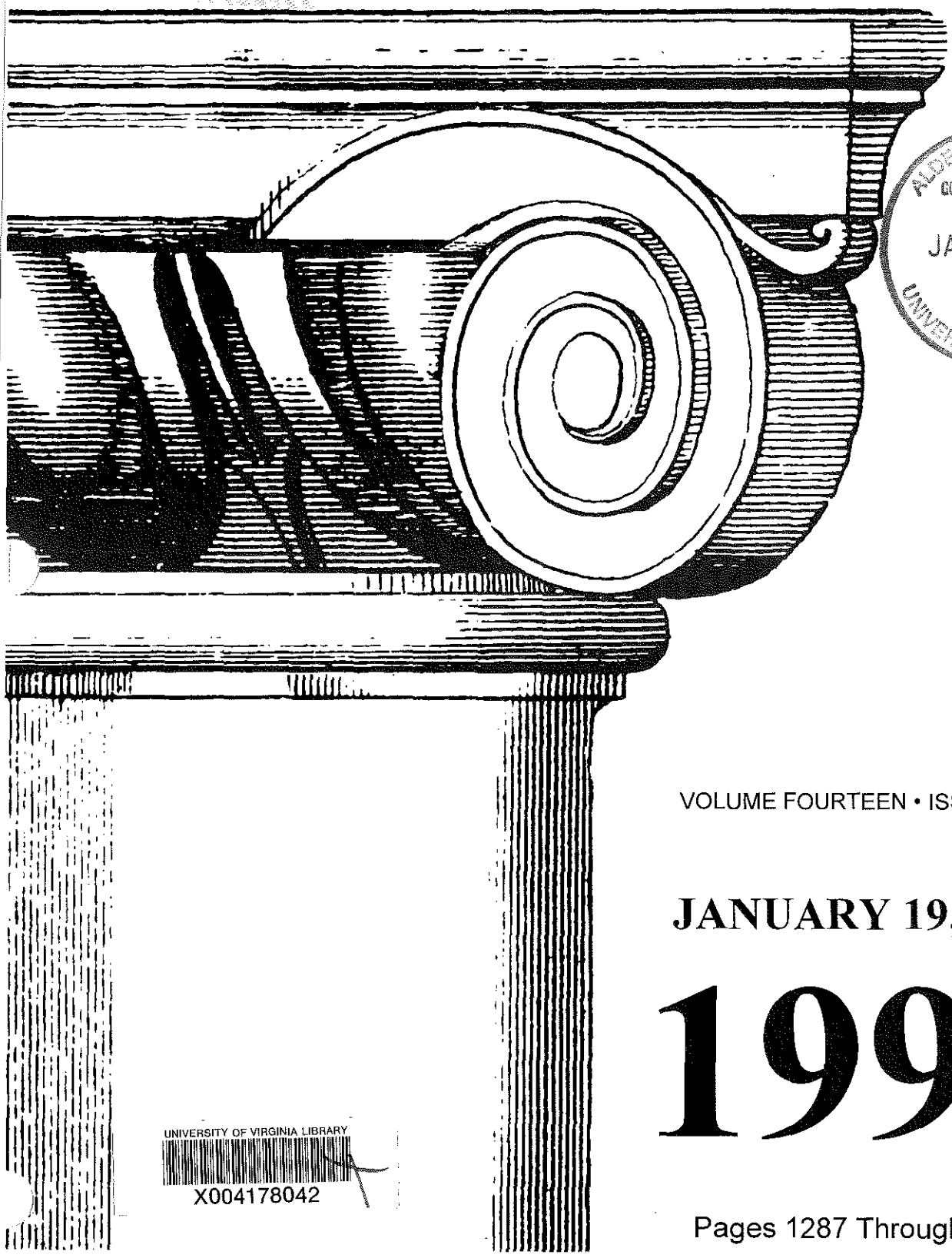
# THE VIRGINIA REGISTER

OF REGULATIONS







VOLUME FOURTEEN • ISSUE NINE

**JANUARY 19, 1998**

**1998**



Pages 1287 Through 1448

# THE VIRGINIA REGISTER INFORMATION PAGE

**THE VIRGINIA REGISTER** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative. **THE VIRGINIA REGISTER** has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in **THE VIRGINIA REGISTER OF REGULATIONS**. In addition, **THE VIRGINIA REGISTER** is a source of other information about state government, including all emergency regulations and executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative committee, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate standing committees and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day extension period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

## EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation; and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of the Code of Virginia be examined carefully.

## CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **12:8 VA.R. 1096-1106 January 8, 1996,** refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

**"THE VIRGINIA REGISTER OF REGULATIONS"** (USPS-001831) is published bi-weekly, with quarterly cumulative indices published in January, April, July and October, for $100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Periodical Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to **THE VIRGINIA REGISTER OF REGULATIONS, 910 CAPITOL STREET, 2ND FLOOR, RICHMOND, VIRGINIA 23219.**

*The Virginia Register of Regulations* is published pursuant to Article 7 (§ 9-6.14:22 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia. Individual copies, if available, may be purchased for $4.00 each from the Registrar of Regulations.

# PUBLICATION DEADLINES AND SCHEDULES

This schedule is available on the *Register*'s Internet home page (http://legis.state.va.us/codecomm/regindex.htm).

