

## Part II. General Information

### 9VAC20-81-95. Identification of solid waste.

A. Wastes identified in this section are solid wastes that are subject to this chapter unless regulated pursuant to other applicable regulations issued by the department.

B. Except as otherwise provided, the definition of solid waste per 40 CFR 261.2 as incorporated by 9VAC20-60-261, as amended, is also hereby incorporated as part of this chapter. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 9VAC20-60-261, as amended, are also hereby incorporated as part of this chapter as well.

C. Except as otherwise modified or excepted by 9VAC20-60, the materials listed in the regulations of the United States Environmental Protection Agency set forth in 40 CFR 261.4(a) are considered a solid waste for the purposes of this chapter. However, these materials are not regulated under the provisions of this chapter if all conditions specified therein are met. This list and all material definitions, reference materials and other ancillaries that are part of 40 CFR Part 261.4(a), as incorporated, modified or accepted by 9VAC20-60 are incorporated as part of this chapter. In addition, the following materials are not solid wastes for the purpose of this chapter:

1. Materials generated by any of the following, which are returned to the soil as fertilizers:
  - a. The growing and harvesting of agricultural crops.
  - b. The raising and husbanding of animals, including animal manures and used animal bedding.
2. Mining overburden returned to the mine site.
3. Recyclable materials used in manner constituting disposal per 9VAC20-60-266.
4. Wood wastes burned for energy recovery.
5. Materials that are:
  - a. Used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as effective substitutes for commercial products or natural resources provided the materials are not being reclaimed or accumulated speculatively; or
  - b. Returned to the original process from which they are generated.
6. Materials that are beneficially used as determined by the department under this subsection. The department may consider other waste materials and uses to be beneficial in accordance with the provisions of 9VAC20-81-97.

7. The following materials and uses listed in this part are exempt from this chapter as long as they are managed so that they do not create an open dump, hazard, or public nuisance. These materials and the designated use are considered a beneficial use of waste materials:

- a. Clean wood, wood chips, or bark from land clearing, logging operations, utility line clearing and maintenance operations, pulp and paper production, and wood products manufacturing, when these materials are placed in commerce for service as mulch, landscaping, animal bedding, erosion control, habitat mitigation, wetlands restoration, or bulking agent at a compost facility operated in compliance with Part IV (9VAC20-81-300 et seq.) of this chapter;
- b. Clean wood combustion residues when used for pH adjustment in compost, liquid absorbent in compost, or as a soil amendment or fertilizer, provided the application rate of the wood ash is limited to the nutrient need of the crop grown on the land on which the wood combustion residues will be applied and provided that such application meets the requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);
- c. Compost that satisfies the applicable requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);
- d. Nonhazardous, contaminated soil that has been excavated as part of a construction project and that is used as backfill for the same excavation or excavations containing similar contaminants at the same site, at concentrations at the same level or higher. Excess contaminated soil from these projects is subject to the requirements of this chapter;
- e. Nonhazardous petroleum contaminated soil that has been treated to the satisfaction of the department in accordance with 9VAC20-81-660;
- f. Nonhazardous petroleum contaminated soil when incorporated into asphalt pavement products;
- g. Solid wastes that are approved in advance of the placement, in writing, by the department or that are specifically mentioned in the facility permit for use as alternate daily cover material or other protective materials for landfill liner or final cover system components;
- h. Fossil fuel combustion products that are not CCR when used as a material in the manufacturing of another product (e.g., concrete, concrete products, lightweight aggregate, roofing materials, plastics, paint, flowable fill) or as a substitute for a product or material resource (e.g., blasting grit, roofing granules, filter cloth pre-coat for sludge dewatering, pipe bedding);
- i. Tire chips and tire shred when used as a sub-base fill for road base materials or asphalt pavements when approved by the Virginia Department of Transportation or by a local governing body;
- j. Tire chips, tire shred, and ground rubber used in the production of commercial products such as mats, pavement sealers, playground surfaces, brake pads, blasting mats, and other

