

Part I: Definitions.

9VAC20-60-17. Definitions created by these regulations.

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

"Administrator" means the Administrator of the United States Environmental Protection Agency or his designee. See 9VAC20-60-14 B 1.

"Another regulation of the Virginia Administrative Code" means any regulation that is not in 9VAC20-60-12 et seq., the Virginia Hazardous Waste Management Regulations.

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

"Application, Part B" means that part of the application that a permit applicant shall complete to be considered for a permit as required by 9VAC20-60-1010.

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

"Authorization (authorized program)" means a state hazardous waste program that has been approved under the authorities of RCRA.

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

"Board" means the Virginia Waste Management Board.

"Commonwealth" means the Commonwealth of Virginia.

"Department" means the Virginia Department of Environmental Quality.

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

"Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the director.

"EPA" means the U.S. Environmental Protection Agency. See 9VAC20-60-14 B 2.

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

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

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

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

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

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

"HWM" means hazardous waste management.

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

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

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

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

"Qualified engineer" or "engineer" means a professional engineer certified to practice in the Commonwealth of Virginia.

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

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

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

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

"These regulations" means 9VAC20-60, the Virginia Hazardous Waste Management Regulations.

"VHWMR" means 9VAC20-60, the Virginia Hazardous Waste Management Regulations.

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

Part II : General Information and Legislative Authority.

9VAC20-60-40. Administration of chapter.

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

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

9VAC20-60-70. Public participation.

A. All regulations developed under the provisions of Title 10.1 of the Code of Virginia for hazardous waste management shall be developed in accordance with the provisions of the Commonwealth of Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) and the Virginia Waste Management Board Public Participation Guidelines, 9VAC20-10.

~~B. All permits for hazardous waste management facilities, including permits by rule, will be the subject of a public hearing, as specified in 9VAC20-60-270.~~

~~B. C.~~ Modifications and revisions to all hazardous waste management facility permits, except changes to interim status, shall be subject to public participation in accordance with 9VAC20-60-270.

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

~~D. E.~~ Dockets of all permitting actions, enforcement actions, and administrative actions relative to this chapter shall be available to the public for review, consistent with the Commonwealth of Virginia Administrative Process Act, Virginia Freedom of Information Act (§2.2-3700 et seq. of the Code of Virginia), and the provisions of this chapter.

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

~~F. G.~~ Public participation in the compliance evaluation and enforcement programs is encouraged.

The department will:

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

Part III: Incorporation of Federal Regulations by Reference.

9VAC20-60-124. Adoption of 40 CFR Part 124 by reference.

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in Subparts A and B of 40 CFR Part 124, wherein they relate to RCRA programs, are hereby incorporated as part of the VHWMR. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 124 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

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

1. Other sections of these regulations, particularly in 9VAC20-60-270 and Part XIV (9VAC20-60-1370 et seq.) of this chapter, describe processes or procedures wherein items from 40 CFR Part 124 are applied as a part of more complete and detailed requirements. The incorporations of portions of 40 CFR Part 124 in this part shall not be construed so as to contradict or interfere with the operations of other parts of these regulations.
2. In addition to the citations in 40 CFR 124.5(a), permits may be modified, revoked and reissued, or terminated for reasons stated in 9VAC20-60-270 B and Part XIV (9VAC20-60-1370 et seq.) of this chapter.
3. Text of 40 CFR 124.5(b) is not incorporated into these regulations. Administrative appeal shall be conducted in accordance the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).
4. In 40 CFR 124.5(d), 40 CFR 124.6(e), and 40 CFR 124.10(b), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.
5. In 40 CFR 124.5(d), 40 CFR 124.6(e), and 40 CFR 124.10(b), the term "EPA" shall mean the United States Environmental Protection Agency.
6. In 40 CFR 124.10(c)(1)(ii), the term "EPA" shall mean the United States Environmental Protection Agency.
7. In 40 CFR 124.10 procedures are described for giving public notice in newspapers and radio broadcast when a draft permit has been prepared (40 CFR 124.10(a)(1)(ii)) or when a

public hearing will be held on the draft permit (40 CFR 124.10(b)(2)). The applicant for a permit shall arrange for the newspaper publication and radio broadcast and bear the cost of the publication and broadcast. The department shall send notification to the applicant that the publication and broadcast are required and the notification shall include the text of the notice, dates of publication and broadcast, and acceptable newspapers and radio stations wherein the notice may be published. The department may arrange for the newspaper publication and radio broadcast and require the applicant to remit the cost of such publication and broadcast.

~~7. 8.~~ In 40 CFR 124.19 an appeal process is established that includes certain appeals procedures that apply to the federal hazardous waste program, including the establishment of an EPA Environmental Appeals Board. These Virginia regulations do not incorporate this federal process. Appeals under these regulations will be in accordance with the Administrative Process Act, Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia. All federal regulatory references to the appeal process or the EPA Environmental Appeals Board, such as in 40 CFR 124.5, shall be construed to mean the administrative processes and appeals processes as specified by Virginia's Administrative Process Act.

9. The petitioner for a variance from any regulation shall arrange for any newspaper publication and radio broadcast required under these regulations (9 VAC 20-60) and to bear the cost of such publication and broadcast. The department shall send notification to the applicant that the publication and broadcast are required and the notification shall include the text of the notice, dates of publication and broadcast, and acceptable newspapers and radio stations wherein the notice may be published. The department may arrange for the newspaper publication and radio broadcast and require the applicant to remit the cost of such publication and broadcast.

9VAC20-60-261. Adoption of 40 CFR Part 261 by reference.

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

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

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the ~~director~~ (Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009).
2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.
3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.
4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of 9VAC20-60-270 and Part XII (9VAC20-60-1260 et seq.) of this chapter.

5. No hazardous waste from a conditionally exempt small quantity generator shall be managed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless such waste management is in full compliance with all requirements of the Solid Waste Management Regulations (9VAC20-80-10 et seq.).

6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

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

9VAC20-60-262. Adoption of 40 CFR Part 262 by reference.