## January 1998 through December 1998

| Volume:Issue | Material Submitted By Noon Wednesday | Will Be Published On |
|---|---|---|
| 14:9 | December 31, 1997 | January 19, 1998 |
| 14:10 | January 14, 1998 | February 2, 1998 |
| 14:11 | January 28, 1998 | February 16, 1998 |
| 14:12 | February 11, 1998 | March 2, 1998 |
| 14:13 | February 25, 1998 | March 16, 1998 |
| 14:14 | March 11, 1998 | March 30, 1998 |
| **INDEX 2 - Volume 14** | | **April 1998** |
| 14:15 | March 25, 1998 | April 13, 1998 |
| 14:16 | April 8, 1998 | April 27, 1998 |
| 14:17 | April 22, 1998 | May 11, 1998 |
| 14:18 | May 6, 1998 | May 25, 1998 |
| 14:19 | May 20, 1998 | June 8, 1998 |
| 14:20 | June 3, 1998 | June 22, 1998 |
| **INDEX 3 - Volume 14** | | **July 1998** |
| 14:21 | June 17, 1998 | July 6, 1998 |
| 14:22 | July 1, 1998 | July 20, 1998 |
| 14:23 | July 15, 1998 | August 3, 1998 |
| 14:24 | July 29, 1998 | August 17, 1998 |
| 14:25 | August 12, 1998 | August 31, 1998 |
| 14:26 | August 26, 1998 | September 14, 1998 |
| **FINAL INDEX - Volume 14** | | **October 1998** |
| 15:1 | September 9, 1998 | September 28, 1998 |
| 15:2 | September 23, 1998 | October 12, 1998 |
| 15:3 | October 7, 1998 | October 26, 1998 |
| 15:4 | October 21, 1998 | November 9, 1998 |
| 15:5 | November 4, 1998 | November 23, 1998 |
| 15:6 | November 17, 1998 **(Tuesday)** | December 7, 1998 |
| 15:7 | December 2, 1998 | December 21, 1998 |
| **INDEX 1 - Volume 15** | | **January 1999** |

# TABLE OF CONTENTS

Tables of contents for issues in Volumes 13 and 14 are available on the *Register*'s Internet home page (http://legis.state.va.us/codecomm/regindex.htm).

## NOTICES OF INTENDED REGULATORY ACTION



## PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



## PROPOSED REGULATIONS



## FINAL REGULATIONS

# Table of Contents

# NOTICES OF INTENDED REGULATORY ACTION

**Symbol Key**
† Indicates entries since last publication of the *Virginia Register*

## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **2 VAC 5-610-10 et seq. Rules Governing the Solicitation of Contributions.** The purpose of the proposed action is to clarify the general application of the Virginia Solicitation of Contributions (VSOC) Law, to include recent changes to the VSOC Law, as well as to review the current regulation for effectiveness and continued need. This is necessary because six additional amendments to the VSOC Law have been passed since 1991 which need to be addressed. The contemplated amendments to the current regulation would bring the regulation into conformity with these amendments in the VSOC Law, streamline the charities' application procedures for exemption from registration, establish disclosure procedures for compliance by professional solicitors with the VSOC Law, and assure uniform regulation of charitable solicitations throughout the Commonwealth. The agency invites comment on whether there should be an advisor appointed for the present regulatory action. An advisor is (i) a standing advisory panel, (ii) an ad-hoc advisory panel, (iii) consultation with groups, (iv) consultation with individuals, or (v) any combination thereof. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 57-66 of the Code of Virginia.

Public comments may be submitted until March 5, 1998, to Jo Freeman, Senior Investigator, Department of Agriculture and Consumer Services, Office of Consumer Affairs, P.O. Box 1163, Richmond, VA 23218.

**Contact:** Evelyn A. Jez, Manager, Strategic Support Unit, Department of Agriculture and Consumer Services, Office of Consumer Affairs, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, toll-free 1-800-552-9963 or 1-800-828-1120/TDD ☎

VA.R. Doc. No. R98-168; Filed December 30, 1997, 9:35 a.m.

## TITLE 11. GAMING

### VIRGINIA RACING COMMISSION

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-100-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Horses.** The purpose of the proposed action is to amend the regulation pertaining to racehorses in regards to lip-tattoo requirements and any other matters arising from the public comment period. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public comments may be submitted until February 18, 1998.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

VA.R. Doc. No. R98-158; Filed December 19, 1997, 3:34 p.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-110-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Entries.** The purpose of the proposed action is to amend the regulation pertaining to entries in light of the commission's experience of the first race meeting at Colonial Downs and any other matters. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public comments may be submitted until February 18, 1998.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

VA.R. Doc. No. R98-157; Filed December 19, 1997, 3:34 p.m.

# TITLE 12. HEALTH

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-120-310. Waivered Services: Services Exempted from Medallion.** The purpose of the proposed action is to provide direct access to obstetricians-gynecologists without a referral from a primary care provider. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until February 18, 1998, to Scott Canady, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or (804) 371-4981.

VA.R. Doc. No. R98-167; Filed December 29, 1997, 1:55 p.m.

## STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **12 VAC 35-120-10 et seq. Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to repeal regulations that will be superseded by 12 VAC 35-115-10 et seq., Rules and Regulations to Assure the Rights of Clients in Facilities and Programs Operated, Funded or Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The agency intends to hold a public hearing on the repeal of the proposed regulation after publication.

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Public comments may be submitted until January 22, 1998.

**Contact:** Marion Greenfield, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Planning and Regulations, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-6431 or FAX (804) 371-0092.

VA.R. Doc. No. R98-137; Filed December 3, 1997, 10:10 a.m.

# TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

## BOARD OF MEDICINE

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physician Assistants.** The purpose of the proposed action is to amend regulations in order to permit a physician assistant to apply without an additional fee for a license to practice as a volunteer in a nonprofit clinic. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public comments may be submitted until January 21, 1998.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or FAX (804) 662 9943.

VA.R. Doc. No. R98-125; Filed November 20, 1997, 11:14 a.m.

## BOARD OF OPTOMETRY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled: **18 VAC 105-20-10 et seq. Regulations of the Virginia Board of Optometry.** The purpose of the proposed action is to amend regulations in order to provide guidance on conditions and provisions that would permit an optometrist to practice adjacent to a commercial or mercantile establishment. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3205 of the Code of Virginia.

Public comments may be submitted until February 18, 1998.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or FAX (804) 662-9943.

