violations. UW Violations.	Consent order under internal review.
TRO	City of Norfolk	Naval Station Norfolk	Exceeding HW accumulation time limits.	Consent Order under negotiation with responsible party.
VRO	Clarke	C2 Management	Failure to notify as LQG. Manifest violations. UW Violations.	Consent Order under negotiation with responsible party.
VRO	Verona	Cadence Inc.	Failure to notify as LQG. Manifest violations. Labeling violations.	Consent Order under development.
VRO	Rockingham	Good Printers Inc.	Failure to make HW determination. Accumulation time limits violation. Failure to notify of waste activity. Container violations.	Consent Order under development.
VRO	Staunton	Mary Baldwin University	Accumulation time limits Violation. UW Violations.	Consent Order under development.
VRO	Front Royal	RPS Shenandoah	Failure to notify as LQG. Manifest violations. Labeling violations.	Consent Order under development.

Total Pending HW Cases: 31

Resolved HW Cases FFY 2020 to Date -Table B

Region	Location	Case Name	Brief Description of Alleged Violations	Status	Penalty
BRRO	Lynchburg City	Bohling Steel, Inc.	Failure to notify as LQG, pay fee, and submit biennial report. Manifest violations. Container violations.	Consent Order effective, May 28, 2020, \$12,320 penalty.	\$12,320.00
BRRO	Roanoke	Budget Signs	Used Oil and HW Violations	Consent Order with penalty, \$15,000, effective January 21, 2020.	\$15,000.00
BRRO	Halifax	Voestalpine High Performance Metals Corp.	Container violations. Inspection violations. Satellite accumulation violations. Contingency plan violations. Failure to notify as LQG. UW Violations.	Consent Order with penalty, \$39,620, effective January 24, 2020.	\$39,620.00
NRO	Caroline Co.	Hoover Treated Wood Products	Failure to make HW determination and appropriately account for all HW generated. Failure to document exemption status; Improper disposal of used oil.	Consent Order with penalty, \$12,950 with injunctive relief, effective February 4, 2020, Terminated March 2, 2020.	\$12,950.00
NRO	Arlington	Joint Base Meyer-Henderson Hall	Failure to make HW determination. Container Violations. Manifest Violations. Training Violations.	Consent Order with penalty \$47,185, effective September 16, 2019. Order terminated November 2, 2019.	\$47,185.00
NRO	Prince William	Preferred Services	Failure to notify as LQG, pay fee, and submit biennial report. Training Violations. Container Violations. UW violations.	Case Closed via Return to Compliance	
NRO	Arlington	Virginia Hospital Center, Arlington	HW comingled with Regulated Medical Waste; Failure to make HW determinations; Failure to notify as LQG; Failure to notify of accumulation areas; Failure to perform weekly inspections; Failure to certify documents; Failure to provide manifests; Failure to label	Consent Order with penalty \$265,175 with injunctive relief, effective January 24, 2020.	\$265,175.00
NRO	Manassas	Zestron Corporation	Failure to make HW determination. Failure to determine HW generator category. Labeling violations. Training Violations	Consent Order with penalty \$11,800, effective January 2, 2020. Terminated January 22, 2020	\$11,800.00

PRO	Richmond	AVAIL Vapor, LLC	Failure to notify of waste activity and LQG status. Failure to pay LQG fee. Failure to submit biennial report. Accumulation timeframe violation. Failure to properly identify wastes. Container violations. Training and contingency violations. Manifest violations.	Consent Order with penalty, \$70,000, effective December 2, 2019.	\$70,000.00
PRO	Hanover	Bear Island Paper Co.	Improper management of HW. Release of HW. Tank violations	Consent Order with penalty, \$149,263. effective, May 14, 2020.	\$149,263.00
TRO	Norfolk	AMP United, LLC	Improper transportation and management of HW.	Consent Order with penalty, \$27,334, effective March 2, 2020.	\$27,334.00
TRO	Norfolk	Naval Station Norfolk	Failure to notify as a LQG, failure to determine, failure to have written training plan	Consent order with penalty	\$3,656.00

Total FFY20 to July 10, 2020 Final Hazardous Waste Consent Orders = 12

Total FFY20 to July 10, 2020 Final Civil Charges = \$654,303

Pending Solid Waste Cases FFY 2020 – Table C

Region	Location	Case Name	Brief Description of Alleged Violations	Status
BRRO	Nottoway	Nottoway Landfill	Blown Litter, missing logs, inadequate freeboard	Consent Order under development.
BRRO	Roanoke	Recycling & Disposal Solutions of Virginia	Storage of contaminated glass, accumulated litter, outdated financial assurance	Consent Order under development.
NRO	Gainesville	Vistas at Lake Manassas	Unpermitted composting and unpermitted storage of solid waste	Consent Order under development.
PRO	Henrico Co.	BFI Old Dominion Landfill	Unpermitted discharge of leachate	Consent Order under development.
PRO	Charles City	Green Zone Investments	Financial assurance, tire storage exceedance,	Pending Informal Fact Finding
PRO	Emporia	Greensville County Landfill	Unpermitted burning, leachate seeps, litter	Consent Order under development.
PRO	Henrico Co.	The East End Landfill	Lack of timely closure	Notice of Violation issued June 2020
SWRO	Carroll Co.	Hardie Plank	Improper storage of solid waste, unpermitted	Consent Order under development.
TRO	Suffolk	Holland Industrial Landfill	Leachate containment mods without permit, unpermitted discharge of leachate, erosive slopes	Consent Order under development.
TRO	Franklin	International Paper Mill, Franklin	Slope failure, intermediate cover issues	Consent Order under development.
VRO	Harrisonburg	Rockingham County Landfill	Unpermitted discharge of leachate to state waters, improper daily and intermediate cover, reporting violations	Consent Order under development.

Total Pending Solid Waste Cases: 11

Resolved Solid Waste Cases FFY 2020 – Table D

Region	Location	Case Name	Brief Description of Alleged Violations	Status
BRRO	Troutville	Botetourt County Landfill	Daily tonnage exceedance, reporting, lack of daily cover	Consent Order with Penalty, \$30,660
BRRO	Giles Co.	Riverview Campground and Bait	Mobile Home debris, and burning/improper disposal	Consent Order with Penalty, \$7,875
SWRO	Abingdon	Tang’s Realty LLC	Burning of demo debris/improper disposal	Consent Order with Penalty, \$2,374.58
VRO	Frederick County	Frederick County Landfill	Discharge of leachate to state waters, improper management of leachate	Dual Water/Solid Waste Consent Order, \$139,860
VRO	Rockbridge Co.	Rockbridge County Landfill	Failure to close in timely manner	Consent Order with Closure Requirements

Total FFY20 Final Solid Waste Orders = 5
 Total FFY20 Civil Charges = \$180,770