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

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

1. In 40 CFR 262.42(a)(2), the words "for the Region in which the generator is located" is deleted from the incorporated text and is not a part of these regulations.
2. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.
3. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.
4. For accumulation areas established before March 1, 1988, a generator who is not otherwise exempted by 40 CFR 261.5 shall notify the ~~director~~ department of each location where he accumulates hazardous waste in accordance with 40 CFR 262.34 by March 1, 1988. For accumulation areas established after March 1, 1988, he shall notify the ~~director~~ department and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34 prior to or immediately upon the establishment of each accumulation area. In the case of a new generator who creates such accumulation areas after March 1, 1988, he shall notify the ~~director~~ department at the time the generator files the Notification of Hazardous Waste Activity that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34. This notification shall specify the exact location of the accumulation area at the site.

5. In addition to the requirements in 40 CFR Part 262, management of hazardous wastes is required to comply with the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110-10 et seq.), including packaging and labeling for transport.

6. A generator shall not offer his hazardous waste to a transporter or to a facility that has not received a permit and an EPA identification number.

7. In 40 CFR 262, Subpart H, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency.

9VAC20-60-264. Adoption of 40 CFR Part 264 by reference.

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

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

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

2. In 40 CFR 264.1(g)(11) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

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

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

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

~~6. In 40 CFR 264.143(h), 40 CFR 264.145(h), and 40 CFR 264.151, an owner or operator may use the same financial mechanism for multiple facilities. If the facilities covered by the mechanism are located in more than one state, identical evidence of financial assurance must~~

~~be submitted to and maintained with all RCRA authorized state agencies where facilities covered by the financial mechanism are located or with the regional administrators where facilities are located in states without RCRA authorization.~~

~~16. 6.~~ In 40 CFR 264.93, “hazardous constituents” shall include constituents identified in 40 CFR Part 264 Appendix IX in addition to those in 40 CFR Part 261 Appendix VIII.

~~17. 7.~~ The federal text at 40 CFR 264.94(a)(2) is not incorporated by reference. The following text shall be substituted for 40 CFR 264.94(a)(2): “For any of the constituents for which the USEPA has established a Maximum Contaminant Level (MCL) under the National Primary Drinking Water Regulation, 40 CFR Part 141 (regulations under the Safe Drinking Water Act), the concentration must not exceed the value of the MCL; or if the background level of the constituent is below the MCL; or.”

8. The owner or operator must submit the detailed, written closure cost estimate described in 40 CFR 264.142 upon the written request of the director.

~~9. In 40 CFR 264.143 (b)(1), 40 CFR 264.143(c)(1), 40 CFR 264.145(b)(1), and 40 CFR 264.145(c)(1), any surety issuing surety bonds to guarantee payment or performance must be licensed pursuant to Chapter 10 (38.2-1000 et seq.) of the Code of Virginia.~~

~~10. In 40 CFR 264.143(b), 40 CFR 264.143(c), 40 CFR 264.145(b) and 40 CFR 264.145(c), any owner or operator demonstrating financial assurance for closure or post-closure care using a surety bond shall submit with the surety bond a copy of the deed book page documenting that the power of attorney of the attorney-in-fact executing the bond has been recorded pursuant to 38.2-2416 of the Code of Virginia.~~

~~[11. The following text shall be substituted for 40 CFR 264.143(c)(5): “Following a final administrative determination pursuant to Chapter 40 (2.2-4000 et seq.) of the Code of~~

Virginia that the owner or operator has failed to perform final closure in accordance with the approved closure plan, the applicable regulations or other permit requirements when required to do so, under the terms of the bond, the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.”

11. Where 40 CFR 264.143(c)(5) the phrase “final administrative determination pursuant to section 3008 of RCRA” appears, it shall be replaced with “final determination pursuant to Chapter 40 (§ 2.2-4000 et seq. of the Code of Virginia”.]

12. The following text shall be substituted for 40 CFR 264.143(d)(8): “Following a final administrative determination pursuant to Chapter 40 (§2.2-4000 et seq.) of the Code of Virginia that the owner or operator has failed to perform final closure in accordance with the approved closure plan, the applicable regulations or other permit requirements when required to do so, the director may draw on the letter of credit.”

13. The following text shall be substituted for 40 CFR 264.143(e)(1): “An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance, along with a complete copy of the insurance policy, to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§38.2-1000 et seq.) of the Code of Virginia.”

14. The following text shall be substituted for 40 CFR 264.143(f)(3)(ii), 40 CFR 264.145(f)(3)(ii) and 40 CFR 264.147(f)(3)(ii): “A copy of the owner’s or operator’s audited

financial statements for the latest completed fiscal year; including a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and"

15. In addition to the other requirements in 40 CFR 264.143(f)(3), 40 CFR 264.145(f)(3) and 40 CFR 264.147(f)(3), an owner or operator must submit confirmation from the rating service that the owner or operator has a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's if the owner or operator passes the financial test with a bond rating as provided in subsection 1(ii)(A).

16. The following text shall be substituted for 40 CFR 264.143(h) and 40 CFR 264.145(h):
"An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure [or post-closure] assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

17. In 40 CFR 264.144, the owner or operator must submit a detailed, written post-closure cost estimate upon the written request of the director."

18. The following text shall be substituted for 40 CFR 264.144(b): "During the active life of the facility and the post-closure period, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with [~~40 CFR 265.145~~ 40 CFR 264.145]. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the department as specified in [~~40 CFR 265.145(f)(5)~~ 40 CFR 264.145(f)(5)]. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U. S. Department of Commerce in its *Survey of Current Business* as specified in 40 CFR 264.142(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

a. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

b. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor."

19. The following text shall be substituted for 40 CFR 264.144(c): "During the active life of the facility and the post-closure period, the owner or operator must revise the post-closure cost estimate within 30 days after the director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in ~~264.144(b)~~.

~~[20. The following text shall be substituted for 40 CFR 264.145(c)(5): “Following a final administrative determination pursuant to Chapter 40 (§2.2-4000 et seq.) of the Code of Virginia that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan, the applicable regulations or other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.”~~

~~20. Where in 40 CFR 264.145(c)(5) the phrase “final administrative determination pursuant to section 3008 of RCRA” appears, it shall be replaced with “final determination pursuant to Chapter 40 (§ 2.2-4000 et seq. of the Code of Virginia”.]~~

~~21. The following text shall be substituted for 40 CFR 264.145(d)(9): “Following a final administrative determination pursuant to Chapter 40 (§2.2-4000 et seq.) of the Code of Virginia that the owner or operator has failed to perform post-closure in accordance with the approved post-closure plan, the applicable regulations, or other permit requirements when required to do so, the director may draw on the letter of credit.”~~

~~22. The following text shall be substituted for 40 CFR 264.145(e)(1): “An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a~~

minimum, the insurer must be licensed pursuant to Chapter 10 (38.2-1000 et seq.) of the Code of Virginia.”

