

Virginia Administrative Code

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CHAPTER 60

VIRGINIA HAZARDOUS WASTE MANAGEMENT REGULATIONS

Part I

Definitions

9VAC20-60-10. [Repealed]

9VAC20-60-12. Definitions derived from the Code of Virginia.

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

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

9VAC20-60-14. Definitions derived from incorporations of reference texts.

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

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

1. "Director" shall supplant the "Administrator," "Assistant Administrator," "Assistant Administrator for Solid Waste and Emergency Response" and the "Regional Administrator," wherever they appear.

2. "Department of Environmental Quality" shall supplant the "United States Environmental

Protection Agency," "Environmental Protection Agency," "Agency," "EPA," "EPA Headquarters," "EPA Region(s)" or "Regional Office," wherever they appear. The use of "EPA" as an adjective in "EPA Acknowledgment of Consent," "EPA document," "EPA form," "EPA identification number," "EPA number," "EPA Publication," or similar phrase shall not be supplanted with "Department of Environmental Quality" and shall remain as in the original text cited.

3. "EPA Environmental Appeals Board" or "Environmental Appeals Board" shall be supplanted with the appointed hearing officer at a formal hearing, the court of appropriate jurisdiction, or others as required by the Administrative Process Act, Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

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

5. "State," "authorized state," and "approved state" means the Commonwealth of Virginia.

6. "Approved program" means the Virginia regulatory program for the Virginia Hazardous Waste Management Regulations.

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

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

E. The text of federal regulations incorporated by reference in these regulations includes references to "RCRA," the "Resource Conservation and Recovery Act," sections of "RCRA," "Subtitle C of RCRA," the "Act," and other citations of enabling federal statutes. These statutes provide authority for actions by the United States Environmental Protection Agency, the administrator, and authorized states to regulate solid and hazardous waste management. The Virginia Waste Management Act (§10.1-1400 et seq.) of Title 10.1 of the Code of Virginia provides authority to the Virginia Waste Management Board, the director and the department analogous to many of those found in the federal statutes. See Part II (9VAC20-60-20 et seq.) of this chapter. Wherever in the incorporation by reference in these regulations of text from the Code of Federal Regulations there is a citation of authority from federal statutes, the authority and power of the analogous or related portions of the Virginia Waste Management Act shall be

considered to apply in addition to the federal statutory citation and to support enforcement of the requirement.

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, 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 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.

9VAC20-60-18. Applicability of incorporated references based on the dates on which they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the *Federal Register* prior to July 1, 2009, with the effective date as published in the *Federal Register* notice or March 3, 2010, whichever is later.

APPENDICES 1.1 to 1.2. [REPEALED]

Part II

General Information and Legislative Authority

9VAC20-60-20. Authority for chapter.

A. This chapter is issued under Chapter 11.1 (§10.1-1182 et seq.) of Title 10.1 of the Code of Virginia and the Virginia Waste Management Act, Chapter 14 (§10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

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

9VAC20-60-30. Purpose of chapter.

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

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

C. This chapter is promulgated to meet the requirements of the Commonwealth legislative authority referenced in 9VAC20-60-20 A and will provide for a state hazardous waste program that will meet the requirements of RCRA.

9VAC20-60-40. Administration of chapter.

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

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

9VAC20-60-50. Application of chapter.

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

B. All persons who notify the U.S. Environmental Protection Agency under the authorities of §3010 of RCRA are subject to the provisions of this chapter.

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

9VAC20-60-60. [Repealed]

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. 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. 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. 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. 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. 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.

9VAC20-60-80. Enforcement and appeal procedures; offenses and penalties.

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

B. Sections 10.1-1455 through 10.1-1457 of the Code of Virginia provide for penalties, enforcement and judicial review. These sections describe the right of entry for inspections, the issuance of orders, penalties, injunctions, and other provisions and procedures for enforcement of these regulations.

9VAC20-60-90. [Reserved]

9VAC20-60-100 to 9VAC20-60-120. [Repealed]

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.

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 this chapter 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.

9VAC20-60-130 to 9VAC20-60-220. [Repealed]

APPENDICES 3.1 to 3.8. [REPEALED]

9VAC20-60-230 to 9VAC20-60-250. [Repealed]

9VAC20-60-260. Adoption of 40 CFR Part 260 by reference.

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

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

1. In 40 CFR 260.10, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

2. In 40 CFR 260.10, the term "EPA" shall mean the United States Environmental Protection Agency.

3. In 40 CFR 260.10 the term "new tank system" and "existing tank system," the reference to July 14, 1986, applies only to tank regulations promulgated pursuant to federal Hazardous and Solid Waste Amendment (HSWA) requirements. HSWA requirement categories include:

a. Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators;

b. Leak detection requirements for all underground tank systems for which construction commenced after July 14, 1986; and

c. Permitting standards for underground tanks that cannot be entered for inspection.

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

4. In 40 CFR 260.10, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 260.10 definitions of the terms "Person," "State," and "United States," the term "state" shall have the meaning originally intended by the Code of Federal Regulations and not be supplanted by "Commonwealth of Virginia."

6. In 40 CFR 260.10 and wherever elsewhere in Title 40 of the Code of Federal Regulations the term "universal waste" appears, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. Throughout 40 CFR 260.11(a), the terms "EPA" and "U.S. Environmental Protection Agency" shall not be supplanted with the term "Commonwealth of Virginia."

8. In Part XIV (9VAC20-60-1370 et seq.), the Virginia Hazardous Waste Management Regulations contain provisions analogous to 40 CFR 260.30, 40 CFR 260.31, 40 CFR 260.32, 40 CFR 260.33, 40 CFR 260.40, and 40 CFR 260.41. These sections of 40 CFR Part 260 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

9. Sections 40 CFR 260.2, 40 CFR 260.20, 40 CFR 260.21, 40 CFR 260.22 and 40 CFR 260.23 are not included in the incorporation of 40 CFR Part 260 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

10. Appendix I to 40 CFR Part 260 is not incorporated by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

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

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

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

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

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009.