VA.R. Doc. No. R98-162; Filed December 23, 1997, 12:06 p.m.

# TITLE 22. SOCIAL SERVICES

## BOARD OF SOCIAL SERVICES

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to consider repealing regulations entitled: **22 VAC 40-710-10 et seq. Child Protective Services Client Appeals.** The purpose of the proposed action is to repeal the current Child Protective Services Client Appeals regulation that has been replaced by a more comprehensive child protective services regulation that became effective January 1, 1998. The new regulation, 22 VAC 40-705-10 et seq., combines both programmatic and appeals regulations. The agency does not intend to hold a public hearing on the repeal of the proposed regulation after publication.

Statutory Authority: §§ 63.1-25 and 63.1-248.6:1 of the Code of Virginia.

Public comments may be submitted until February 18, 1998.

**Contact:** Jane Clements, Appeals Program Manager, Department of Social Services, 730 E. Broad St., Richmond, 23219, telephone (804) 692-1832 or FAX (804) 692-1804.

VA.R. Doc. No. R98-162; Filed December 23, 1997, 12:06 p.m.

# PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS

**PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS**

Effective July 1, 1995, publication of notices of public comment periods in a newspaper of general circulation in the state capital is no longer required by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Chapter 717 of the 1995 Acts of Assembly eliminated the newspaper publication requirement from the Administrative Process Act. In *The Virginia Register of Regulations*, the Registrar of Regulations has developed this section entitled "Public Comment Periods - Proposed Regulations" to give notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**March 20, 1998** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services.** The purpose of the proposed action is to provide reimbursement for high dose chemotherapy and bone marrow/stem cell transplants for individuals over the age of 21 who have been diagnosed with lymphoma or breast cancer. This package will also clarify the reimbursement policy for transplants.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 20, 1998, to Anita Cordill, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-7959 or (804) 371-8854 or FAX (804) 371-4981.

* * * * * * * *

**March 20, 1998** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services.** This action proposes to expand the array of services which can be provided by school-employed medical personnel and reimbursed by Medicaid.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 20, 1998, to Jeff Nelson, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-7959 or (804) 371-8854 or FAX (804) 371-4981.

* * * * * * * *

**March 20, 1998** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care.** These regulations propose to provide additional reimbursement to certain nursing facilities which provide special services to individuals who have traumatic brain injuries.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 20, 1998, to Regina Anderson-Cloud, LTC Policy, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-7959 or (804) 371-8854 or FAX (804) 371-4981.

* * * * * * * *

**rch 20, 1998 -** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120-10 et seq. Waivered Services.** The proposed regulation specifies the requirements and standards for the provision of consumer-directed personal attendant services. The consumer-directed PAS program will provide home and community-based care personal attendant services to consumers who meet Medicaid eligibility and financial requirements. The service will allow qualifying consumers to remain in their homes, directing their own care, rather than receiving services under the home health agency model or being institutionalized. This proposal is mandated by Chapter 924, 1997 Appropriation Act. Public hearings have already been held on these regulations.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 20, 1998, to Karen Lawson, LTC Policy, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance rvices, 600 E. Broad St., Richmond, VA 23219, telephone 4) 786-7959 or (804) 371-8854 or FAX (804) 371-4981.

# TITLE 13. HOUSING

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

**February 23, 1998 - 10 a.m.** – Public Hearing
Department of Housing and Community Development, 501 North Second Street, Richmond, Virginia.

**March 20, 1998** – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **13 VAC 5-61-10 et seq. Virginia Uniform Statewide Building Code/1996.** The purpose of the proposed action is to establish standards for automatic sprinkler (fire) systems in certain dormitories at colleges and universities.

Statutory Authority: §§ 36-98 and 36-99.3 of the Code of Virginia.

blic comments may be submitted until March 20, 1998.

**Contact:** Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7170 or FAX (804) 371-7092.

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **High Dose Chemotherapy and Bone Marrow Transplantation.**
**12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-100, 12 VAC 30-50-140 and 12 VAC 30-50-540; adding 12 VAC 30-50-550, 12 VAC 30-50-560 and 12 VAC 30-50-570).**

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until March 20, 1998.
(See Calendar of Events section
for additional information)

Basis and Authority: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Administrative Process Act (APA) provides for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 1997. Section 9-6.14:4.1 C of the Code of Virginia requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on August 13, 1997.

Chapter 683 of the 1997 Virginia Acts of Assembly directed DMAS to provide for payment for high dose chemotherapy and bone marrow transplants on behalf of individuals over the age of 21 who have been diagnosed with lymphoma or breast cancer. DMAS was directed to promulgate regulations to implement this change to be effective within 280 days of the enactment of the legislation.

Purpose: The purpose of this proposal is to provide reimbursement for high dose chemotherapy and bone marrow/stem cell transplants for individuals over the age of 21 who have been diagnosed with lymphoma or breast cancer. This package will also clarify the reimbursement policy for transplants.

Substance and Analysis: The Department of Medical Assistance Services (DMAS) currently provides reimbursement for kidney and cornea transplants for Medicaid recipients of all ages. The facility and patient standards which must be met for reimbursement to occur are set out in the State Plan for Medical Assistance in Attachment 3.1-E, Standards for the Coverage of Organ Transplant Services (Part VII (12 VAC 30-50-540 et seq.) of 12 VAC Chapter 50). The presence of these standards in the State Plan is required by federal law in order for a state to claim federal financial participation.

In 1993, DMAS added to its organ transplant coverages the coverage for children (younger than 21 years of age) of liver, heart, allogeneic and autologous bone marrow transplantation. At the same time, coverage was added for children for any other medically necessary transplantation procedures, provided they were not considered experimental or investigational, that were determined to be necessary through health screenings.

This action proposes to add coverage by the Program for bone marrow transplantation procedures for individuals ov the age of 21 when preauthorized by DMAS. Legislatio passed into law by the 1997 General Assembly requires that DMAS reimburse for this transplant procedure, and the concomitant high dose chemotherapy, for individuals over the age of 21 who have been diagnosed with lymphoma or breast cancer.