~~7.~~ 23. In 40 CFR 264.147(a)(1)(ii), 40 CFR 264.147(b)(1)(ii), 40 CFR 264.147(g)(2), and 40 CFR 264.147(i)(4), the term “Virginia” shall not be substituted for the term “State” or “States.”

~~8.~~ 24. In 40 CFR 264.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1997, instead of January 12, 1997.

~~9.~~ 25. In 40 CFR 264.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987, instead of July 14, 1986.

~~10.~~ 26. In 40 CFR 264.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1997, instead of January 12, 1997.

~~11.~~ 27. A copy of all reports made in accordance with 40 CFR 264.196(d) shall be sent to the ~~director~~ department and to the chief administrative officer of the local government of the jurisdiction in which the event occurs. The sentence in 40 CFR 264.196(d)(1), “If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement.” is not incorporated by reference into these regulations and is not a part of the Virginia Hazardous Waste Management Regulations.

~~12.~~ 28. The following text shall be substituted for 40 CFR 264.570(a): “The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other

agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreements for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993.”

~~13.~~ 29. In 40 CFR 264.1030(c), the reference to 40 CFR 124.15 shall be replaced by a reference to 40 CFR 124.5.

~~14.~~ 30. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

~~15.~~ 31. In addition to the notices required in Subpart B and others parts of 40 CFR Part 264, the following notices are also required:

- a. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source (a source located outside of the United States of America) shall notify the ~~director~~ department and administrator in writing at least four weeks in advance of the date

the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

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

c. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements contained in 9VAC20-60-264 and 9VAC20-60-270. An owner or operator's failure to notify the new owner or operator of the above requirements in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

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

9VAC20-60-265. Adoption of 40 CFR Part 265 by reference.

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

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

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

2. In 40 CFR 265.1(c)(14) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

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

4. In 40 CFR 265.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.
5. In 40 CFR 265.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."
6. In addition to the notifications required by 40 CFR 265.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center and the Virginia Department of Emergency Management, Emergency Operations Center. In the associated report filed under 40 CFR 265.56(j), the owner or operator shall include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.
7. In addition to the requirements of 40 CFR 265.91, a log shall be made of each ground water monitoring well describing the soils or rock encountered, the permeability of formations, and the cation exchange capacity of soils encountered. A copy of the logs with appropriate maps shall be sent to the ~~director~~ department or his designee.
- ~~[8. In 40 CFR 265.143(g) and 40 CFR 265.145(g), an owner or operator may use the same financial mechanism for multiple facilities. If the facilities covered by the mechanism are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with all RCRA authorized state agencies where facilities covered by the financial mechanism are located or with the regional administrators where facilities are located in states without RCRA authorization.~~

8. The following text shall be substituted for 40 CFR 265.143(g) and 40 CFR 265.145(g):

“An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure or post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.]

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

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

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

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

13. The following text shall be substituted for 40 CFR 265.440(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those

for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 265.443(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

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

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

- a. Type and amount of hazardous waste and hazardous waste constituents in the landfill;
- b. The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

- c. Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration;
 - d. Climate, including amount, frequency and pH of precipitation;
 - e. Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and
 - f. Geological and soil profiles and surface and subsurface hydrology of the site.
16. Additionally, during the post-closure care period, the owner or operator of a hazardous waste landfill shall comply with the requirements of 40 CFR 265.116 and the following items:
- a. Maintain the function and integrity of the final cover as specified in the approved closure plan;
 - b. Maintain and monitor the leachate collection, removal, and treatment system, if present, to prevent excess accumulation of the leachate in the system;
 - c. Maintain and monitor the landfill gas collection and control system, if present, to control the vertical and horizontal escape of gases;
 - d. Protect and maintain, if present, surveyed benchmarks; and
 - e. Restrict access to the landfill as appropriate for its post-closure use.
17. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.
18. Regulated units of the facility are those units used for storage treatment or disposal of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills that received hazardous waste after July 26, 1982. In addition to the requirements of Subpart G of

40 CFR Part 265, owners or operators of regulated units who manage hazardous wastes in regulated units shall comply with the closure and post-closure requirements contained in Subpart G of 40 CFR Part 264, Subpart H of 40 CFR Part 264, and Subpart K of 40 CFR Part 264 through Subpart N of 40 CFR Part 264, as applicable, and shall comply with the requirements in Subpart F of 40 CFR Part 264 during any post-closure care period and for the extended ground water monitoring period, rather than the equivalent requirements contained in 40 CFR Part 265. The following provisions shall also apply:

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

b. A permit application as required under 9VAC20-60-270 to address the post-closure care requirements of 40 CFR 264.117 and for ground water monitoring requirements of 40 CFR 264.98, 40 CFR 264.99, or 40 CFR 264.100, as applicable, shall be submitted for all regulated units which fail to satisfy the requirements of closure by removal or decontamination in 40 CFR 264.228(a)(1), 40 CFR 264.258(a), or 40 CFR 264.280(d) and 40 CFR 264.280(e), as applicable. The permit application shall be submitted at the same time as the closure plan for those units closing with wastes in place and six months following the determination that closure by removal or decontamination is unachievable for those units attempting such closure. The permit application shall address the post-closure care maintenance of both the

final cover and the ground water monitoring wells as well as the implementation of the applicable ground water monitoring program whenever contaminated soils, subsoils, liners, etc., are left in place. When all contaminated soils, subsoils, liners, etc., have been removed yet ground water contamination remains, the permit application shall address the post-closure care maintenance of the ground water monitoring wells as well as the implementation of the applicable ground water monitoring program.

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

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

9VAC20-60-270. Adoption of 40 CFR Part 270 by reference.