2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.

3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of 9VAC20-60-270 and Part XII (9VAC20-60-1260 et seq.) of this chapter.

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

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

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

8. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 261 as promulgated by U.S. EPA on October 30, 2008, (73 FR 64717) (definition of solid waste rule) are not adopted herein.

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

9VAC20-60-262. 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 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 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 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), 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 Part 262, Subpart H, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency.

8. In addition to the requirements of this section, large quantity generators are required to pay an annual fee. The fee schedule and fee regulations are contained in Part XII (9VAC20-60-1260 through 9VAC20-60-1285) of this chapter.

9VAC20-60-263. Adoption of 40 CFR Part 263 by reference.

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

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

1. Additional requirements for transportation of hazardous materials are included in Part VII (9VAC20-60-420 et seq.) of these regulations and in the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110-10 et seq.).

2. Sections of 40 CFR 263.21(a)(2), 40 CFR 263.30 and 40 CFR 263.31 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations. See 9VAC20-60-490 for requirements related to transportation discharge management.

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 264.93, "hazardous constituents" shall include constituents identified in 40 CFR Part 264 Appendix IX in addition to those in 40 CFR Part 261 Appendix VIII.

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 Title 38.2 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. 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 Title 2.2 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 Title 2.2 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 Title 38.2 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 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 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. 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 Title 2.2 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 Title 2.2 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 confirms 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 Title 38.2 of the Code of Virginia."

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."

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.

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.

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.

27. A copy of all reports made in accordance with 40 CFR 264.196(d) shall be sent to the director and to the chief administrative officer of the local government of the jurisdiction in which the event occurs. The sentence in 40 CFR 264.196(d)(1), "If the release has been reported

pursuant to 40 CFR Part 302, that report will satisfy this requirement." is not incorporated by reference into these regulations and is not a part of the Virginia Hazardous Waste Management Regulations.

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."

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.

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

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 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 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 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 department.

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.

9VAC20-60-266. Adoption of 40 CFR Part 266 by reference.

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

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

1. In addition to the requirements of Subpart C of 40 CFR Part 266, those who generate or transport recyclable materials or those who own or operate facilities that use or store recyclable materials are also subject to applicable requirements of Parts IV (9VAC20-60-305 et seq.), VII (9VAC20-60-420 et seq.), and XII (9VAC20-60-1260 et seq.) of these regulations if the

materials are used in a manner constituting disposal.

2. In addition to the requirements of Subpart C of 40 CFR Part 266, those who generate or transport recyclable materials or those who own or operate facilities that use or store recyclable materials are also subject to applicable requirements of Parts IV, VII and XII of these regulations if the recyclable materials are for precious metals recovery.

3. In addition to the requirements of Subpart G of 40 CFR Part 266, those who store lead-acid batteries subject to 40 CFR 266.80(b) are also subject to the requirements of Parts IV, VII and XII of these regulations.

9VAC20-60-268. Adoption of 40 CFR Part 268 by reference.

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

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

1. In 40 CFR 268.1(e)(3), the term "EPA" means the United States Environmental Protection Agency.

2. In 40 CFR 268.1(f) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to 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 268.5, 40 CFR 268.6, 40 CFR 268.10, 40 CFR 268.11, 40 CFR 268.12, 40 CFR 268.40(b), 40 CFR 268.42(b) and 40 CFR 268.44(a) through (g), the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee, the term "Regional Administrator" shall mean the regional administrator of the United States Environmental Protection Agency for Region III or his designee, and the term "EPA" shall mean the United States Environmental Protection Agency.

4. In 40 CFR 268.9(d), the term "EPA Region or authorized State" shall mean the Commonwealth of Virginia.

5. 40 CFR 268.13 is not included in the incorporation of 40 CFR Part 268 by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

6. Any applications or petitions made to the director or the department in compliance with 40

CFR 268.44 shall comply with procedures of Part XIV (9VAC20-60-1370 et seq.) of these regulations.

7. In Subpart C of 40 CFR Part 268 there are dates on which a provision is or was to begin and dates on which national capacity variances expires or expired. None of these dates prior to the effective date of these regulations shall be incorporated by reference or be a part of the Virginia Hazardous Waste Management Regulations. Requirements associated with these expired dates shall be considered to be currently in effect. This exclusion from these regulations shall not be considered to remove or diminish any responsibility a person has or had regarding these dates under federal requirements related to the dates or during the interim following these dates.

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 department no later than the effective date of the federal permit; and
- (3) The owner and operator of the facility submit a request to continue the federal permit addressed to the department.

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

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

7. Interim status.

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

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

- (1) Failure to submit a completed Part B application on time;
- (2) Failure to furnish any information required by this chapter;
- (3) Falsification, misrepresentation or failure to fully disclose any information submitted or required to be kept under this chapter;
- (4) Violation of this chapter; and
- (5) A determination that the facility poses a significant threat to public health or the environment.

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

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

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

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

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

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

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

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

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

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

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

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

10. A period of 30 days shall elapse between the date of public notice and the date of a public hearing under 40 CFR 270.42(b)(4) and 40 CFR 270.42(c)(4).

11. Notices given under 40 CFR 270.30(l)(1) shall be written.

12. The following additional information is required from owners or operators of facilities that store or treat hazardous waste in waste piles if an exemption is sought to Subpart F of 40 CFR Part 264 and 40 CFR 264.251 as provided in 40 CFR 264.250(c) and 40 CFR 264.90(b)(2):

a. An explanation of how the standards of 40 CFR 264.250(c) will be complied with; and

b. Detailed plans and an engineering report describing how the requirements of 40 CFR

264.90(b)(2) will be met.

13. The agencies of the Commonwealth publish notices of regulatory activity, permit hearings and other official notices in the Virginia Register. Any references in incorporated federal text that indicate a publication is to be made in the Federal Register shall be construed to mean the Virginia Register when such publication is to be made by an agency of the Commonwealth.