Issues: The alternative treatment for adults with lymphoma or breast cancer is continued chemotherapy treatments, the only treatment covered by Medicaid prior to this legislative change. Continued chemotherapy treatments are costly and do not offer the opportunity for a permanent cure. That coverage was discussed extensively by legislators during public meetings. Those discussions resulted in the legislation directing this change as the preferred alternative.

This regulation will have a positive effect on recipients since it provides previously unavailable coverage. Specific providers which provide these services will be reimbursed for a broader population than previously covered by DMAS. The agency projects no negative issues involved in implementing this proposed change.

Fiscal/Budget Impact: The 1997 General Assembly appropriated $1,105,000 total funds ($536,000 general funds; $569,000 nongeneral funds) for coverage of this service in FY 1997-98. The language changes to the reimbursement provisions simply clarify that if the actual transplant charges are lower than the flat fee established for that procedure DMAS will reimburse the actual charges rather than the fl

fee. The language as currently written could be interpreted to mean that DMAS will pay the flat fee even when the actual charges are lower than that fee. There are no localities which are uniquely affected by these regulations as they apply statewide.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation authorizes DMAS to provide reimbursement for high dose chemotherapy and bone marrow transplants for adults with lymphoma or breast cancer; clarifies transplant reimbursement policy. The proposal is mandated by Chapter 683 of the 1997 Acts of Assembly.

Estimated economic impact. The expansion of Medicaid coverage to include high dose chemotherapy and bone marrow transplants (BMT) will have a total cost of approximately $1,105,000 in FY98. This is not the cost to Virginia. Virginia only pays 48.5% of the cost of these procedures. The balance is paid by a federal match. Thus, the FY98 expenditures on BMT are expected to be $536,000.

We can assume that the expansion of coverage will provide a net benefit to recipients of the procedures since the treatment is voluntary. Any patient who did not find BMT an attractive treatment option can choose not to have the procedure. The actual value of the treatment to recipients is difficult to measure in dollar terms for a number of reasons. First, the usual standard for valuing changes in life expectancy, willingness to pay for the service, does not apply here since this program entails a significant change in the recipients income. Willingness to pay for changes in life expectancy is known to change substantially with changes in income.

The market price of the BMT procedure is probably not a good indicator of its marginal value in changing life expectancies. This is because few recipients of the procedure actually pay the full cost of obtaining the procedure. In a number of cases, health care providers may not be at liberty to refuse to pay for BMT even if they do not think that it is justified in terms of health outcomes.

In addition, every dollar of state tax revenues spent on BMT for Medicaid recipients, brings slightly more than one dollar of federal match into the state. These matching funds increase Virginia income and employment and, hence, greatly reduce any negative impact of the state spending on this program.

Given that Virginia can offer BMT to its Medicaid recipients for half price, due to the federal match, there is every reason to believe that the costs to the state are less than the benefits received. The program does imply some redistribution of income from taxpayers to recipients and providers of the BMT service. However, the increased economic activity implied by the federal match ameliorates the impact of this redistribution somewhat.

Businesses and entities affected. The benefits of this expansion of Medicaid coverage will fall primarily to the recipients of the service and the providers: doctors, hospitals and their suppliers. The number of recipients is relatively small, in the range of 10 to 20. The increased income to providers will be spread more widely among a number of firms, individuals and organizations. The dollar value of these changes cannot readily be estimated at this time.

Localities particularly affected. The costs associated with this expansion will be fairly evenly distributed across the Commonwealth since they will be paid from general funds. The benefits are more likely to accrue to areas with a more advanced medical care infrastructure. We would expect Richmond, Northern Virginia and the Charlottesville area to see most of the increase in income from this change.

Projected impact on employment. Any impact on employment will be small but the presence of the federal match gives reason to expect that the expansion of Medicaid services to cover BMT will have a small positive impact on employment in Virginia.

Effects on the use and value of private property. No measurable or significant changes in the use and value of private property can be expected to result from this change.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning high dose chemotherapy and bone marrow transplantation.

Summary:

*The proposed amendments add Medicaid coverage for bone marrow transplantation procedures and the concomitant high dose chemotherapy for individuals over the age of 21 who have been diagnosed with lymphoma or breast cancer when the services are preauthorized by DMAS. The amendments also clarify that Medicaid pays the lower of a flat fee or actual charges for organ transplant services.*

**12 VAC 30-50-100. Inpatient hospital services provided at general acute care hospitals and freestanding psychiatric hospitals; enrolled providers.**

A. Preauthorization of all inpatient hospital services will be performed. This applies to both general acute care hospitals

and freestanding psychiatric hospitals. Nonauthorized inpatient services will not be covered or reimbursed by the Department of Medical Assistance Services (DMAS). Preauthorization shall be based on criteria specified by DMAS. In conjunction with preauthorization, an appropriate length of stay will be assigned using the HCIA, Inc., Length of Stay by Diagnosis and Operation, Southern Region, 1996, as guidelines.