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 270 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 270 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

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

1. In 40 CFR Part 270 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

2. In 40 CFR 270.5, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 270.5, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

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

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

a. Hazardous waste management facilities located in Virginia which possess an effective final RCRA permit issued by the United States Environmental Protection Agency will be

considered to possess a valid Virginia hazardous waste management permit for the duration of the unexpired term of the federal permit, provided that:

- (1) The facility remains in compliance with all of the conditions specified in the federal permit;
- (2) The operator submits a complete copy of the federal permit to the ~~director~~ department no later than the effective date of the federal permit; and
- (3) The owner and operator of the facility submit a request to continue the federal permit addressed to the ~~director~~ department.

b. Federal permits issued to hazardous waste management facilities located in Virginia by the United States Environmental Protection Agency pursuant to HSWA requirements which constitute the federal portion of the combined Virginia--United States Environmental Protection Agency RCRA permits are considered, for the purposes of this chapter, as addenda to the Virginia permits and will remain in effect during the unexpired term of the Virginia permit.

6. All permit applications and reapplications required by these regulations shall be accompanied by an appropriate permit application fee as specified in Part XII (9VAC20-60-1260 et seq.) of this chapter. Applications or reapplications not accompanied by such fees will not be considered complete. The director shall not issue a permit before receiving a complete application except permits by rule, emergency permits, or continued federal permits. In addition, an application for a permit is not complete until the ~~director~~ department receives an application form and any supplemental information, which are completed to the department's satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. In cases

where Part A of the application was first submitted to the United States Environmental Protection Agency Administrator, a copy of such submission shall also be sent to the ~~director~~ department.

7. Interim status.

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

b. Unless subject of an exception specified in 40 CFR 270.73, interim status terminates when final disposition of a permit application is made or when interim status is terminated by the director. Interim status may be terminated for any of the following reasons:

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

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

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

(4) Violation of this chapter; and

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

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

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

(a) Be received by the ~~director~~ department prior to the issuance of the request to submit Part B of the permit application in accordance with this section; and

(b) Be accompanied by a waiver of procedures contained in this section.

(2) Termination under this part will not be granted to the owner and operator of the facility:

(a) Which is not in compliance with the standards contained in 9VAC20-60-265; or

(b) When termination proceedings have been instituted under this section.

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

8. Each permit shall include permit conditions necessary to achieve compliance with the Virginia Waste Management Act (§10.1-1400 et seq. of the Code of Virginia) and regulations, including each of the applicable requirements specified in this part (Part III) of these regulations. In satisfying this provision, the director may incorporate applicable requirements of Part III directly into the permit or establish other permit conditions that are based on these requirements.

9. In addition to the other general information requirements to be part of the contents of any Part B in 40 CFR 270.14(b), the following information is required for all hazardous waste management facilities, except as provided otherwise:

a. A copy of the general inspection schedule required by 40 CFR 264.15(b). Include, where applicable, as part of the inspection schedule, specific requirements in 40 CFR 264.174, 40 CFR 264.193(i), 40 CFR 264.195, 40 CFR 264.226, 40 CFR 264.254, 40 CFR 264.273, 40 CFR 264.303, 40 CFR 264.573, 40 CFR 264.574, 40 CFR 264.602, 40 CFR 264.1033, 40 CFR 264.1052, 40 CFR 264.1053, and 40 CFR 264.1058.

- b. Traffic pattern, estimated volume (number, types of vehicles) and control; describe access road surfacing and load bearing capacity; show traffic control signals.
10. A period of 30 days shall elapse between the date of public notice and the date of a public hearing under 40 CFR 270.42(b)(4) and 40 CFR 270.42(c)(4).
11. Notices given under 40 CFR 270.30(l)(1) shall be written.
12. The following additional information is required from owners or operators of facilities that store or treat hazardous waste in waste piles if an exemption is sought to Subpart F of 40 CFR Part 264 and 40 CFR 264.251 as provided in 40 CFR 264.250(c) and 40 CFR 264.90(b)(2):
 - a. An explanation of how the standards of 40 CFR 264.250(c) will be complied with; and
 - b. Detailed plans and an engineering report describing how the requirements of 40 CFR 264.90(b)(2) will be met.
13. The agencies of the Commonwealth publish notices of regulatory activity, permit hearings and other official notices in the Virginia Register. Any references in incorporated federal text that indicate a publication is to be made in the Federal Register shall be construed to mean the Virginia Register when such publication is to be made by an agency of the Commonwealth.
14. Appeal rights and procedures related to a remedial action plan (RAP) included in 40 CFR 270.155, especially appeals to the EPA Environmental Appeals Board, are not incorporated into these regulations. Appeals of actions related to the content or process of developing a RAP will be governed by the Administrative Process Act, Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.
15. The conditions of an expired permit continue in force until the effective date of the new permit if the permittee has submitted a timely reapplication that is a complete application for a

new permit; and the director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. Permits that are continued remain fully effective and enforceable.

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

- a. Initiate enforcement action based on the permit, which has been continued;
- b. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without permit;
- c. Issue a new permit with appropriate conditions; or
- d. Take other actions authorized by this chapter.

Part IV: Notification of Hazardous Waste Management Activity Regulations.

9VAC20-60-305. General.

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

B. Any person as described in 9VAC20-60-305 A that has notified the EPA or is subject to the requirements to notify the EPA as specified in Vol. 45, No. 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provisions of this chapter.

C. The purpose of this chapter is to provide a means for the Commonwealth of Virginia to utilize the information provided by all who complied with the notification requirements of the EPA as described in 9VAC20-60-305 B and to assure that all persons who did not notify the EPA as described in 9VAC20-60-305 B or all who initiated hazardous waste management activities subsequent to the requirements of the EPA as referenced in 9VAC20-60-305 B shall notify the ~~director~~ department of their hazardous waste management activities.

9VAC20-60-315. Notification.

A. Any person that notified the EPA of hazardous waste management activities as referenced in 9VAC20-60-305 B shall provide a copy of that notification to the ~~director~~ department.

B. Any person involved in hazardous waste management activities that did not comply with the notification requirements of the EPA as referenced in 9VAC20-60-305 B but is subject to those requirements shall notify the ~~director~~ department in writing of their hazardous waste management activities by the effective date of this chapter. Notification shall be accomplished by the use of EPA Form 8700-12.

C. Any person who initiated a hazardous waste management activity subsequent to the preliminary notification period of 42 USC §6930 but prior to the effective date of this chapter shall notify the ~~director~~ department of the initiation of such activities by the effective date of this chapter. Notification shall be accomplished by the use of EPA Form 8700-12.

D. (Reserved.)

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

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

G. A notification form is required for each storage, treatment, disposal, or other facility.

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

H. New generators, transporters, treaters, storers, and disposers (those initiating activities subsequent to the assumption of the hazardous waste management program by the Commonwealth) shall comply with the requirements of 9VAC20-60-262, 9VAC20-60-263, and 9VAC20-60-264, as applicable, to obtain an identification number from the administrator or the ~~director~~ department.

