COMMONWEALTH OF VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Demonstration of Adequate Authority
For
Virginia Hazardous Waste Management Program Revisions
From Program Revision IV through June 19, 2006

Program Revision IV

October 1, 2007

VIRGINIA PROGRAM REVISION IV

DEMONSTRATION OF ADEQUATE AUTHORITY FOR THE VIRGINIA HAZARDOUS WASTE MANAGEMENT PROGRAM, INCLUDING CHANGES TO THE FEDERAL RCRA PROGRAM THROUGH JUNE 19, 2006

This document provides, as supplemented by the documents submitted in Revision I, Revision II, Revision III and the original application for authorization, a demonstration of the statutory and regulatory authority for the Virginia Hazardous Waste Management Program. The specific authorities cited herein are contained in statutes or regulations adopted and effective at the date of this Demonstration. These authorities supplement those previously described in the Virginia Demonstrations of Adequate Authority for the Virginia Hazardous Waste Management Program dated May 12, 2000, September 18, 2002, March 24, 2005, and in the letter dated January 12, 1998, regarding Virginia's Environmental Assessment Privilege and Immunity Law.

Since the Commonwealth received approval of Program Revision III on July 10, 2006, it has improved its program and amended its regulations to incorporate changes to the Federal regulations through June 19, 2006. Commonwealth-initiated changes are addressed herein. The Commonwealth initiates this revision, Revision IV, of its authorization under 40 CFR 271.21 to seek approval of the amended program. The pages below discuss those changes to the Commonwealth's statutes and regulations for which approval is sought. They address the differences between the Commonwealth's requirements and the parallel Federal provisions.

STATUTES

Statutes addressed in the previous program revision submissions to the Environmental Protection Agency continue undiminished with regard to the Commonwealth's program's powers to issues relevant to authorization. The statutory authorities for the Commonwealth are documented in the May 12, 2000 Demonstration of Adequate Authority. This submission explains changes to the statutes made to enhance the authority to conduct the hazardous waste program in the Commonwealth. Changes to the statutes that affect permit fees or other items not related to the Federal program equivalency are not discussed.

JUDICIAL DECISIONS

There have been no judicial decisions that are known to limit or interfere with Virginia's authority to implement, administer, or enforce the authorized hazardous waste program.

VIRGINIA PROGRAM REVISION IV

REGULATORY DOCUMENTATION FOR THE PROGRAM REVISIONS FOR WHICH THE COMMONWEALTH IS SEEKING APPROVAL
(Includes Federal Regulatory Changes from Program Revision III through June 19, 2006)

Title of Regulations: 9 VAC 20-60, Virginia Hazardous Waste Management Regulations

Effective Dates of Regulations:

Immediate Final Rule 2006 May 22, 2006 (Adoption of June 19, 2006 CFR)

Statutory Authority:

§§ 10.1-1402 and 10.1-1402.1 and Article 4 (§ 10.1-1426 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia. Legislation cited is current through the 2006 session of the Virginia General Assembly.

Date Prepared: September 21, 2007

A. COMMONWEALTH ANALOGS TO FEDERAL REGULATIONS

At VAC 20-60-18, in Immediate Final Rule 2006, Virginia incorporated by reference the Federal regulations as published on June 19, 2006. Virginia is seeking approval for program revisions relative to Federal regulatory changes published in the Federal Register from July 1, 2004 through June 19, 2006.

Federal Rule Reference(s)	Date(s) Federal Rule Published	Applicable CFR Sections Affected by Federal Amendment(s)	Commonwealth Citation(s) (as referring to)	Date Incorporated Into Commonwealth Regulations
69 FR 56357	September 21, 2004	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
69 FR 60557	October 12, 2004	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
69 FR 62217	October 25, 2004	262	9VAC20-60-18 (9VAC20-60-262.A)	May 22, 2006
70 FR 9138	February 24, 2005	261 268	9VAC20-60-18 (9VAC20-60-261.A) (9VAC20-60-268.A)	May 22, 2006

70 FR 10776	March 4, 2005	260 261 262 263 264 265	9VAC20-60-18 (9VAC20-60-260.A (9VAC20-60-261.A) (9VAC20-60-262.A) (9VAC20-60-263.A) (9VAC20-60-264.A) (9VAC20-60-265.A)	May 22, 2006
70 FR 21153	April 25, 2005	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
70 FR 34538	June 14, 2005	260 261 264 265 266 268 270 279	9VAC20-60-18 (9VAC20-60-260.A) (9VAC20-60-261.A) (9VAC20-60-264.A) (9VAC20-60-265.A) (9VAC20-60-266.A) (9VAC20-60-268.A) (9VAC20-60-270.A) (9VAC20-60-279.A)	May 22, 2006
70 FR 35032	June 16, 2005	261 268	9VAC20-60-18 (9VAC20-60-261.A) (9VAC20-60-268.A)	May 22, 2006
70 FR 35034	June 16, 2005	262 264 265	9VAC20-60-18 (9VAC20-60-262.A) (9VAC20-60-264.A) (9VAC20-60-265.A)	May 22, 2006
70 FR 42499	July 25, 2005	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
70 FR 44150	August 1, 2005	261 264	9VAC20-60-18 (9VAC20-261.A) (9VAC20-264.A)	May 22, 2006
70 FR 44496	August 3, 2005	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
70 FR 44505	August 3, 2005	268	9VAC20-60-18 (9VAC20-60-268.A)	May 22, 2006
70 FR 45508	August 5, 2005	260 261 264 265 268 270 273	9VAC20-60-18 (9VAC20-260.A) (9VAC20-261.A) (9VAC20-264.A) (9VAC20-265.A) (9VAC20-268.A) (9VAC20-270.A) (9VAC20-273.A)	May 22, 2006
70 FR 49187	August 23, 2005	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
70 FR 51638	August 31, 2005	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006