rubberized commercial products;

k. Tire chips and tire shred when used as backfill in landfill gas or leachate collection pipes, recirculation lines, and drainage material in landfill liner and cover systems, and gas interception or remediation applications;

l. Waste tires, tire chips or tire shred when burned for energy recovery or when used in pyrolysis, gasification, or similar treatment process to produce fuel;

m. Waste-derived fuel product, as defined in 9VAC20-81-10, derived from nonhazardous solid waste;

n. Uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock placed in commerce for service as a substitute for conventional aggregate; and

o. Clean, ground gypsum wallboard when used as a soil amendment or fertilizer, provided the following conditions are met:

(1) No components of the gypsum wallboard have been glued, painted, or otherwise contaminated from manufacture or use (e.g., waterproof or fireproof drywall) unless otherwise processed to remove contaminants.

(2) The gypsum wallboard shall be processed so that 95% of the gypsum wallboard is less than 1/4 inch by 1/4 inch in size, unless an alternate size is approved by the department.

(3) The gypsum wallboard shall be applied only to agricultural, silvicultural, landscaped, or mined lands or roadway construction sites that need fertilization.

(4) The application rate for the ground gypsum wallboard shall not exceed the following rates.

Region	Rate
Piedmont, Mountains, and Ridge and Valley	250 lbs/1,000 ft <sup>2</sup>
Coastal Plain	50 lbs/1,000 ft <sup>2</sup>

Note: These weights are for dry ground gypsum wallboard.

D. The following activities are conditionally exempt from this chapter provided no open dump, hazard, or public nuisance is created:

1. Composting of sewage sludge at the sewage treatment plant of generation without addition of other types of solid wastes.

2. Composting of household waste generated at a residence and composted at the site of generation.

3. Composting activities performed for educational purposes as long as no more than 100 cubic yards of materials are onsite at any time. Greater quantities will be allowed with suitable justification presented to the department. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

4. Composting of animal carcasses onsite at the farm of generation.
5. Composting of vegetative waste or yard waste generated onsite by owners or operators of agricultural operations or owners of the real property or those authorized by the owners of the real property provided:
  - a. All decomposed vegetative waste and compost produced is utilized on said property;
  - b. No vegetative waste or other waste material generated from other sources other than said property is received;
  - c. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage or disposal are satisfied; and
  - d. They pose no nuisance or present no potential threat to human health or the environment.
6. Composting of yard waste by owners or operators who accept yard waste generated offsite shall be exempt from all other provisions of this chapter as applied to the composting activities provided the requirements of 9VAC20-81-397 B are met.
7. Composting of preconsumer food waste and kitchen culls generated onsite and composted in containers designed to prohibit vector attraction and prevent nuisance odor generation.
8. Vermicomposting, when used to process Category I, Category II, or Category III feedstocks in containers designed to prohibit vector attraction and prevent nuisance odor generation. If offsite feedstocks are received no more than 100 cubic yards of materials may be onsite at any one time. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.
9. Composting of sewage sludge or combinations of sewage sludge with nonhazardous solid waste provided the composting facility is permitted under the requirements of a Virginia Pollution Abatement (VPA) or VPDES permit.
10. Management of solid waste in appropriate containers at the site of its generation, provided that:
  - a. Putrescible waste is not stored more than seven days between time of collection and time of removal for disposal;
  - b. Nonputrescible wastes are not stored more than 90 days between time of collection and time of removal for proper management; and
  - c. Treatment of waste is conducted in accordance with the following:
    - (1) In accordance with a waste analysis plan that:
      - (a) Contains a detailed chemical and physical analysis of a representative sample of the waste being treated and contains all records necessary to treat the waste in accordance with the requirements of this part, including the selected testing frequency; and
      - (b) Is kept in the facility's onsite file and made available to the department upon request.

(2) Notification is made to the receiving waste management facility that the waste has been treated.