9VAC20-60-328. EPA identification number.

A. A generator shall not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received an EPA identification number from the administrator or the ~~director~~ department.

B. A generator who has not received an EPA identification number may obtain one by applying to the ~~director~~ department using EPA Form 8700-12. Upon receiving a request, the ~~director~~ department will assign an EPA identification number to the generator.

C. A generator shall not offer his hazardous waste to transporters or to facilities that have not received an EPA identification number.

D. Provisional identification number. If an emergency or other unusual incident occurs which causes a necessity for the rapid transport of a hazardous waste to an authorized hazardous waste management facility, the generator involved in such a circumstance can telephone the Department of Environmental Quality (804-698-4000) and obtain a provisional identification number. Applicants receiving such a number will be mailed a blank EPA Form 8700-12 that shall be completed and returned to the Department of Environmental Quality regional office within 10 calendar days. (Note: The department's website, <http://www.deq.state.va.us>, or the receptionist at 804-698-4000, will provide information on how to contact the appropriate regional office.)

Part VII: Regulations Applicable to Transporters of Hazardous Waste.

9VAC20-60-420. General.

A. This chapter applies to all persons who transport a hazardous waste as defined in this chapter and applies to all shipments of hazardous waste that originate within the Commonwealth or that terminate in the Commonwealth but originate in another state or foreign country. However, this chapter does not apply to the shipment of a hazardous waste on the site of a hazardous waste generator, nor on the site of a permitted hazardous waste management facility. Nothing in this

Part (9VAC20-60-420 through 9VAC20-60-500) shall be construed as imposing any requirement

on transporters of or the transportation of universal waste not otherwise imposed in 9VAC20-60-273.

B. Transporters of hazardous waste shipments originating outside the Commonwealth and terminating in another state shall comply with 9VAC20-60-490 and applicable requirements of 9VAC20-60-263 while in transit through the Commonwealth.

C. All transporters of hazardous waste shall comply with the applicable portions of the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110-10 et seq.) and Parts III (9VAC20-60-124 et seq.), IV (9VAC20-60-305 et seq.), and VII (9VAC20-60-420 et seq.) of this chapter.

D. A transporter is a generator if he:

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

E. All transporters of hazardous waste shipments originating or terminating or both in the Commonwealth are required to obtain a permit from the director in accordance with 9VAC20-60-450.

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

G. Transporters of hazardous waste fuel are subject to the applicable requirements of 9VAC20-60-266.

9VAC20-60-440. Identification number.

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

B. An EPA identification number shall be obtained from the ~~director~~ department by submitting an application on EPA Form 8700-12.

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

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

Hazardous Waste Transporter ID Number _____

Virginia Hazardous Waste Transporter Permit Number _____;

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

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

D. The identification number and permit number shall remain unique to the applicant as long as the applicant continues to do business as a transporter of hazardous waste in the Commonwealth

of Virginia. The identification number may not be transferred without the approval of EPA. The permit number may not be transferred without the approval of the director.

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

9VAC20-60-450. Transporter permit.

A. This chapter applies to all persons who transport a hazardous waste, except as otherwise provided in Part VII (9VAC20-60-420 et seq.) of this chapter.

B. The transporter permit required under 9VAC20-60-450 applies only to those transporters who transport hazardous waste shipments that originate or terminate or both in the Commonwealth. Transporters who transport hazardous waste only through the Commonwealth are not required to obtain a transporter permit.

C. Permit issuance. Upon receipt of a complete application, Form 7.1, accompanied by the appropriate permit application fee as specified in Part XII (9VAC20-60-1260 et seq.) of this chapter, the director shall either:

1. Issue a permit, provided conditions of 9VAC20-60-440 are met; or

2. Deny the permit when it can be demonstrated that the transporter has violated regulations of the Commonwealth, another state or the federal government, so as to pose substantial present or potential hazard to health or environment. The procedure for denying a permit shall be consistent with the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

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

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

E. Revocation of permit.

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

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

3. Within 30 days of the receipt of the notice of revocation, the original copy of the permit shall be returned to the ~~director~~ department.

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

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

G. Temporary transporter permit. If a provisional identification number is issued by the ~~director~~ department pursuant to the provisions of 9VAC20-60-440 E the applicant may obtain a temporary transporter permit by calling the department ~~director or his representative~~ at 804-698-4000. The permit will be valid only for the duration of the activity that required the provisional EPA identification number. The applicant shall submit a permit application conforming to 9VAC20-60-450 C within 10 calendar days.

H. Emergency transporter permit. In the event of a determination by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality, provisions of 9VAC20-60-260, 9VAC20-60-262, and Part VII of this chapter may be waived by the director or his designee. Such waiver will be considered as an emergency transporter permit valid for the duration of an emergency only.

9VAC20-60-490. Discharges.

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

B.

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

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

3. If the discharge of hazardous waste occurs during transportation and the director or his designee determines that immediate removal of the waste is necessary to protect human health or the environment, an emergency transporter permit may be issued in accordance with 9VAC20-60-450 H.

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

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

1. In addition to requirements contained in preceding parts, an air, rail, highway or water (nonbulk) transporter who has discharged hazardous waste shall give notice at the earliest practicable moment to agencies indicated in 9VAC20-60-490 C 2 after each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which as a direct result of the discharge of the hazardous wastes:

- a. A person is killed;
- b. A person receives injuries requiring his hospitalization;
- c. Estimated carrier or other property damage exceeds \$50,000;
- d. Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material;
- e. Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or
- f. A situation exists of such a nature that, in the judgment of the transporter, it should be reported in accordance with 9VAC20-60-490 C 2 even though it does not meet the above criteria (e.g., continuing danger of life exists at the scene of the incident), or as required by 49 CFR 171.15.

2. The notice required by 9VAC20-60-490 C 1 shall be given to:

- a. The National Response Center, U.S. Coast Guard, at 800-424-8802 (toll free) or at 202-267-2675 (toll call); and
- b. The Virginia Department of Emergency Management at 800-468-8892 (toll free) or 804-674-2400 (Richmond local area). In a case of discharges affecting state waters, the notice

shall also be given to the Pollution Response Program (PreP) Coordinator in the appropriate regional office of the department.