70 FR 53420	September 8, 2005	124 260 261 267 270	9VAC20-60-18 (9VAC20-124..A) (9VAC20-260.A) (9VAC20-261.A) (9VAC20-267.A) (9VAC20-270.A)	May 22, 2006
70 FR 57769	October 4, 2005	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
70 FR 59402	October 12, 2005	260 264 265 266 270	9VAC20-60-18 (9VAC20-60-260.A) (9VAC20-60-264.A) (9VAC20-60-265.A) (9VAC20-60-266.A) (9VAC20-60-270.A)	
70 FR 60217	October 17, 2005	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
70 FR 71002	November 25, 2005	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
70 FR 71002	November 25, 2005	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
70 FR 76168	December 23, 2005	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
71 FR 6209	February 7, 2006	268	9VAC20-60-18 (9VAC20-60-268.A)	May 22, 2006
71 FR 9723	February 27, 2006	261	9VAC20-60-18 (9VAC20-60-261.A)	May 22, 2006
71 FR 16862	April 4, 2006	260 261 264 265 266 268 270	9VAC20-60-18 (9VAC20-60-260.A) (9VAC20-60-261.A) (9VAC20-60-264.A) (9VAC20-60-265.A) (9VAC20-60-266.A) (9VAC20-60-268.A) (9VAC20-60-270.A)	May 22, 2006

Interpretive Comment: Since the Commonwealth has adopted these Federal changes by reference without exceptions, the Commonwealth's regulations are identical, therefore equivalent, to Federal regulations on these points.

B. FEDERAL PROGRAM REVISIONS FOR WHICH VIRGINIA IS NOT SEEKING AUTHORITY

The Commonwealth is seeking authority for all Federal program revisions.

C. COMMONWEALTH-INITIATED CHANGES TO THE PREVIOUSLY AUTHORIZED PROGRAM

There have been no Commonwealth-initiated changes to the previously approved program during this period.

D. CHANGES TO COMMONWEALTH STATUTES

2004 Changes

The 2004 General Assembly of Virginia amended the statutes at §10.1-1426.

§10.1-1426 Changes.

In §10.1-1426.F., the local and state agencies were authorized to collect hazardous waste from exempt small quantity generators:

> F. Any locality or state agency may collect hazardous waste from exempt small quantity generators for shipment to a permitted treatment or disposal facility if done in accordance with (i) a permit to store, treat, or dispose of hazardous waste issued pursuant to this chapter or (ii) a permit to transport hazardous waste, and the wastes collected are stored for no more than 10 days prior to shipment to a permitted treatment or disposal facility. If household hazardous waste is collected and managed with hazardous wastes collected from exempt small quantity generators, all waste shall be managed in accordance with the provisions of this subsection.

Interpretive Comment: Since the statute's subsection addresses on exempt small quantity generators and allows local and state agencies to conduct waste management activities not prohibited by Federal requirements, the Commonwealth is broader in scope by defining regulatory bounds for the management of the waste that Federal requirements do not contain.

2005 Changes.

The 2005 General Assembly of Virginia amended the statutes at §10.1-1309, §10.1-1316, §10.1-1428 and §10.1-11455.

§10.1-1309 Changes.

In §10.1-1309.A.(vi), the Virginia Waste Management Board was given a new broad power to issue orders to enforce its regulations by issuance of civil fines:

> (vi) require any person to pay civil penalties of up to $32,500 for each violation, not to exceed $100,000 per order, if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subsection B. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be

paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination.

Interpretive Comment: Since the Commonwealth's statutes have heretofore been determined to be equivalent, broader in scope, or more stringent than Federal requirements, the new power of the Board to issue orders is also equivalent to, broader in scope, or more stringent than Federal requirements. Further, §10.1-1309.D. specifies, "Nothing in this section or in § 10.1-1307 shall limit the Board's authority to proceed against such owner directly under § 10.1-1316 or ~~§~~ 10.1-1320 without the prior issuance of an order, special or otherwise." The provision defeats inadvertent coincidental limitation of other enforcement powers.

§10.1-1316 Changes.