11. Using rocks, brick, block, dirt, broken concrete, crushed glass, porcelain, and road pavement as clean fill.

12. Storage of less than 100 waste tires at the site of generation provided that no waste tires are accepted from offsite and that the storage will not present a hazard or a nuisance.

13. Storage in piles of land-clearing debris including stumps and brush, clean wood wastes, log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose, are exempt from this chapter if they meet the following conditions at a minimum:

a. The wastes are managed in the following manner:

(1) They do not cause discharges of leachate, or attract vectors.

(2) They cannot be dispersed by wind and rain.

(3) Fire is prevented.

(4) They do not become putrescent.

b. Any facility storing waste materials under the provisions of this subsection shall obtain a stormwater discharge permit if they are considered a significant source under the provisions of 9VAC25-31-120 A 1 c.

c. No more than a total of 1/3 acre of waste material is stored onsite and the waste pile does not exceed 15 feet in height above base grade.

d. Siting provisions.

(1) All log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose are stored at the site of the industrial activity that produces them;

(2) A 50-foot fire break is maintained between the waste pile and any structure or tree line;

(3) The slope of the ground within the area of the pile and within 50 feet of the pile does not exceed 4:1;

(4) No waste material may be stored closer than 50 feet to any regularly flowing surface water body or river, floodplain, or wetland; and

(5) No stored waste materials shall extend closer than 50 feet to any property line.

e. If activities at the site cease, any waste stored at the site must be properly managed in accordance with these regulations within 90 days. The director can approve longer timeframes with appropriate justification. Justification must be provided in writing no more than 30 days after ceasing activity at the site.

f. Waste piles that do not meet these provisions are required to obtain a permit in

accordance with the permitting provisions in Part V (9VAC20-81-400 et seq.) of this chapter and meet all of the applicable waste pile requirements in Part IV (9VAC20-81-300 et seq.) of this chapter. Facilities that do not comply with the provisions of this subsection and fail to obtain a permit are subject to the provisions of 9VAC20-81-40.

14. Storage of nonhazardous solid wastes and hazardous wastes, or hazardous wastes from very small quantity generators as defined in Virginia Hazardous Waste Management Regulations (9VAC20-60) at a transportation terminal or transfer station in closed containers meeting the U.S. Department of Transportation specifications is exempt from this section and the permitting provisions of Part V (9VAC20-81-400 et seq.) of this chapter provided such wastes are removed to a permitted storage or disposal facility within 10 days from the initial receipt from the waste generator. To be eligible for this exemption, each shipment must be properly documented to show the name of the generator, the date of receipt by the transporter, and the date and location of the final destination of the shipment. The documentation shall be kept at the terminal or transfer station for at least three years after the shipment has been completed and shall be made available to the department upon request. All such activities shall comply with any local ordinances.

15. Open burning of solid wastes as provided in the following:

a. For forest management, agriculture practices, and highway construction and maintenance programs approved by the State Air Pollution Control Board.

b. For training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting authority. Buildings that have not been demolished may be burned under the provisions of this subdivision only. Additionally, burning rubber tires, asphaltic materials, crankcase oil, impregnated wood, or other rubber-based or petroleum-based wastes is permitted when conducting bona fide firefighting instruction.

c. For the destruction of classified military documents under the supervision of the designated official.

d. For campfires or other fires using clean wood or vegetative waste that are used solely for recreational purposes, for ceremonial occasions, for outdoor preparation of food, and for warming of outdoor workers.

e. For the onsite destruction of vegetative waste located on the premises of private property, provided that no regularly scheduled collection service for such vegetative waste is available at the adjacent street or public road.

f. For the onsite destruction of household waste by homeowners or tenants, provided that no regularly scheduled collection service for such household waste is available at the adjacent street or public road.

g. For the onsite destruction of clean wood waste and debris waste resulting from property maintenance; from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas,

sanitary landfills; or from any other clearing operations.