3. When notifying as required in 9VAC20-60-490 C 1, the notifier shall provide the following information:

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

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

5. In reporting discharges of hazardous waste as required in 9VAC20-60-490 C 4, the following information shall be furnished in Part H of the DOT Form F5800.1 in addition to information normally required:

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

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

D. Discharges by water (bulk) transporters.

1. A water (bulk) transporter shall, as soon as he has knowledge of any discharge of hazardous waste from the vessel, notify, by telephone, radio telecommunication or a similar means of rapid communication, the office designated in 9VAC20-60-490 C 2.
2. If notice as required in 9VAC20-60-490 D 1 is impractical, the following offices may be notified in the order of priority:
 - a. The government official predesignated in the regional contingency plan as the on-scene coordinator. Such regional contingency plan for Virginia is available at the office of the 5th U.S. Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705;
 - b. Commanding officer or officer-in-charge of any U.S. Coast Guard unit in the vicinity of the discharge; or
 - c. Commander of the 5th U.S. Coast Guard District.
3. When notifying the notifier shall provide the following information:
 - a. Name of person reporting the discharge and his role in the discharge;
 - b. Name, telephone number and address of the transporter;
 - c. Name, telephone number and address of the generator;

- d. Telephone number so the notifier can be contacted;
- e. Date, time, location of the discharge;
- f. Type of incident and nature of hazardous waste involvement and whether a continuing danger to life exists at the scene;
- g. Classification, name and quantity of hazardous waste involved; and
- h. The extent of injuries, if any.

E. Discharges at fixed facilities. Any transporter responsible for the release of a hazardous material (as defined in Part I (9VAC20-60-12 et seq.) of this chapter) from a fixed facility (e.g., transfer facility) which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the chief administrative officers (or their designees) of the local governments of the jurisdictions in which the release occurs as well as the ~~director or his designee~~ department.

9VAC20-60-500. Transfer facilities.

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

Part XII: Permit Application Fees.

9VAC20-60-1260. Purpose, scope, and applicability.

A. The purpose of this part is to establish a schedule of fees collected by the department in the support of its permit issuance programs required by Parts III (9VAC20-60-270 et seq.) and VII (9VAC20-60-420 et seq.) of this chapter.

B. Part XII (9VAC20-60-1260 et seq.) of this chapter applies to all persons required to submit a permit application ("applicants") under 9VAC20-60-270 and 9VAC20-60-420 E unless specifically exempt under 9VAC20-60-1260 G. The fees shall be assessed in accordance with 9VAC20-60-1270.

C. When the director finds it necessary to modify any permit under 9VAC20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9VAC20-60-1270 D even if the director shall have initiated the modification action.

D. When the director finds it necessary to revoke and reissue any permit in accordance with 9VAC20-60-270, the holder of that permit shall be considered an applicant for a new permit and shall be assessed a fee in accordance with 9VAC20-60-1270 C.

E. If the director finds it necessary either to revoke and reissue a permit or to perform a minor modification of a permit in accordance with 9VAC20-60-270, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9VAC20-60-1270 E.

F. When the director finds it necessary to issue an emergency treatment, storage, or disposal permit in accordance with 9VAC20-60-270, the holder of that permit shall be considered an

applicant and shall be assessed a fee in accordance with 9VAC20-60-1270 F. No permit application fee will be assessed to the holders of the emergency transportation permits issued in accordance with 9VAC20-60-450 H.

G. Exemptions.

1. The owners and operators of HWM treatment, storage, and disposal facilities who have submitted Part A of their application and who have qualified for interim status in accordance with 9VAC20-60-270 are exempt from the requirements of Part XII of this chapter until a Part B application for the entire facility or a portion of the facility has been requested or voluntarily submitted. The owner and operator of a HWM facility submitting a Part B application will be considered an applicant for a new permit.
2. The owners and operators of HWM facilities that are deemed to possess a permit by rule in accordance with 9VAC20-60-270 are exempt from the requirements of Part XII of this chapter.
3. Hazardous waste generators that accumulate wastes on-site in accordance with 40 CFR 262.34 are not subject to regulations contained in Part XII of this chapter since HWM permits are not required for such accumulations.

[~~H. The effective date of Part XII of this chapter is October 1, 1984.~~

~~H. Permit fees shall be assessed based on the date of approval of the permit and the application of 9 VAC 20-60-1270, 9 VAC 20-60-1280, and 9 VAC 20-60-1285.]~~

9VAC20-60-1280. Payment of fees.

A. Due date.

1. Except as specified in subdivision 2 of this subsection, all permit application fees are due on the day of application and must accompany the application.
2. All holders of a Virginia HWM facility permit issued prior to the effective date of this part shall submit the application fees as required by the conditions specified in that permit.

B. Method of payment. Acceptable payment is cash or check made payable to the Commonwealth of Virginia, Department of Environmental Quality.

C. Incomplete payments. All incomplete payments will be deemed nonpayments.

D. Late payment. No applications will be deemed to be complete (see 9VAC20-60-270) until the ~~director~~ department receives proper payment.

9VAC20-60-1285. Permit application fee schedule.

(The effective date of this fee schedule is ~~October 1, 1984~~. July 1, 2003)

~~A. Transporter fees.~~

Transporters with terminals or other facilities within the Commonwealth.	\$80
Other transporters	\$120

~~B. New TSD facility fees.~~

~~—Base fee for all facilities, including corrective action for solid waste management units. \$9,720~~

~~—Supplementary fee for one or more land-based TSD units, including corrective action for solid waste management units. \$22,590~~

~~—Supplementary fee for one or more incineration, boiler, or industrial furnace units (BIF). \$14,490~~

~~C. Major (Class 3) Permit modification fees.~~

~~—Base fee for all major (Class 3) modifications, including major changes related to corrective action for solid waste management unit. \$50~~

~~—Addition of new wastes. \$1,330~~

~~—Addition of or major (Class 3) change to one or more land-based TSD units, including major change related to corrective action for land-based solid waste management units. \$25,920~~

~~—Addition of or major (Class 3) change to one or more incineration, boiler, or industrial furnace units. \$19,430~~

~~— Addition of or major (Class 3) change to other treatment, storage or disposal units, processes or areas and major change related to corrective action for solid waste management units that are not land based. — \$8,080~~

~~— Substantive changes (Class 2). — \$1,330~~

~~D. Minor (Class 1) permit modification fees.~~

~~— Minor (Class 1) permit modification fee. — \$50~~

~~E. Emergency permit fees.~~

~~— Emergency permit fee. — \$1,330~~

Editorial Note: The above stricken text has been reformatted into the table below.