In §10.1-1316.D., the Virginia Waste Management Board was given a new task and power related to enforcement its regulations:

> D. The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

Interpretive Comment: Since the statute's subsection does not limit the exercise of enforcement power of the Board or require a standard or limit to the outcome of the task, it does not diminish the equivalency of the Commonwealth's program to the Federal requirements.

§10.1-1428 Changes.

In §10.1-1428. the Director of the Department of Environmental Quality new powers to receive and expend funds collected as resulting from default on instruments set up for financial responsibility for abandoned facilities:

> E. Any funds forfeited pursuant to this section and the regulations of the Board shall be paid ~~to the county, city or town in which the abandoned facility is located. The county, city or town in which the facility is located~~ over to the Director, who shall then expend the forfeited funds as necessary to restore and maintain the facility in a safe condition. Nothing in this section shall require the Director to expend funds from any other source to carry out the activities contemplated under this section.

Interpretive Comment: Since the statute section cedes new powers to the Director of the Department of Waste Management previously held cities, counties or towns wherein abandoned facilities are located, the powers of the Commonwealth's program to act in abandonment of a hazardous waste facility is improved. The new power of the Director is equivalent to, broader in scope, or more stringent than relevant Federal requirements.

§10.1-1455 Changes.

In §10.1-1455. the maximum civil penalty that may be assessed in cases where a violation of the Commonwealth's regulations is found is increase from $25,000 to $32, 500 to coincide with similar Federal assessments. The Virginia Waste Management Board was also given a new task and power related to enforcement its regulations:

> A. Any person who violates any provision of this chapter, any condition of a permit or certification, or any regulation or order of the Board shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than ~~$25,000~~ $32,500 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.
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> B. In addition to the penalties provided above, any person who knowingly transports any hazardous waste to an unpermitted facility; who knowingly transports, treats, stores, or disposes of hazardous waste without a permit or in violation of a permit; or who knowingly makes any false statement or representation in any application, disclosure statement, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of hazardous waste program compliance shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than five years and a fine of not more than ~~$25,000~~ $32,500 for each violation, either or both. The provisions of this subsection shall be-deemed to constitute a lesser included offense of the violation set forth under subsection I.
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> Each day of violation of each requirement shall constitute a separate offense.
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> C. The Board is authorized to issue orders to require any person to comply with the provisions of any law administered by the Board, the Director or the Department, any condition of a permit or certification, or any regulations promulgated by the Board or to comply with any case decision, as defined in § 2.2-4001, of the Board or Director. Any such order shall be issued only after a hearing in accordance with § 2.2-4020 with at least ~~thirty~~ 30 days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than ~~fifteen~~ 15 days after mailing a copy thereof by certified mail to the last known address of such person. The provisions of this section shall not affect the authority of the Board to issue separate orders and regulations to meet any emergency as provided in § 10.1-1402.
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> E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed ~~$25,000~~ $32,500 for each violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.
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G. In addition to all other available remedies, the Board may issue administrative orders for the violation of (i) any law or regulation administered by the Board; (ii) any condition of a permit or certificate issued pursuant to this chapter; or (iii) any case decision or order of the Board. Issuance of an administrative order shall be a case decision as defined in § 2.2-4001 and shall be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020. Orders issued pursuant to this subsection may include civil penalties of up to ~~$25,000~~ $32,500 per violation not to exceed $100,000 per order, and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. The Board may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with this subsection. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Orders issued pursuant to this subsection shall become effective five days after having been delivered to the affected persons or mailed by certified mail to the last known address of such persons. Should the Board find that any person is adversely affecting the public health, safety or welfare, or the environment, the Board shall, after a reasonable attempt to give notice, issue, without a hearing, an emergency administrative order directing the person to cease the activity immediately and undertake any needed corrective action, and shall within ~~ten~~ 10 days hold a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel the emergency administrative order. If the Board finds that a person who has been issued an administrative order or an emergency administrative order is not complying with the order's terms, the Board may utilize the enforcement and penalty provisions of this article to secure compliance.

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L. The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

Interpretive Comment: Subsections A., B. and E. increase the maximum assessable fine for violation of the Commonwealth's regulations to that consistent with Federal requirement and is equivalent to the requirements. Subsection C. contains only corrective changes that do not effect equivalency of Federal and Commonwealth requirement.

Subsection G. contains corrective changes that do not effect equivalency of Federal and Commonwealth requirement. It also increases the maximum assessable fine for violation of the Commonwealth's

regulations to that consistent with Federal requirement and is equivalent to the requirements. Additional language was inserted into Subsection G. to establish procedures and limits for the Board in administering a special power to issue certain orders containing monetary penalties. The powers described therein are not those required for demonstration of equivalency to Federal requirements; therefore, any restriction on their administration does not alter the success of the Commonwealth in demonstration of enforcement authority under 40CFR271.16 or any other provision.

Subsection L contains provisions similar to those of §10.1-1316.D., described above. Since the statute's subsection does not limit the exercise of enforcement power of the Board or require a standard or limit to the outcome of the task, it does not diminish the equivalency of the Commonwealth's program to the Federal requirements.