14. Appeal rights and procedures related to a remedial action plan (RAP) included in 40 CFR 270.155, especially appeals to the EPA Environmental Appeals Board, are not incorporated into these regulations. Appeals of actions related to the content or process of developing a RAP will be governed by the Administrative Process Act, Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

15. The conditions of an expired permit continue in force until the effective date of the new permit if the permittee has submitted a timely reapplication that is a complete application for a new permit; and the director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. Permits that are continued remain fully effective and enforceable.

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

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

16. Part XII (9VAC20-60-1260 through 9VAC20-60-1285) of this chapter applies to all permitted facilities, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. In addition to permit application fees, a permitted treatment, storage, and disposal facility is assessed an annual fee. A facility that operates under interim status, a facility that is subject to an order or agreement, and a large quantity generator are also assessed annual fees.

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

9VAC20-60-273. Adoption of 40 CFR Part 273 by reference.

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

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

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

2. In addition to universal wastes included in 40 CFR Part 273, other wastes are defined to be universal wastes in Part XVI (9VAC20-60-1495 et seq.) of these regulations. Part XVI also contains waste specific requirements associated with the waste defined to be universal waste therein. In 40 CFR 273.1, the definitions in 40 CFR 273.9, and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous waste that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to 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." Any listing of universal wastes in 40 CFR Part 273 shall incorporate the universal wastes set out in Part XVI in a manner identical to those included in the federal text; whether, for example, as in 40 CFR 273.32(b)(4), 40 CFR 273.32(b)(5), 40 CFR 273.39(b)(2), and 40 CFR 273.62(a)(20) or as items to be included in a calculation or requirement as in the definitions of "Large Quantity Handler of Universal Waste" and "Small Quantity Handler of Universal Waste."

3. In addition to the requirements for lamps contained in 40 CFR 273, the following requirements shall apply:

a. A used lamp shall be considered discarded and a waste on the date the generator permanently removes it from its fixture. An unused lamp becomes a waste on the date the generator discards it since that is the date on which he is deemed to have decided to discard it in accordance with 40 CFR 273.5(c)(2).

b. Universal waste lamps may be crushed or intentionally broken on the site of generation to reduce their volume; however, breaking, crushing, handling, and storage must occur in a safe and controlled manner that minimizes the release of mercury to the workplace and the environment and must comply with 29 CFR 1910.1000. The procedure for breaking, crushing, handling and storing of the lamps must be documented and use a mechanical unit specifically designed for the process that incorporates the containment and filtration of process air flows to remove mercury-containing vapors and dusts.

c. All handlers of universal waste (large or small quantity) who crush mercury-containing lamps under these universal waste regulations shall comply with the following provisions:

(1) The handler must use a mercury-containing lamp crusher indoors with air pollution controls that capture both particulate and vapor phase mercury. At a minimum, these controls must include, or must be equivalent to the protection provided by a HEPA filter, activated charcoal, and a negative air flow (vacuum) through the crusher unit. The crusher must have documentation from the manufacturer that demonstrates that the unit:

(a) Is capable of achieving the Occupational Safety and Health Administration Permissible Exposure Limit (PEL) for mercury of 0.10 milligram per cubic meter in indoor ambient air (under individual site-specific use conditions); and

(b) Achieves a particle retention rate of 99.97% in the HEPA filter (at a particle diameter of 0.3 microns).

(2) The handler must develop and implement a written procedure specifying how to safely crush universal waste lamps. This procedure must include: type of equipment to be used to crush the lamps safely, operation and maintenance of the unit in accordance with written procedures developed by the manufacturer of the equipment, and proper waste management practices. The handler must document maintenance activities and keep records of maintenance. In addition, the unit operator must receive training in crushing procedures, waste handling and emergency procedures (training must be documented).

(3) Residues, filter media, or other solid waste generated as part of the crushing operation, which are not being reclaimed and which exhibit any characteristics of a hazardous waste, must be managed in accordance with all applicable hazardous waste management requirements.

(4) The handler must ensure that spills of the contents of the universal waste lamps that may occur during crushing operations are cleaned up in accordance with 40 CFR 273.13 (d)(2) or 40 CFR 273.33 (d) (2).

(5) The handler must store the crushed lamps in closed, nonleaking drums or containers that are in good condition. Transfer of the crushed lamps to other drums or containers is not permitted.

(6) Drums or containers used for storage of crushed lamps must be properly sealed and labeled. The label shall bear the words "Universal Waste-Lamp(s)," "Waste Lamp(s)," or "Used Lamp(s)."

4. A small quantity handler having a waste subject to the requirements of 40 CFR 273.13(a)(3)(i) is also subject to 9VAC20-60-270 and Parts IV (9VAC20-60-305 et seq.), VII (9VAC20-60-420 et seq.), and XII (9VAC20-60-1260 et seq.) of this chapter.

9VAC20-60-279. Adoption of 40 CFR Part 279 by reference.

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

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

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

part of the Virginia Hazardous Waste Management Regulations.

2. [Reserved.]

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 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 department of their hazardous waste management activities.

9VAC20-60-310. [Repealed]

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 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 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 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. Anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record. Any large quantity generator who ceases to be a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.

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 department.

9VAC20-60-320. [Repealed]

9VAC20-60-325. Prohibition.

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

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 department.

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

Manifest Regulations for Hazardous Waste Management [Repealed]

APPENDIX 5.1. [REPEALED]

Part VI

Regulations Applicable to Generators of Hazardous Waste [Repealed]

9VAC20-60-330 to 9VAC20-60-410. [Repealed]

APPENDIX 6.1. [REPEALED]

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 et seq.) 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) 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.

9VAC20-60-430. Recordkeeping and reporting requirements.

A. Except as provided in 9VAC20-60-430 B and 9VAC20-60-430 C, all transporters shall retain one signed copy of all manifests in their records for not less than three years from the date of acceptance for shipment by the initial transporter. The retained copy shall show his signature as well as those of the generator and the designated facility owner or operator, or next designated transporter.