A. Transporter fees

Column 2

Column 3

<u>Type of application</u>	<u>July 1, 2003 Through June 30, 2004</u>	<u>July 1, 2004 and Thereafter</u>
<u>Transporters with terminals or other facilities within the Commonwealth.</u>	<u>\$240</u>	<u>\$140</u>
<u>Other transporters.</u>	<u>\$360</u>	<u>\$210</u>

B. New TSD facility fees.

<u>Elements of applications</u>	<u>July 1, 2003 Through June 30, 2004</u>	<u>July 1, 2004 and Thereafter</u>
<u>Base fee for all facilities, including corrective action for solid waste management units.</u>	<u>\$29,160</u>	[<u>\$16,620</u> <u>\$16,900</u>]
<u>Supplementary fee for one or more land-based TSD units, including corrective action for solid waste management units.</u>	<u>\$67,770</u>	[<u>\$38,640</u> <u>\$39,280</u>]
<u>Supplementary fee for one or more incineration, boiler, or industrial furnace units (BIF).</u>	<u>\$43,470</u>	[<u>\$24,780</u> <u>\$25,200</u>]

C. Major (Class 3) Permit modification fees.

<u>Elements of Applications for Major Permit Modifications</u>	<u>July 1, 2003 Through June 30, 2004</u>	<u>July 1, 2004 and Thereafter</u>
<u>Base fee for all major (Class 3) modifications, including major changes related to corrective action for solid waste management unit.</u>	<u>\$150</u>	<u>\$90</u>
<u>Addition of new wastes.</u>	<u>\$3,990</u>	[<u>\$2,270</u> <u>\$2,310</u>]
<u>Addition of or major (Class 3) change to one or more land-based TSD units, including major change related to corrective action for land-based solid waste management units.</u>	<u>\$77,760</u>	[<u>\$44,330</u> <u>\$45,070</u>]

<u>Addition of or major (Class 3) change to one or more incineration, boiler, Or industrial furnace units.</u>	<u>\$58,290</u>	[<u>\$33,230</u> <u>\$33,790</u>]
<u>Addition of or major (Class 3) change to other treatment, storage or disposal units, processes or areas and major change related to corrective action for solid waste management units that are not land based.</u>	<u>\$24,240</u>	[<u>\$13,820</u> <u>\$14,050</u>]
<u>Substantive changes (Class 2).</u>	<u>\$3,990</u>	[<u>\$2,270</u> <u>\$2,310</u>]

D. Minor (Class 1) permit modification fees.

<u>Type of application</u>	<u>July 1, 2003 Through June 30, 2004</u>	<u>July 1, 2004 and Thereafter</u>
<u>Minor (Class 1) permit modification fee.</u>	<u>\$150</u>	<u>\$90</u>

E. Emergency Permit fee

<u>Type of application</u>	<u>July 1, 2003 Through June 30, 2004</u>	<u>July 1, 2004 and Thereafter</u>
<u>Emergency Permit fee</u>	<u>\$3,990</u>	[<u>\$2,270</u> <u>\$2,310</u>]

Illustrative Examples

Example 1.

The applicant is submitting a Part B application for a HWM permit for a facility consisting of several surface impoundments, a land treatment process and an ancillary tank and container storage facility. The required fee is calculated as follows:

Base Fee.	\$9,720 +
Supplementary fee for land-based TSD units.	\$22,590 +
Tank storage facility (see 9VAC20-60-1270 C 4).	\$0 =
<hr/>	
Total fee.	\$32,310

Example 2.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to change the manufacturing process and apply for a modification to allow for an addition of several new hazardous streams to be treated in two new incinerators. The required modification fee is calculated from subsection C of this section as follows:

Base fee.	\$50 +
-----------	-------------------

Addition of new wastes.	_____	\$1,330 <u>+</u>
Addition of new incineration units.	_____	\$19,430 <u>=</u>
<hr/>		
Total modification fee.	_____	\$20,810

The fee for a comparable new permit calculated on the basis of subsection B of this section is as follows:

Base fee.	_____	\$9,720 <u>+</u>
Supplementary fee for land-based units.	_____	\$22,590 <u>+</u>
Supplementary fee for incineration units.	_____	\$14,490 <u>+</u>
Storage facility.	_____	\$0 <u>=</u>
<hr/>		
Total fee.	_____	\$46,800

~~which is larger than the required modification fee, so that the provisions of 9VAC20-60-1270 D 7 do not apply and the proper fee is \$20,810.~~

Example 3.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to expand their container storage facility for a storage of additional new waste streams, and apply for a permit modification. The required modification fee is calculated from subsection C of this section as follows:

Base fee.	\$50 ₊
Addition of a new waste.	\$1,330 ₊
Fee for nonsubstantive change.	\$1,330 _±
<hr/>	
Total modification fee.	\$2,710

Part XIV: Rulemaking Petitions and Procedures.

9VAC20-60-1370. General.

A. Any person affected by this chapter may petition the director to exclude a waste at a facility or to change the identification and listing of a solid or hazardous waste, subject to the provisions of this part. Any petition submitted to the director is also subject to the provisions of the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

B. The director will not accept any petition relating to delisting of hazardous wastes, equivalent testing or analytical methods. Such petitions shall be submitted to the administrator in accordance with 40 CFR 260.21.

C. Each petition shall be submitted to the ~~director~~ department by certified mail and shall include, in addition to any other provisions required by this part, at least the following:

1. The petitioner's name and address;
2. A statement of the petitioner's interest in the proposed action;

3. A description of the proposed action;
4. A statement of the need and justification for the proposed action, including any supporting tests, studies or other information.

9VAC20-60-1380. Changes to identification and listing of hazardous wastes.

A. General changes.

1. The administrator may from time to time add or delete wastes listed in Subpart D of 40 CFR Part 261.
2. The petitions to exclude wastes listed in Subpart D of 40 CFR Part 261 which are subject to federal jurisdiction shall be addressed directly to the administrator in accordance with the requirements contained in Subpart C of 40 CFR Part 260.