1. Admission review.

a. Planned/scheduled admissions. Review shall be done prior to admission to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned at the time of this review. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

b. Unplanned/urgent admissions. Review shall be performed within one working day to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned for those admissions which have been determined to be appropriate. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

2. Concurrent review shall end for nonpsychiatric claims with dates of admission and services on or after July 1, 1998, with the full implementation of the DRG reimbursement methodology. Concurrent review shall be done to determine that inpatient hospitalization continues to be medically necessary. Prior to the expiration of the previously assigned initial length of stay, the provider shall be responsible for obtaining authorization for continued inpatient hospitalization. If continued inpatient hospitalization is determined necessary, an additional length of stay shall be assigned. Concurrent review shall continue in the same manner until the discharge of the patient from acute inpatient hospital care. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

3. Retrospective review shall be performed when a provider is notified of a patient's retroactive eligibility for Medicaid coverage. It shall be the provider's responsibility to obtain authorization for covered days prior to billing DMAS for these services. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

4. Reconsideration process.

a. Providers requesting reconsideration must do so upon verbal notification of denial.

b. This process is available to providers when the nurse reviewers advise the providers by telephone that the medical information provided does not meet DMAS specified criteria. At this point, the provider must request by telephone a higher level of review if he disagrees with the nurse reviewer's findings. If highe level review is not requested, the case will be denie and a denial letter generated to both the provider and recipient identifying appeal rights.

c. If higher level review is requested, the authorization request will be held in suspense and referred to the Utilization Management Supervisor (UMS). The UMS shall have one working day to render a decision. If the UMS upholds the adverse decision, the provider may accept that decision and the case will be denied and a denial letter identifying appeal rights will be generated to both the provider and the recipient. If the provider continues to disagree with the UMS' adverse decision, he must request physician review by DMAS medical support. If higher level review is requested, the authorization request will be held in suspense and referred to DMAS medical support for the last step of reconsideration.

d. DMAS medical support will review all case specific medical information. Medical support shall have two working days to render a decision. If medical support upholds the adverse decision, the request for authorization will then be denied and a letter identifying appeal rights will be generated to both the provider and the recipient. The entire reconsideration process must be completed within three working days.

5. Appeals process.

a. Recipient appeals. Upon receipt of a denial lette the recipient shall have the right to appeal the adverse decision. Under the Client Appeals regulations, Part I (12 VAC 30-110-10 et seq.) of 12 VAC 30-110, the recipient shall have 30 days from the date of the denial letter to file an appeal.

b. Provider appeals. If the reconsideration steps are exhausted and the provider continues to disagree, upon receipt of the denial letter, the provider shall have 30 days from the date of the denial letter to file an appeal if the issue is whether DMAS will reimburse the provider for services already rendered. The appeal shall be held in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

B. Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Coverage of inpatient hospitalization shall be limited to a total of 21 days per admission in a 60-day period for the same or similar diagnosis or treatment plan. The 60-day period would begin on the first hospitalization (if there are multiple admissions) admission date. There may be multipl

admissions during this 60-day period. Claims which exceed 21 days per admission within 60 days for the same or similar diagnosis or treatment plan will not be authorized for payment. Claims which exceed 21 days per admission within 60 days with a different diagnosis or treatment plan will be considered for reimbursement if medically indicated. Except as previously noted, regardless of authorization for the hospitalization, the claims will be processed in accordance with the limit for 21 days in a 60-day period. Claims for stays exceeding 21 days in a 60-day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days for nonpsychiatric admissions shall cease with dates of service on or after July 1, 1998.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in general hospitals and freestanding psychiatric hospitals in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical or psychological, as appropriate, examination. The admission and length of stay must be medically justified and preauthorized via the admission and concurrent or retrospective review processes described in subsection A of this section. Medically unjustified days in such hospitalizations shall not be authorized for payment.

E. Coverage for a normal, uncomplicated vaginal delivery shall be limited to the day of delivery plus an additional two days unless additional days are medically justified. Coverage for cesarean births shall be limited to the day of delivery plus an additional four days unless additional days are medically justified.

F. Coverage in freestanding psychiatric hospitals shall not be available for individuals aged 21 through 64. Medically necessary inpatient psychiatric care rendered in a psychiatric unit of a general acute care hospital shall be covered for all Medicaid eligible individuals, regardless of age, within the limits of coverage prescribed in this section and 12 VAC 30-50-105.

G. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. *High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma or breast cancer.* Transplant services for liver, heart, ~~and bone marrow transplantation~~ and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow*/stem cell* transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS medical support. Inpatient hospitalization related to kidney transplantation will require preauthorization at the time of admission and, concurrently, for length of stay. Cornea transplants do not require preauthorization of the procedure, but inpatient hospitalization related to such transplants will require preauthorization for admission and, concurrently, for length of stay. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. *If the actual charges are lower than the fee, the agency shall reimburse actual charges.* Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540.

H. Coverage of observation beds. (Reserved.)

I. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed shall be subject to review. Hospitals must submit the required DMAS forms corresponding to the procedures. Regardless of authorization for the hospitalization during which these procedures were performed, the claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

**12 VAC 30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.**

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a

private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Outpatient psychiatric services.

1. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to DMAS' approval) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by DMAS. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. Consistent with § 6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary psychiatric services shall be covered when prior authorized by DMAS for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.

2. Psychiatric services can be provided by psychiatrists, clinical psychologists licensed by the State Board of Medicine, psychologists clinical licensed by the Board of Psychology, or by a licensed clinical social worker under the direct supervision of a psychiatrist, licensed clinical psychologist or a licensed psychologist clinical.

3. Psychological and psychiatric services shall be medically prescribed treatment which is directly and specifically related to an active written plan designed and signature-dated by either a psychiatrist or a clinical psychologist licensed by the Board of Medicine, a psychologist clinical licensed by the Board of Psychology, or a licensed clinical social worker under the direct supervision of a licensed clinical psychologist, a licensed psychologist clinical, or a psychiatrist.

4. Psychological or psychiatric services shall be considered appropriate when an individual meets the following criteria:

a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels which have been impaired;

b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;

c. Is at risk for developing or requires treatment for maladaptive coping strategies; and

d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

5. Psychological or psychiatric services may be provided in an office or a mental health clinic.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients over the age of 21 are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses or treatment plan and is further restricted to medically necessary authorized (for enrolled providers)/approved (for nonenrolled providers) inpatient hospital days as determined by the Program. EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in general hospitals and freestanding psychiatric facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days shall be limited to medically necessary inpatient hospital days.

H. (Reserved).

I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.