B. For shipments delivered to the designated facility by water (bulk shipment), each water (bulk

shipment) transporter shall retain a copy of the shipping paper containing all the information required in 40 CFR 263.20(e)(2) for a period of three years from the date of acceptance by the initial transporter.

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

1. The initial rail transporter shall keep a copy of the manifest and shipping paper with all the information required in 40 CFR 263.20(f)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

2. The final rail transporter shall keep a copy of the signed and dated manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

3. Intermediate rail transporters are not required to keep records pursuant to this chapter.

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

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

F. All transporters permitted by the director under 9VAC20-60-450 are required to submit an annual report of hazardous waste transporting activities. The annual report shall be a summary of activities and shall be submitted on and include the information required by the Transporter Annual Report form (Form 7.2-1). The annual report shall be submitted within 90 days of the close of the reporting year. The reporting year ends December 31 of each calendar year.

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 department an identification number prior to such transport.

B. An EPA identification number shall be obtained from the 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 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 which originate or terminate or both in the Commonwealth. Transporters who transport hazardous waste only through the Commonwealth are not required to obtain a transporter permit.

C. Permit issuance. Upon receipt of a complete application, 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 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 within 30 days of such a change. Upon receiving such a notification the department will revoke the old permit and reissue it reflecting the appropriate changes. The reissued permit will remain valid for the unexpired duration of the revoked permit.

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

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 department pursuant to the provisions of 9VAC20-60-440 E the applicant may obtain a temporary transporter permit by calling the department 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 with 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.

9VAC20-60-460. Labeling, placarding, and marking.

9VAC20-60-470. Use of the manifest system.

9VAC20-60-480. Acceptance, shipment and delivery of hazardous waste.

A. A transporter shall not accept for shipment any hazardous waste for transport without determining that requirements of 9VAC20-60-263 have been complied with.

B. If a manifest is required by 9VAC20-60-263, the generator shall sign and date the manifest and release the hazardous waste shipment to the transporter.

C. The transporter who is subject to 9VAC20-60-480 B shall sign and date the manifest and accept the hazardous waste for shipment.

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

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

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

F. The transporter shall maintain the labeling required by the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110) during the shipment of the hazardous waste.

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

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

2. If the hazardous waste shipment cannot be delivered in accordance with 9VAC20-60-480 G 1, the transporter must contact the generator for further directions concerning an alternate facility for delivery and must revise the manifest according to the generator's instructions.

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

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

J. If the shipment of hazardous waste is shipped out of the United States, the transporter shall handle the manifest in accordance with 9VAC20-60-263.

K. If the transporter mixes hazardous wastes of different shipping descriptions specified in Regulations Governing the Transportation of Hazardous Materials by placing them into a single container, such transporter shall also comply with 9VAC20-60-262.

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

M. A transporter that imports a hazardous waste from a foreign country into the Commonwealth shall comply with the provisions of 9VAC20-60-262 and shall obtain a transporter permit from

the director and obtain an ID number from the EPA.

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 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 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.

APPENDIX 7.1 [REPEALED]

APPENDICES 7.1-2 to 7.3. [REPEALED]

9VAC20-60-510. [Repealed]

APPENDICES 8.1 to 8.14. [REPEALED]

Part IX

Hazardous Waste Management Facility Interim Status Standards [Repealed]

9VAC20-60-520 to 9VAC20-60-680. [Repealed]

9VAC20-60-690 to 9VAC20-60-700. [Reserved]

9VAC20-60-710 to 9VAC20-60-730. [Repealed]

APPENDICES 9.1 to 9.4. [REPEALED]

Part X

Standards for Permitted Hazardous Waste Management Facilities [Repealed]

9VAC20-60-740 to 9VAC20-60-890. [Repealed]

9VAC20-60-900 to 9VAC20-60-920. [Reserved]

9VAC20-60-930 to 9VAC20-60-950. [Repealed]

APPENDICES 10.1 to 10.6. [REPEALED]

Part XI

Hazardous Waste Management Facility Permit Regulations [Repealed]

9VAC20-60-960 to 9VAC20-60-1250. [Repealed]

APPENDIX 11.1. [REPEALED]

APPENDIX 11.2. [REPEALED]

Part XII

Permit Application And Annual 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 programs required by Parts III (9VAC20-60-270 et seq.), IV (9VAC20-60-305 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 subsection G of this section, to facilities operating under interim status, to facilities subject to an order or agreement, and to all large quantity generators. The fees shall be assessed in accordance with 9VAC20-60-1270 through 9VAC20-60-1286.

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. The holder of a permit shall not be assessed a permit modification fee for minor modifications.

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 9VAC20-60-1270 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 9VAC20-60-1270.

3. Hazardous waste generators that accumulate wastes on-site in accordance with 40 CFR 262.34 are not subject to regulations contained in 9VAC20-60-1270 since HWM permits are not required for such accumulations.

9VAC20-60-1270. Determination of application fee amount.

A. General.

1. Each application for a new or renewed permit and each application for a modification to a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of this section.

2. The amount of the permit application fee is based on the costs directly associated with the permitting program required by Parts III (9VAC20-60-270 et seq.) and VII (9VAC20-60-420 et seq.) of this chapter and includes costs for personnel and contractual effort and the prorated costs of supplies, equipment, communications and office space. The fee schedules are shown in 9VAC20-60-1285.

B. Transporter fees.

1. Application fees for the transporter permits are shown in 9VAC20-60-1285 A. Based on the greater regulatory effort associated with the issuance of permits to the transporters without terminals or other facilities in the Commonwealth, the out-of-state transporters are charged

higher fees.

2. Since Part VII of this chapter does not provide for a modification procedure, all transporter permit applications are considered to be for new permits.

C. New HWM facility permits.

1. All applicants for new or renewed hazardous waste treatment, storage, and disposal facility permits are assessed a base fee shown in 9VAC20-60-1285 B.

