



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC20-60
VAC Chapter title(s)	Virginia Hazardous Waste Management Regulations
Action title	Annual Update 2022
Final agency action date	October 28, 2022
Date this document prepared	September 14, 2022

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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

The **Virginia Hazardous Waste Management Regulations, 9VAC20-60**, include citations and requirements in the form of federal regulatory text at Title 40 of the Code of Federal Regulations (CFR) which is incorporated by reference. This regulatory amendment, **Annual Update 2022**, will bring the citations up to date and incorporate the 2022 Annual edition of Title 40 of the CFR published on July 1, 2022.

The incorporation by reference of Title 40 of the Code of Federal Regulations includes the provisions of EPA's *Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations* (84 FR 67202 12/9/2019). However, this regulatory update does not include EPA's *Conforming Changes to Canada-Specific Hazardous Waste Import-Export*

Recovery and Disposal Operation Codes, (86 FR 54381 10/1/2021) which will be adopted during the next regulatory update cycle.

Sections 2.2-4006 A 4 (c) of the Code of Virginia allow the Board to adopt this regulatory amendment to 9VAC20-60 as a final exempt action as the changes are necessary to conform to changes in the federal regulations.

Mandate and Impetus

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

Conforming state regulations to those of the EPA is necessary to maintain federally granted authority to implement the national program.

Adoption of the changes allows Virginia to be consistent with the federal regulations, and provides more flexibility to the regulatory community with regard to management of these waste. This amendment incorporates recent changes made by EPA to federal hazardous waste regulations into Virginia's regulations.

Acronyms and Definitions

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

- Board – Virginia Waste Management Board**
- CFR – Code of Federal Regulations**
- FR – Federal Register**
- EPA – United States Environmental Protection Agency**
- VAC – Virginia Administrative Code**
- RCRA – Resource Conservation and Recovery Act**

Statement of Final Agency Action

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

The Virginia Waste Management Board adopted this amendment, Annual Update 2022, to 9VAC20-60 on October 28, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

Legal Basis

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

Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Virginia Waste Management Act (Act). Additionally, Sections 2.2-4006 A 4 (c) of the Code of Virginia allow the Board to adopt this regulatory amendment to 9VAC20-60 as a final exempt action as the changes are necessary to conform to changes in the federal regulations.

Purpose

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

Conforming the regulations to federal regulations is essential for the protection of the health, safety or welfare of citizens as it is necessary to maintain federally granted authority for the Commonwealth to implement the national program. Facilities also benefit from state implementation of the program as they have easier access to decision makers who have a clearer understanding of state-specific issues and needs.

Substance

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

The regulatory action, Annual Update 2022, will amend 9VAC20-60-18 to update the date of incorporation by reference of the Code of Federal Regulations to July 1, 2022, and incorporate the following rule promulgated by EPA in 2019 by removing the existing exception language:

- ***Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations (84 FR 67202 12/9/2019)***

The rule promulgated by EPA is a new rule that was designed to increase the recycling of aerosol cans by allowing generators to manage waste aerosol cans as universal wastes. Universal wastes are certain hazardous wastes that are more prevalent and impact more generators. EPA has determined that these UW can be managed under alternate less-stringent regulatory requirements.

Aerosol cans were previously regulated nationally as hazardous waste if the aerosol can met the definition of hazardous waste, which most aerosol cans typically did (they were hazardous for ignitability and reactivity). The universal waste regulations are less onerous on the generators, with reduced on-site management requirements, as well as longer accumulation periods of wastes at the generator site.

However, this regulatory update does not include EPA’s *Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes*, (86 FR 54381 10/1/2021) which will be adopted during the next regulatory update cycle.

A summary of changes to the federal regulations is provided in Attachment B.

Issues

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

The primary advantage of this amendment is that it conforms 9VAC20-60, *Virginia Hazardous Waste Management Regulations*, by updating the date of incorporation by reference of the Federal Code of Regulations and incorporating a new rule promulgated by the EPA (see Attachment B). Conforming our regulations to EPA’s recent rulemakings maintains Virginia’s federally granted authority to implement the national hazardous waste management program. Additionally, an advantage for businesses and facilities in Virginia is that, by keeping our rules as current as possible, they benefit from state implementation of the programs as they have easier access to decision makers who have a clearer understanding of state-specific issues and needs.

Requirements More Restrictive than Federal

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

There are no requirements of the regulatory update which are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

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

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

Other State Agencies Particularly Affected:

There are no other state agencies particularly affected by this regulatory amendment.

Localities Particularly Affected:

There are no localities particularly affected by this regulatory amendment.

Other Entities Particularly Affected:

There are no entities particularly affected by this regulatory amendment.

Details of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC20-60-18	N/A	Applicability of incorporated references based on the dates on which they became effective.	<p>Updated the 40 CFR citation to the most recent annual update of July 1, 2022.</p> <p>Removed the incorporation exception for <i>Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations</i> (84 FR 67202 12/9/2019).</p> <p>Adds the incorporation exception for EPA's <i>Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes</i>, (86 FR 54381 10/1/2021).</p>

Regulatory Flexibility Analysis

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

The *Virginia Hazardous Waste Management Regulations* apply to all facilities including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance and reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the regulation; or (5) exemption of small businesses from all or any part of the requirements contained in this regulation for all small businesses would directly, significantly and adversely affect the benefits achieved through the implementation of the regulations for the safe management of hazardous waste.

Conforming state regulations to those of the EPA is necessary to maintain federally granted authority to implement the national program. Facilities benefit from state implementation of the program as they have easier access to decision makers with a clearer understanding of state-specific issues and needs.

Family Impact

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

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

Attachment B

**EPA Rule Included with Annual Update 2022
Title 40 of the CFR —July 1, 2021 through June 30, 2022, and February 7, 2020**

Title	Federal Register	Summary
<i>Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations</i>	(84 FR 67202 12/9/2019). The EPA version of the rule was effective on February 7, 2020, nationally in unauthorized states.	<p>The rule that was promulgated by EPA is a new rule that is designed to increase the recycling of aerosol cans. Aerosol cans are regulated as a hazardous waste if the aerosol can meets the definition of a hazardous waste, which most aerosol cans typically do (hazardous for ignitability and reactivity).</p> <p>The EPA rule is a less stringent way to manage these aerosol cans by including them as a new category of Universal Waste. Universal wastes are wastes that are so prevalent that EPA wanted to reduce the impacts of management on the regulated community in order to encourage recycling and/or proper disposal. The portion of the new regulation that allows generators to manage these hazardous wastes as universal wastes will be adopted by reference through a regulatory amendment to 9VAC20-60.</p>