J. (Reserved.)

K. For the purposes of organ transplantation, all similar situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. *High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma or breast cancer.* Transplant services for liver, heart, ~~and bone marrow~~ and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow*/stem cell* transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services duri

the transplant hospital stay, including radiologists, thologists, oncologists, surgeons, etc. The flat fee mbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. *If the actual charges are lower than the fee, the agency shall reimburse actual charges.* Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540.

**12 VAC 30-50-540. ~~Standards for the coverage of organ transplant services. The following criteria will be used to evaluate specific organ transplant requests. 1.1. Patient selection criteria for provision of~~ Kidney transplantation (KT).**

A. *Patient selection criteria for provision of kidney transplantation.* Transplantation of the kidney is a surgical treatment whereby a diseased kidney is replaced by a healthy organ. Pre-authorization is required. The following patient selection criteria shall apply for the consideration of all approvals for coverage and reimbursement for kidney transplantation.

1. Current medical therapy has failed and patient has failed to respond to appropriate conservative management;

2. The patient does not have other systemic disease including but not limited to the following:

a. Reversible renal conditions;

b. Major extra-renal complications (malignancy, systemic disease, cerebral cardio-arterial disease);

c. Active infection;

d. Severe malnutrition; or

e. Pancytopenia.

3. The patient is not in both an irreversible terminal state and on a life support system;

4. Adequate supervision will be provided to assure there will be strict adherence to the medical regimen which is required;

5. The KT is likely to prolong life and restore a range of physical and social function suited to activities of daily living;

6. A facility with appropriate expertise has evaluated the patient, and has indicated willingness to undertake the procedure;

7. The patient does not have multiple uncorrectable severe major system congenital anomalies;

8. Failure to meet (1) through (7) above shall result in denial of pre-authorization and coverage for the requested kidney transplant procedures.

~~1.2.~~ *B.* Facility selection criteria for kidney transplantation (KT). ~~A.~~ For medical facility to qualify as an approved Virginia Medicaid provider for performing kidney transplants, the following conditions must be met:

1. The facility has available expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;

2. The KT program staff has extensive experience and expertise in the medical and surgical treatment of renal disease;

3. Transplant surgeons on the staff have been trained in the KT technique at an institution with a well established KT program;

4. The transplantation program has adequate services to provide specialized psychosocial and social support for patients and families;

5. Adequate blood bank support services are present and available;

6. Satisfactory arrangements exist for donor procurement services;

7. The institution is committed to a program of at least 25 KTs a year;

8. The center has a consistent, equitable, and practical protocol for selection of patients (at a minimum, the DMAS Patient Selection Criteria must be met and adhered to);

9. The center has the capacity and commitment to conduct a systematic evaluation of outcome and cost;

10. In addition to hospital administration and medical staff endorsement, hospital staff support also exists for such a program;

11. The hospital has an active, ongoing renal dialysis service;

12. The hospital has access to staff with extensive skills in tissue typing, immunological and immunosuppressive techniques;

13. Initial approval as KT center requires performance of 25 KTs within the most recent 12 months, with a one year survival rate of at least 90%. Centers that fail to meet this requirement during the first year will be given a one-year conditional approval. Failure to meet the volume requirement following the conditional approval will result in loss of approval.

***~~2.1.~~ 12 VAC 30-50-550. Corneal transplantation.***

*A.* Patient selection criteria for provision of corneal transplantation (CT). ~~A.~~ Transplantation of the cornea is a surgical treatment whereby a diseased cornea is replaced by a healthy organ. While pre-authorization is not required, the following patient selection criteria shall apply for the consideration of all approvals for reimbursement for cornea transplantation.

1. Current medical therapy has failed and will not prevent progressive disability;

2. The patient is suffering from one of the following conditions:

a. Post-cataract surgical decompensation,

b. Corneal dystrophy,

c. Post-traumatic scarring,

d. Keratoconus, or

e. Aphakia Bullous Keratopathy;

3. Adequate supervision will be provided to assure there will be strict adherence by the patient to the long term medical regimen which is required;

4. The CT is likely to restore a range of physical and social function suited to activities of daily living;

5. The patient is not in both an irreversible terminal state and on a life support system;

6. The patient does not have untreatable cancer, bacterial, fungal, or viral infection;

7. The patient does not have the following eye conditions:

a. Trichiasis,

b. Abnormal lid brush and/or function,

c. Tear film deficiency,

d. Raised transocular pressure,

e. Intensive inflammation, and

f. Extensive neo-vascularization.

~~2.~~ *B.* Facility selection criteria for cornea transplantation (CT). ~~A.~~ For medical facility to qualify as an approved Medicaid provider for performing cornea transplants, the following conditions must be met:

1. The facility has available expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;

2. The CT program staff has extensive experience and expertise in the medical and surgical treatment of eye disease;

3. Transplant surgeons on the staff have been trained in the CT technique at an institution with a well established CT program;

4. The transplantation program has adequate services to provide social support for patients and families;

5. Satisfactory arrangements exist for donor procurement services;

6. The institution is committed to a program of eye surgery;

7. The center has a consistent, equitable, and practical protocol for selection of patients (at a minimum, t DMAS Patient Selection Criteria must be met a adhered to);

8. The center has the capacity and commitment to conduct a systematic evaluation of outcome and cost;

9. In addition to hospital administration and medical staff endorsement, hospital staff support also exists for such a program;

10. Initial approval as CT center requires performance of corneal transplant surgery, with a one year graft survival rate of at least 75%. Centers that fail to meet this requirement during the first year will be given a one-year conditional approval. Failure to meet this requirement following the conditional approval will result in loss of approval.

***12 VAC 30-50-560. Liver, heart, allogeneic and autologous bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational (coverage for persons younger than 21 years).***

~~3.1.~~ *A.* Patient selection criteria for provision of liver, heart, allogeneic and autologous bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational.