2. Applicants for a facility permit which includes one or more of the hazardous waste treatment, storage or disposal units or processes that require ground water protection or corrective action for solid waste management units in accordance with Subpart F of 40 CFR Part 264, Subpart K of 40 CFR Part 264, Subpart L of 40 CFR Part 264, Subpart M of 40 CFR Part 264, and Subpart N of 40 CFR Part 264, as applicable, ("land-based TSD units") are assessed a supplementary fee shown in 9VAC20-60-1285 B, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

3. Applicants for a facility permit which includes one or more hazardous waste incineration, boiler, or industrial furnace units or processes regulated in accordance with Subpart O of 40 CFR Part 264 are assessed a supplementary fee shown in 9VAC20-60-1285 B, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

4. Applicants for a facility permit for storage of hazardous wastes in containers, tanks or drip pads, or both, subject to Subpart I of 40 CFR Part 264, Subpart J of 40 CFR Part 264, and Subpart W of 40 CFR Part 264 will not be assessed any supplementary fees unless required to close and perform post-closure care as landfills as provided for in 40 CFR 264.197(b) and 40 CFR 264.571(b).

5. The transporter permits are separate permits and require a separate administrative action. Applicants for new treatment, storage, and disposal facility permits who also apply for a transporter permit will be assessed separate fees in accordance with subsection B of this section.

D. Modifications to existing HWM facility permits.

1. Except as provided for in subsection E of this section, all applicants for a modification of an existing HWM facility permit are assessed a modification base fee shown in 9VAC20-60-1285 C.

2. Applicants for a modification that includes or involves the addition of hazardous wastes not currently in the permit are assessed a supplementary modification fee shown in 9VAC20-60-1285 C, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate.

3. Applicants for a major (Class 3) modification that includes or involves corrective action for solid waste management units under 40 CFR 264.101 and Title 40, Subpart S shall be assessed a supplementary modification fee shown in 9VAC20-60-1285 C in addition to supplementary fees specified in subdivision 1 of this subsection and any other supplementary fee that may be

appropriate.

4. Applicants for a major (Class 3) modification that includes or involves the addition of one or more new hazardous waste land-based TSD units or processes; or requires a substantive change in the design of the existing land-based TSD units or processes, are assessed a supplementary modification fee shown in 9VAC20-60-1285 C in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate. For the purpose of this subsection, it will be deemed that a major change is required whenever a change in the design of the ground water protection system or whenever a new land treatment demonstration permit specified in 9VAC20-60-270 is necessary.

5. Applicants for a major (Class 3) modification that includes or involves the addition of one or more hazardous waste incineration units or processes, or requires a substantive change in the design of an existing incineration unit or process, are assessed a supplementary modification fee shown in 9VAC20-60-1285 C, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate. For the purposes of this subsection, it will be deemed that a major change is required whenever a change occurs that necessitates the performance of a trial burn in accordance with 9VAC20-60-270.

6. Applicants for a major (Class 3) modification which includes or involves new treatment, storage or disposal units, processes or areas, or requires a substantive change in the design of any existing hazardous waste treatment, storage or disposal units, processes or areas, neither of which is a hazardous waste land-based TSD or incineration unit, are assessed a supplementary modification fee shown in 9VAC20-60-1285 C, in addition to the base fee specified in subdivision 1 of this subsection and any other supplementary fee that may be appropriate. For the purposes of this subsection, expansion of an existing container storage facility is not considered to be a major change.

7. Applicants for a modification that is not a minor modification and is a substantive (Class 2) as specified in 9VAC20-60-270 and that is not subject to the requirements of subdivisions 2 through 6 of this subsection are assessed a supplementary modification fee shown in 9VAC20-60-1285 C, in addition to the base fee specified in subdivision 1 of this subsection.

8. Applicants for numerous modifications subject to several supplementary fees will not be assessed a permit application fee in excess to the one required for a new permit for a comparable HWM facility.

E. Minor modifications of existing HWM facility permits. All applicants for minor (Class 1) modification of an existing HWM facility permit provided for in 9VAC20-60-270 are not assessed a fee.

F. Emergency permits. Applicants for an emergency hazardous waste treatment, storage or disposal permit as provided for in 9VAC20-60-270 are assessed a fee shown in 9VAC20-60-1285 E, unless the director shall determine that a lesser fee is appropriate at the time the permit is issued. No permit fee will be assessed for emergency treatment, storage, or disposal necessary for the remediation of abandoned or orphaned hazardous waste by the U.S. Environmental Protection Agency, the Virginia Department of Environmental Quality, the Virginia Department of Emergency Management, the Virginia State Police, the Virginia Department of

Transportation, a U.S. Department of Defense Explosive Ordnance Disposal Team, a U.S. Army Technical Escort Unit or other federal government entities trained in explosive or munitions emergency response. No permit fee will be assessed for emergency treatment, storage, or disposal when a determination has been made by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality.

9VAC20-60-1280. Payment of application 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 January 1, 1988, shall submit the application fees as required by the conditions specified in that permit.

B. Method of payment. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240. When the department is able to accept electronic payments, payments may be submitted electronically.

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 department receives proper payment.

9VAC20-60-1283. Determination of annual fee amount.

A. Each operator of a hazardous waste treatment, storage, or disposal facility shall be assessed an annual fee as shown in 9VAC20-60-1285 F to be paid in accordance with 9VAC20-60-1284.

B. Each large quantity generator of hazardous waste shall be assessed an annual fee as shown in 9VAC20-60-1285 G to be paid in accordance with 9VAC20-60-1284.

C. A hazardous waste treatment, storage, or disposal facility operating under interim status and a facility subject to an order or agreement operate by accession and shall be assessed an annual fee as described in 9VAC20-60-1285 F to be paid in accordance with 9VAC20-60-1284.