16. Open burning of vegetative waste is allowed at a closed landfill that has not been released from postclosure care. The activity shall be included in the text of the postclosure plan and conducted in accordance with § 10.1-1410.3 of the Code of Virginia.

17. Placement of trees, brush, or other vegetation from land used for agricultural or silvicultural purposes on the same property or other property of the same landowner.

18. Using fossil fuel combustion products that are not CCR in one or more of the following applications or when handled, processed, transported, or stockpiled for the following uses:

a. As a base, sub-base or fill material under a paved road, the footprint of a structure, a paved parking lot, sidewalk, walkway or similar structure, or in the embankment of a road. In the case of roadway embankments, materials will be placed in accordance with Virginia Department of Transportation specifications, and exposed slopes not directly under the surface of the pavement must have a minimum of 18 inches of soil cover over the fossil fuel combustion products, the top six inches of which must be capable of sustaining the growth of indigenous plant species or plant species adapted to the area. The use, reuse, or reclamation of unamended coal combustion byproduct shall not be placed in an area designated as a 100-year flood plain;

b. Processed with a cementitious binder to produce a stabilized structural fill product that is spread and compacted with proper equipment for the construction of a project with a specified end use; or

c. For the extraction or recovery of materials and compounds contained within the fossil fuel combustion products.

E. The following solid wastes are exempt from this chapter provided that they are managed in accordance with the requirements promulgated by other applicable state or federal agencies:

1. Management of wastes regulated by the State Board of Health, the State Water Control Board, the Air Pollution Control Board, the Department of Mines, Minerals and Energy, Department of Agriculture and Consumer Services, or any other state or federal agency with such authority.

2. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal.

4. Fossil fuel combustion products used for mine reclamation, mine subsidence, or mine refuse disposal on a mine site permitted by the Virginia Department of Mines, Minerals and Energy (DMME) when used in accordance with the standards.

5. Solid waste management practices that involve only the onsite placing of solid waste from mineral mining activities at the site of those activities and in compliance with a permit issued by the DMME, that do not include any municipal solid waste, are accomplished in an

environmentally sound manner, and do not create an open dump, hazard or public nuisance are exempt from all requirements of this chapter.

6. Waste or byproduct derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner, or horticultural growing medium as defined in § 3.2-3600 of the Code of Virginia, or whose intended purpose is to neutralize soil acidity (see § 3.2-3700 of the Code of Virginia), and that is regulated under the authority of the Virginia Department of Agriculture and Consumer Services.

7. Fossil fuel combustion products bottom ash or boiler slag used as a traction control material or road surface material if the use is consistent with Virginia Department of Transportation practices. This exemption does not apply to CCR used in this manner.

8. Waste tires generated by and stored at salvage yards licensed by the Department of Motor Vehicles provided that such storage complies with requirements set forth in § 10.1-1418.2 of the Code of Virginia and such storage does not pose a hazard or nuisance.

9. Tire chips used as the drainage material in construction of septage drain fields regulated under the authority of the Virginia Department of Health.

F. The following solid wastes are exempt from this chapter provided that they are reclaimed or temporarily stored incidentally to reclamation, are not accumulated speculatively, and are managed without creating an open dump, hazard, or a public nuisance:

1. Paper and paper products;

2. Clean wood waste that is to undergo size reduction in order to produce a saleable product, such as mulch;

3. Cloth;

4. Glass;

5. Plastics;

6. Tire chips, tire shred, ground rubber; and

7. Mixtures of above materials only. Such mixtures may include scrap metals excluded from regulation in accordance with the provisions of subsection C of this section.

**Statutory Authority**

§ 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Parts 257 and 258.

**Historical Notes**

Derived from Virginia Register Volume 27, Issue 12, eff. March 16, 2011; amended, Virginia Register Volume 27, Issue 22, eff. August 3, 2011; Volume 30, Issue 4, eff. December 5, 2013; Volume 32, Issue 9, eff. January 27, 2016; Volume 35, Issue 12, eff. March 6, 2019.