~~A. General.~~ *1.* The following general conditions shall apply to these services:

~~1.~~ *a.* Coverage shall not be provided for procedure that are provided on an investigational or experimental basis.

~~2.~~ *b.* There must be no effective alternative medical or surgical therapies available with outcomes that are at least comparable.

~~3.~~ *c.* The transplant procedure and application of the procedure in treatment of the specific condition for which it is proposed have been clearly demonstrated to be medically effective and not experimental or investigational.

~~4.~~ *d.* Prior authorization by the Department of Medical Assistance Services (DMAS) is required. The prior authorization request must contain the information and documentation as required by DMAS.

~~B.~~ *2.* The following patient selection criteria shall apply for the consideration of authorization and coverage and reimbursement:

~~1.~~ *a.* The patient must be under 21 years of age at time of surgery.

~~2.~~ *b.* The patient selection criteria of the transplant center where the surgery is to be performed shall be used in determining whether the patient is appropriate for selection for the procedure. Transplant procedure will be pre-authorized only if the selection of t

patient adheres to the transplant center's patient selection criteria, based upon review by DMAS of information submitted by the transplant team or center.

~~a.~~ The recipient's medical condition shall be reviewed by the transplant team or program according to the transplant facility's patient selection criteria for that procedure and the recipient shall be determined by the team to be an appropriate transplant candidate. Patient selection criteria used by the transplant center shall include, but not necessarily be limited to, the following:

~~1.~~ *(1)* Current medical therapy has failed and the patient has failed to respond to appropriate therapeutic management;

~~2.~~ *(2)* The patient is not in an irreversible terminal state, and

~~3.~~ *(3)* The transplant is likely to prolong life and restore a range of physical and social function suited to activities of daily living.

~~3.2.~~ *B.* Facility selection criteria for liver, heart, allogeneic and autologous bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational *(coverage for persons younger than 21 years)*.

~~A. General.~~ *1.* The following general conditions shall apply:

~~1.~~ *a.* Procedures may be performed out of state only when the authorized transplant cannot be performed in the Commonwealth because the service is not available or, due to capacity limitations, the transplant can not be performed in the necessary time period.

~~2.~~ *b.* Criteria applicable to transplantation services and centers in the Commonwealth also apply to out-of-state transplant services and facilities.

~~B.~~ 2. To qualify for coverage, the facility must meet, but not necessarily be limited to, the following criteria:

~~1.~~ *a.* The transplant program staff has demonstrated expertise and experience in the medical and surgical treatment of the specific transplant procedure;

~~2.~~ *b.* The transplant surgeons have been trained in the specific transplant technique at an institution with a well established transplant program for the specific procedure;

~~3.~~ *c.* The facility has expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;

~~4.~~ *d.* The facility has staff or access to staff with expertise in tissue typing, immunological and immunosuppressive techniques;

~~5.~~ *e.* Adequate blood bank support services are available;

~~6.~~ *f.* Adequate arrangements exist for donor procurement services;

~~7.~~ *g.* Current full membership in the United Network for Organ Sharing, for the facilities where solid organ transplants are performed;

~~8.~~ *h.* Membership in a recognized bone marrow accrediting or registry program for bone marrow transplantation programs;

~~9.~~ *i.* The transplant facility or center can demonstrate satisfactory transplantation outcomes for the procedure being considered;

~~10.~~ *j.* Transplant volume at the facility is consistent with maintaining quality services;

~~11.~~ *k.* The transplant center will provide adequate psychosocial and social support services for the transplant recipient and family~~;~~.

***12 VAC 30-50-570. High dose chemotherapy and bone marrow/stem cell transplantation (coverage for persons over 21 years of age).***

*A. Patient selection criteria for high dose chemotherapy and bone marrow/stem cell transplantation (coverage for persons over 21 years of age).*

*1. The following general conditions shall apply to these services:*

*a. This must be the most effective medical therapy available yielding outcomes that are at least comparable to other therapies.*

*b. The transplant procedure and application of the procedure in treatment of the specific condition for which it is proposed have been clearly demonstrated to be medically effective.*

*c. Prior authorization by the Department of Medical Assistance Services (DMAS) is required. The prior authorization request must contain the information and documentation as required by DMAS. The nearest approved and appropriate facility will be considered.*

*2. The following patient selection criteria shall apply for the consideration of authorization and coverage and reimbursement for individuals who have been diagnosed with lymphoma or breast cancer and have been determined by the treating health care provider to have a performance status sufficient to proceed with such high dose chemotherapy and bone marrow/stem cell transplant:*

*a. The patient selection criteria of the transplant center where the treatment is to be performed shall be used in determining whether the patient is appropriate for selection for the procedure. Transplant procedures will be preauthorized only if the selection of the patient adheres to the transplant center's patient selection criteria based upon review by DMAS of information submitted by the transplant team or center.*

*b. The recipient's medical condition shall be reviewed by the transplant team or program according to the transplant facility's patient selection criteria for that procedure and the recipient shall be determined by the team to be an appropriate transplant candidate. Patient selection criteria used by the transplant center shall include, but not necessarily be limited to, the following:*

*(1) The patient is not in an irreversible terminal state (as demonstrated in the facility's patient selection criteria), and*

*(2) The transplant is likely to prolong life and restore a range of physical and social functions suited to activities of daily living.*

*B. Facility selection criteria for high dose chemotherapy and bone marrow/stem cell transplantation for individuals diagnosed with lymphoma or breast cancer.*

*1. The following general conditions shall apply:*

*a. Unless it is cost effective and medically appropriate, procedures may be performed out of state only when the authorized transplant cannot be performed in the Commonwealth because the service is not available or, due to capacity limitations, the transplant cannot be performed in the necessary time period.*

*b. Criteria applicable to transplantation services and centers in the Commonwealth also apply to out-of-state transplant services and facilities.*

*2. To qualify for coverage, the facility must meet, but not necessarily be limited to, the following criteria:*