An order or agreement may be issued to the operator of a facility, a generator, or a person who is both a facility operator and a generator. If a person is issued an order or agreement whose terms allows that person to conduct an activity that is by these regulations reserved for persons operating a facility under a permit or interim status, that person shall be considered to be operating a facility subject to an order or agreement. If the order or agreement is issued to a generator and the terms of the order do not allow that person to conduct any activity that is by these regulations reserved for persons operating a facility under a permit or interim status and the person is not otherwise operating a facility at the site of generation, that person shall not be considered to be operating a facility subject to an order or agreement.

D. Annual fees are separate and accumulative. However, a facility that is assessed an annual fee as a facility shall not also be assessed a second annual fee as a large quantity generator for

hazardous waste generated at that facility.

E. Anyone who operates a facility (including those described in subsections A and C of this section) or who is a large quantity generator at any time during the year shall be assessed the full annual fee amount no matter how short the period the facility is operated or how briefly the generator is a large quantity generator. A generator who is a large quantity generator episodically or provisionally (having received a provisional EPA Identification Number) shall be assessed the full annual fee for any year in which the generator was a large quantity generator. For the evaluation of facility status or of generator status, the annual year shall be considered to be from January 1 to December 31.

F. No annual fee as a facility or large quantity generator will be assessed for emergency treatment, storage, or disposal necessary for the remediation of abandoned or orphaned hazardous waste by the U.S. Environmental Protection Agency, the Virginia Department of Environmental Quality, the Virginia Department of Emergency Management, the Virginia State Police, the Virginia Department of Transportation, a U.S. Department of Defense Explosive Ordnance Disposal Team, a U.S. Army Technical Escort Unit or other federal government entities trained in explosive or munitions emergency response. No annual fee will be assessed for emergency treatment, storage, or disposal when a determination has been made by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality.

Persons who are remediating a brownfield as defined in the Brownfield Restoration and Land Renewal Act (§10.1-1230 et seq. of the Code of Virginia) shall not be assessed an annual fee as a large quantity generator with regard to hazardous waste management activities at a waste management unit and that result from the remediation of the brownfield.

G. Discounted annual fees may be offered based on the criteria listed in 9VAC20-60-1286. An operator of a facility or a large quantity generator will be notified by the department if discounted annual fees are applicable.

9VAC20-60-1284. Payment of annual fees.

A. Due date. The operator of the treatment, storage, or disposal facility and each large quantity generator shall pay the correct fees to the Department of Environmental Quality. The department may bill the facility or generator for amounts due or becoming due in the immediate future. All payments are due and shall be received by the department no later than the first day of October 2004 (for the 2003 annual year), and no later than the first day of October of each succeeding year thereafter (for the preceding annual year) unless a later payment date is specified by the department in writing.

B. Method of payment.

1. The operator of the facility or the large quantity generator shall send a payment transmittal letter to the Department of Environmental Quality. The letter shall contain the name and address of the facility or generator, the Federal Identification Number (FIN) for the facility or generator, the amount of the payment enclosed, and the period that the payment covers. With the transmittal letter shall be payment in full for the correct fees due for the annual period. A copy of the transmittal letter only shall be maintained at the facility or the site where the hazardous waste

was generated.

2. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240. When the department is able to accept electronic payments, payments may be submitted electronically.

C. Late payment and incomplete payments. In addition to any other provision provided by statute for the enforcement of these regulations, interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to §6621(a)(2) of the Internal Revenue Code. This rate is prescribed in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee may also be charged to any delinquent (over 90 days past due) account. The Department of Environmental Quality is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and other administrative costs incurred in pursuing and collecting any past due amount.

9VAC20-60-1285. Permit application fee and annual fee schedules.

(The effective date of this fee schedule is July 1, 2004.)

Table 1. Permit Application Fees.

A. Transporter fees

Type of application

Transporters with terminals or other facilities within the Commonwealth.	\$140
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Other transporters.	\$210
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B. New or renewed TSD facility fees.

Elements of applications

Base fee for all facilities, including corrective action for solid waste management units. \$16,900

Supplementary fee for one or more land-based TSD units, including corrective action for solid waste management units. \$39,280

Supplementary fee for one or more incineration, boiler, or industrial furnace units (BIF). \$25,200

C. Major (Class 3) Permit modification fees.

Elements of Applications for Major Permit Modifications

Base fee for all major (Class 3) modifications, including major changes related to corrective action for solid waste management unit. \$90

Addition of new wastes. \$2,310

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. \$45,070

Addition of or major (Class 3) change to one or more incineration, boiler, or industrial furnace units. \$33,790

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.

Substantive changes (Class 2).	\$2,310
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D. Minor (Class 1) permit modification fees.

Type of application

Minor (Class 1) permit modification fee.	\$0
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E. Emergency Permit fee

Type of application

Emergency Permit fee	\$2,310
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Table 2. Annual Fees.

F. Facilities fees.

Permitted treatment, storage, and disposal facility.	\$2,800
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\ Interim status treatment, storage, and disposal facility.	\$2,800
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Facility subject to an order or agreement.	\$2,800
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G. Large quantity generator fees.

Large quantity generators.

\$1,000

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.	+
Supplementary fee for land-based TSD units.	+
Tank storage facility (see 9VAC20-60-1270 C 4).	=

Total fee.	

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.	+
Addition of new wastes.	+
Addition of new incineration units.	=

Total modification fee.	

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

Base fee.	+
Supplementary fee for land-based units.	+
Supplementary fee for incineration units.	=
Storage facility.	----
Total fee.	

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.	+
Addition of a new waste.	+
Fee for nonsubstantive change.	=

Total modification fee.	

9VAC20-60-1286. Discounted annual fees for Environmental Excellence program participants.

A. The term "Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMS). The program is based on the use of environmental management systems that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

B. Participants in the VEEP shall be eligible for reduced annual fees. The VEEP includes the Environmental Enterprise (E2) level of participation and the Exemplary Environmental Enterprise (E3) level of participation.

C. Annual fee discounts will not become effective until 2005. The availability of discounts to the annual fees will be dependent upon acceptance and continued participation in the VEEP.