B. A person whose wastes were delisted as a result of a successful petition to the administrator shall provide to the ~~director~~ department :

1. The petitioner's name and address;
2. A copy of the petition to the director; and
3. A copy of the administrator's decision.

A person whose wastes were delisted as a result of a successful petition to the administrator may petition the director for a variance from these regulations to allow the application of the delisting to hazardous waste management within the Commonwealth. The director or his designee will process the petition in accordance with 9VAC20-60-1420 B. (Note: It is usual that delistings by the administrator are incorporated into the Commonwealth's regulation during the next

rulemaking by the board; the variance would allow application of the delisting during the interim period before the regulations are amended.)

9VAC20-60-1390. Changes in classifications as a solid waste.

A. Variances.

1. Applicability.

a. A person who recycles waste that is managed entirely within the Commonwealth may petition the director to exclude the waste at a particular site from the classification as the solid waste (Parts I and III). The conditions under which a petition for a variance will be accepted are shown in subdivision 2 of this subsection. The wastes excluded under such petitions may still, however, remain classified as a solid waste for the purposes of other regulations issued by the Virginia Waste Management Board or other agencies of the Commonwealth.

b. A person who generated wastes at a generating site in Virginia and whose waste is subject to federal jurisdiction (e.g., the waste is transported across state boundaries) shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before his waste may be considered for a variance by the director.

c. A person who recycles materials from a generating site outside the Commonwealth and who causes them to be brought into the Commonwealth for recycling shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before the waste may be considered for a variance by the director.

d. A person who received a favorable decision from the administrator in the response to a petition for variance or a person whose wastes were delisted as a result of a successful petition to the administrator shall provide a notification to the ~~director~~ department containing the following information: (i) the petitioner's name and address and (ii) a copy of the administrator's decision.

2. Conditions for a variance. In accordance with the standards and criteria in subsection B of this section and the procedures in 9VAC20-60-1420 A, the director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

- a. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Part I).
- b. Materials that are reclaimed and then reused within the original primary production process in which they were generated; and
- c. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

B. Standards and criteria for variances.

1. The director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed on an annual basis by filing a new application. The director's decision will be based on the following criteria:

- a. The manner in which the material is expected to be recycled, and when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangement for recycling);
 - b. The reason that the applicant has accumulated the material for one or more years without recycling 75% of the volume accumulated at the beginning of the year;
 - c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;
 - d. The extent to which the material is handled to minimize loss; and
 - e. Other relevant factors.
2. The director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:
- a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
 - b. The prevalence of the practice on an industry-wide basis;
 - c. The extent to which the material is handled before reclamation to minimize loss;
 - d. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
 - e. The location of the reclamation operation in relation to the production process;

- f. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
 - g. Whether the person who generates the material also reclaims it; and
 - h. Other relevant factors.
3. The director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:
- a. The degree of processing the material has undergone and the degree of further processing that is required;
 - b. The value of the material after it has been reclaimed;
 - c. The degree to which the reclaimed material is like an analogous raw material;
 - d. The extent to which an end market for the reclaimed material is guaranteed;
 - e. The extent to which the reclaimed material is handled to minimize loss; and
 - f. Other relevant factors.

9VAC20-60-1420. Administrative procedures.

A. Procedures for variances to be classified as a boiler. The director will use the following procedures in evaluating applications for variances to classify particular enclosed controlled flame combustion devices as boilers:

1. The applicant must apply to the ~~director~~ department for the variance. The application must address the relevant criteria contained in 9VAC20-60-1400.
2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any).

B. Variances. The director will use the following procedures in evaluating applications for variances submitted under 9VAC20-60-1380 B, 9VAC20-60-1390 and 9VAC20-60-1400.

1. The applicant shall apply to the ~~director~~ department. The application shall address the relevant criteria contained in 9VAC20-60-1380 B, 9VAC20-60-1390 and 9VAC20-60-1400.
2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any), and will publish it in the newspaper in the locality where the applicant is located.

C. Changes in management procedures.

1. Recycling activities. In determining whether to regulate recycling activities in a manner differing from procedures described in 40 CFR 261.6(a)(2)(iii), the director will fulfill all the requirements of Article 3 (§2.2-4018 et seq.) of the Administrative Process Act. In addition to the process required by the APA, the director will:

a. If a generator is accumulating the waste, issue a notice setting forth the factual basis for the decision and stating that the person shall comply with applicable requirements of 9VAC20-60-262. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the director will hold a public hearing. The director will provide notice of the hearing to the public and allow public participation at the hearing. The director will issue a final order after the hearing stating whether or not compliance with 9VAC20-60-262 is required. The order becomes effective in 30 days, unless the director specifies a later date or unless review under Article 5 (§2.2-4025 et seq.) of the Administrative Process Act is requested.

b. If the person is accumulating the recyclable material at a storage facility, issue a notice stating that the person shall obtain a permit in accordance with all applicable provisions of Part III (9VAC20-60-124 et seq.), 9VAC20-60-270, and Part XII (9VAC20-60-1260 et seq.) of this chapter. The owner or operator of the facility shall apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the director's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the director's determination. The

questions of whether the director's decision was proper will remain open for consideration during the public comment period discussed under 9VAC20-60-1210 and in any subsequent hearing.

2. Variance from secondary containment. The following procedures shall be followed in order to request a variance from secondary containment:

a. The ~~director~~ department shall be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in 40 CFR 265.193(g), (or 40 CFR 264.195(g)), and 9VAC20-60-1410 B according to the following schedule:

(1) For existing tank systems, at least 24 months prior to the date that secondary containment shall be provided in accordance with 40 CFR 265.193(a) or 40 CFR 264.193(a); and

(2) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

b. As part of the notification, the owner or operator shall also submit to the ~~director~~ department a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in 9VAC20-60-1410 B 4 or 9VAC20-60-1410 B 5.

c. The demonstration for a variance shall be completed and submitted to the ~~director~~ department within 180 days after notifying the ~~director~~ department of intent to conduct the demonstration.

d. In case of facilities regulated under 9VAC20-60-265:

(1) The director will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The director also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(2) The director will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the 90-day time period will begin when the ~~director~~ department receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in subdivision 2 d (1) of this subsection is extended, the 90-day time period will be similarly extended.

e. In case of facilities regulated under 9VAC20-60-264, if a variance is granted to the permittee, the director will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

Certified True and Accurate: _____

Robert G. Burnley, Director, DEQ

DATE: _____