D. Eligibility for reduced annual fees shall be based upon the department's review of the annual report that is required to be submitted by the VEEP. The department shall review annual reports to verify that facilities continue to meet VEEP criteria prior to offering discounted annual fees.

1. The participant's annual report must reflect activities occurring through December 31 and must satisfy all reporting requirements established in the VEEP.

2. Annual reports must be received at the department's central office by April 1 of the following year to be eligible for a reduction of the annual fees.

3. The annual report must list all regulated and permitted activities included within the scope of the facility's environmental management system.

4. A participant's level of participation will be evaluated as of December 31 of each calendar year.

E. If a facility participated in the VEEP but participation in the program was terminated, discounted fees will not be available to participants until they have been reaccepted into the VEEP.

F. Participants at the E2 level of participation will be eligible to receive a discount to annual fees for up to a maximum of three years.

G. Prior to distributing bills for annual fees, the department shall calculate the discounted hazardous waste management annual fees. The total amount of facilities' discounts to hazardous waste management annual fees shall not exceed \$26,000 annually.

1. The total of a 10% discount for each participant at the E3 level of participation and a 5.0% discount for each participant at the E2 level of participation shall be calculated.

2. If the calculated total of the discounts to annual fees would exceed \$26,000, annual fees for participants at the E3 level of participation shall be discounted 5.0%, additional discounts of annual fees for participants at the E3 level of participation shall not be available, and annual fees for participants at the E2 level of participation shall not be discounted,

3. If the calculated total of the discounts to annual fees would not exceed \$26,000, annual fees for participants at the E3 level of participation shall be discounted 10%, annual fees for participants at the E2 level of participation shall be discounted 5.0%, and a larger discount may be provided for participants at the E3 level of participation, based upon direct program costs and program revenues, not to exceed a total discount of 20%. The total of all discounts shall not exceed \$26,000. Any additional discounted fees will be calculated as follows:

(Total program revenues in the previous fiscal year minus direct program costs for the previous fiscal year) multiplied by 0.75 equals the additional discounts to be distributed to program participants. Additional discounts will be distributed to participants at the E3 level of participation in equal whole percentages.

4. If the calculated total of all facilities' discounts exceeds \$26,000, the department shall reevaluate the discounts offered to VEEP participants and shall begin the regulatory process to revise the discounts offered to VEEP participants.

APPENDIX 12.1. [REPEALED]

Part XIII

Standards for the Management of Specific Hazardous Wastes and Specific Types of Management Facilities [Repealed]

9VAC20-60-1290 to 9VAC20-60-1360. [Repealed]

APPENDICES 13.1 to 13.8. [REPEALED]

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 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 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 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.

9VAC20-60-1400. Changes in process classification.

A. Variance to be classified as a boiler. In accordance with the standards and criteria in the definition of "boiler" and the procedures in 9VAC20-60-1420 B or 9VAC20-60-1420 C the director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler after considering the following criteria:

1. The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;
2. The extent to which the combustion chamber and energy recovery equipment are of integral design;
3. The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;
4. The extent to which exported energy is utilized;
5. The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and
6. Other factors, as appropriate.

B. [Reserved.]

9VAC20-60-1410. Changes in the required management procedures.

A. Reclamation of precious metals. The director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in 40 CFR 261.6(a)(2)(iii) should be regulated under 40 CFR 261.6(b) and 40 CFR 261.6(c) rather than under provisions of 9VAC20-60-266. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the director will consider the following factors:

1. The types of materials accumulated or stored and the amounts accumulated or stored;
2. The method of accumulation or storage;
3. The length of time the materials have been accumulated or stored before being reclaimed;
4. Whether any contaminants are being released into the environment, or are likely to be so released; and
5. Other relevant factors. The procedures for this decision are set forth in 9VAC20-60-1420 C.

B. Variance from containment requirements for tanks.

1. The owner or operator may obtain a variance from the requirements of 40 CFR 265.193 or 40 CFR 264.193 if the director finds, as a result of a demonstration by the owner or operator, either:

a. That alternative design and operating practices, together with location characteristics, will prevent the migration of hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment during the active life of the tank system; or

b. That in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment.

2. New underground tank systems may not, per a demonstration in accordance with subdivision 5 of this subsection, be exempted from the secondary containment requirements of this section.

3. Application for a variance as allowed in subdivision 1 of this subsection does not waive compliance with the requirements of 40 CFR 265.193 or 40 CFR 264.193 for new tank systems.

4. In deciding whether to grant a variance based on a demonstration of equivalent protection of ground water and surface water, the director will consider:

a. The nature and quantity of the wastes;

b. The proposed alternate design and operation;

c. The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and

d. All other factors that would influence the quality and mobility of the hazardous waste constituents and the potential for them to migrate to ground water or surface water.

5. In deciding whether to grant a variance, based on a demonstration of no substantial present or potential hazard, the director will consider:

a. The potential adverse effects on groundwater, surface water, and land quality taking into account:

(1) The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

(2) The hydrogeological characteristics of the facility and surrounding land;

(3) The potential for health risks caused by human exposure to waste constituents;

(4) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(5) The persistence and permanence of the potential adverse effects;

b. The potential adverse effects of a release on ground water quality, taking into account:

(1) The quantity and quality of ground water and the direction of ground water flow;

- (2) The proximity and withdrawal rates of water in the area;
- (3) The current and future uses of ground water in the area; and
- (4) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the ground water quality;

c. The potential adverse effects of a release on surface water quality, taking into account:

- (1) The quantity and quality of ground water and the direction of ground water flow;
- (2) The patterns of rainfall in the region;
- (3) The proximity of the tank system to surface waters;
- (4) The current and future uses of surface waters in the area any water quality standards established for those surface waters; and
- (5) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality; and

d. The potential adverse effects of a release on the land surrounding the tank system, taking into account:

- (1) The patterns of rainfall in the region; and
- (2) The current and future uses of the surrounding land.

6. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of subdivision 4 of this subsection at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), shall:

a. Comply with the requirements of 40 CFR 265.196 or 40 CFR 264.196, except 40 CFR 265.196(d) or 40 CFR 264.196(d);

b. Decontaminate or remove contaminated soil to the extent necessary to:

- (1) Enable the tank system, for which the variance was granted, to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release; and
- (2) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and

c. If contaminated soil cannot be removed or decontaminated in accordance with subdivision 6 b of this subsection, comply with the requirements of 40 CFR 265.197(b) or 40 CFR 264.197(b), as applicable;

7. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of subdivision 4 of this subsection, at which a

release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall:

- a. Comply with the requirements of 40 CFR 265.196(a) through 40 CFR 265.196(d) or 40 CFR 264.196(a) through 40 CFR 264.196(d);
- b. Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if ground water has been contaminated, the owner or operator shall comply with the requirements of 40 CFR 265.197(b) or 40 CFR 264.197(b); and
- c. If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of 40 CFR 265.193(a) through 40 CFR 265.193(f) or 40 CFR 264.193(a) through 40 CFR 264.193(f) or reapply for a variance from secondary containment and meet the requirements for new tank systems in 40 CFR 265.192 or 40 CFR 264.192 if the tank system is replaced.

The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed, and ground water or surface water has not been contaminated.

C. Petitions to allow land disposal of a waste prohibited under 9VAC20-60-268.

1. Any person seeking an exemption from a prohibition under 9VAC20-60-268 for the disposal of a restricted hazardous waste in a particular unit or units shall submit a petition to the EPA administrator in accordance with 40 CFR 268.6.

2. (Reserved.)

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 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 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 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 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 department within 180 days after notifying the 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 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.

9VAC20-60-1430. Petitions to include additional hazardous wastes.

A. General.

1. Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of 9VAC20-60-273 and Part XVI (9VAC20-60-1495 et seq.) of this chapter may petition for a regulatory amendment under this part.

2. To be successful, the petitioner shall demonstrate to the satisfaction of the director that regulation under the universal waste regulations of 9VAC20-60-273 and Part XVI of this chapter:

a. Is appropriate for the waste or category of waste;

b. Will improve management practices for the waste or category of waste; and

c. Will improve implementation of the hazardous waste program.

The petition shall include the information required by 9VAC20-60-1370 C. The petition should also address as many of the factors listed in subsection B of this section as are appropriate for the waste or category of waste addressed in the petition.

3. The director will grant or deny a petition using the factors listed in subsection B of this section. The decision will be based on the weight of evidence showing that regulation under 9VAC20-60-273 and Part XVI of this chapter is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

4. The director may request additional information needed to evaluate the merits of the petition.

5. If the director adds new hazardous wastes to the list contained in 9VAC20-60-273 and in Part XVI of these regulations, management of these wastes under the universal waste regulations would only be allowed within the Commonwealth or other states that have added those particular wastes to their regulations. Shipments of such wastes to a state where universal waste standards do not apply to that waste would have to comply with the full hazardous waste requirements of Parts I through XV of this chapter.

B. Factors to consider.

1. The waste or category of waste, as generated by a wide variety of generators, is listed in Subpart D of 40 CFR Part 261, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Subpart C of 40 CFR Part 261. (When a characteristic waste is added to the universal waste regulations of 9VAC20-60-273 and Part XVI of this chapter by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries). Thus, only the portion of the waste stream that does exhibit one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of 9VAC20-60-273 and Part XVI of this chapter;

2. The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);

3. The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;

4. Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

5. The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to 9VAC20-60-273 or Part XVI of this chapter; and applicable requirements of the Virginia

Regulations Governing the Transportation of Hazardous Materials, 9VAC20-110-10 et seq.) would be protective of human health and the environment during accumulation and transport;

6. Regulation of the waste or category of waste under 9VAC20-60-273 will increase the likelihood that the waste will be diverted from nonhazardous waste management systems (e.g., the municipal waste stream, nonhazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with the Virginia Hazardous Waste Management Regulations;

7. Regulation of the waste or category of waste under 9VAC20-60-273 will improve implementation of and compliance with the hazardous waste regulatory program; and

8. Such other factors as may be appropriate.

9VAC20-60-1435. Petitions for site-specific variance from the applicable treatment standard under the land disposal restrictions.

The director may approve an application for site-specific variance from the applicable treatment standards under the land disposal restriction using the criteria and procedures established in 9VAC20-60-1370 and 40 CFR 268.44.

APPENDIX 14.1. [REPEALED]

Part XV

Land Disposal Restrictions [Repealed]

9VAC20-60-1440 to 9VAC20-60-1480. [Repealed]

APPENDICES 15.1 to 15.10. [REPEALED]

Part XVI

Additional Universal Waste Management Provisions

9VAC20-60-1495. General provisions.

A. Hazardous wastes defined to be universal wastes in the texts incorporated by reference at 9VAC20-60-260 and 9VAC20-60-273 and hazardous wastes as defined in 9VAC20-60-1505 shall be universal wastes for the purposes of these regulations, the Virginia Hazardous Waste Management Regulations.

B. A universal waste may be managed under the general provisions as hazardous waste or under the special provisions as universal waste. The generator shall determine under which provisions the waste shall be managed and subsequent management shall be consistent with that determination by the generator.

9VAC20-60-1505. Additional universal wastes.

Note: At this time, there are no universal wastes that are not also universal wastes under 40 CFR Part 273 or 9VAC20-60-273 B.

FORMS

Application for a Transporter Permit, Form 7.1 (rev. 12/01).

Transporter Annual Report, Form 7.2-1 (rev. 12/01).

Intra-Commonwealth Shipments, Form 7.2-2 (rev. 12/01).

Shipments to Other States, Form 7.2-3 (rev. 12/01).

Shipments into the Commonwealth, Form 7.2-4 (rev. 12/01).

Shipments to Foreign Facilities, Form 7.2-5 (rev. 12/01).