*a. The transplant program staff has demonstrated expertise and experience in the medical treatment of the specific transplant procedure;*

*b. The transplant physicians have been trained in the specific transplant technique at an institution with a well established transplant program for the specific procedure;*

*c. The facility has expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;*

*d. The facility has staff or access to staff with expertise in tissue typing, immunological and immunosuppressive techniques;*

*e. Adequate blood bank support services are available;*

*f. Adequate arrangements exist for donor procurement services;*

*g. Membership in a recognized bone marrow accrediting or registry program for bone marrow transplantation programs;*

*h. The transplant facility or center can demonstrate satisfactory transplantation outcomes for the procedure being considered;*

*i. Transplant volume at the facility is consistent with maintaining quality services; and*

*j. The transplant center will provide adequate psychosocial and social support services for the transplant recipient and family.*

VA.R. Doc. No. R97-721; Filed December 22, 1997, 1:55 p.m.

* * * * * * * * *

Title of Regulation: **Expansion of Coverage of School-Based Health Services.**
**12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-200; adding 12 VAC 30-50-229.1).**

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until March 20, 1998.
(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Administrative Process Act (APA) provides for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 1997. Section 9-6.14:4.1 C of the Code of Virginia requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on August 13, 1997.

Purpose: The purpose of this amendment is to expand the services, beyond the currently covered basic therapy services, which may be provided by school divisions to their Medicaid eligible children with special education needs.

Substance and Analysis: In 1991, DMAS began covering special education services (physical, occupational and speech-language therapies) in school divisions. DMAS became involved in covering special education services due to budgetary initiatives within the Commonwealth to utilize available federal funding for services which otherwise had been funded by state and local sources. The particular services were selected by DMAS for coverage because the existing DMAS requirements for covering them were similar to the definitions and provider qualifications implemented by the school divisions. This service coverage expansion bega

as a result of a study by the Governor's Child Health Task Force as described in its report entitled "Investing in Virginia's Future" (December 1991).

Since this service initiation, discussions have been ongoing between DMAS and the Department of Education (DOE) as to further feasible service expansions. A study was requested of DMAS by the 1996 General Assembly on DMAS' coverage of school-based health services. One of the recommendations of the study was for DMAS to expand coverage to include skilled nursing services and the Individualized Education Program meetings for the special education population.

The 1997 General Assembly directed DMAS to expand coverage of school-based health services by July 1, 1997, to include skilled nursing services and up to two meetings annually for the development of the Individualized Education Program (IEP). These services are for children with special education needs and all Virginia school divisions are required to provide these services as well as others under federal law regardless of whether through Medicaid or under various contracting mechanisms. DMAS has covered school-based health services for children with special education needs since 1991. DMAS reimbursement for these two additional services will consist of the federal share of the payment only. DMAS does not receive a general fund appropriation for reimbursement of school-based services to children with special education needs. DMAS reimbursement allows school divisions financial assistance for the provision of the required services, which otherwise are funded by predominantly state and local funding revenues.

Issues: The advantage of this regulatory change to recipients is the expansion of services provided. This action will only expand the number of providers if more schools enroll as providers. The advantage to the Commonwealth is the shifting of costs from state and local funds to federal funds. The agency projects no negative issues involved in implementing this proposed change.

Fiscal/Budget Impact: For the 1995-96 school year, DMAS reimbursed approximately $191,000 to school divisions for Medicaid covered special education services. One-half of this amount is federal funds reimbursed by DMAS and the other half is documented matching funds from school divisions. The reimbursement represents about 2,200 claims paid for services. Enrollment by school divisions with DMAS is voluntary. Currently about 25 school divisions actively bill Medicaid. The 1997 General Assembly budget language included $104,200 in nongeneral funds (NGF) in FY '98, for the two new school-based health services. From a more recent analysis, the estimate of the NGF for the two new services is $241,200 (with total Medicaid expenditures of $468,800 for these new services). DMAS will adjust its federal matching amount accordingly.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. DMAS is required, under HB 1600, Item 322(D)(8) of the 1997 General Assembly, to pay for up to two meetings annually for the purposes of developing a special education child's Individual Education Program (IEP) and for skilled nursing sessions. The proposed regulation makes it possible to use federal Medicaid funds to pay for services that are required but have historically been paid for out of local funds.

Estimated economic impact. This proposal will result in federal funds replacing approximately 50% of local expenditures used to pay for the two school-based services covered in the proposal. No other impact is anticipated. This change will result in a net increase in federal expenditures and a commensurate decrease in local expenditures. DMAS' most recent estimate of the federal expenditures is $241,156. According to DMAS, this amount can be expected to increase somewhat in the future as more school divisions begin to bill DMAS for the federal share of offering these services.

Businesses and entities affected. The only entities directly affected by this regulation are the local governments that are required to provide these services. Their required financial commitment will be somewhat lessened by the federal payments for some of the costs of providing the services. The size of the federal matching amount has been increasing in the last several months as a number of localities that did not previously request reimbursement have begun to do so. The gain to Virginia's economy is something more than the expected influx of federal dollars. The increased federal funding will have secondary impacts on the economy due either to reduced local taxes or a reallocation of local spending to other areas. The expected net gain to Virginia is somewhat more than $241,156 per year. Thus, this regulation clearly represents a net gain to Virginia's economy.

Localities particularly affected. This regulation will not have a disproportionate impact on any particular localities in Virginia.

Projected impact on employment. The influx of federal matching dollars can be expected to increase economic activity in Virginia by a small amount. Thus, there will be a small increase in employment although the change will not be measurable.

Effects on the use and value of private property. This proposal will not have any effect on the use and value of

private property beyond that implied by a small increase in the level of economic activity in the state.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Amount, Duration and Scope of Services: Expansion of Coverage of School-Based Health Services.

Summary:

*This amendment proposes the expansion of services, beyond the currently covered basic therapy (physical therapy, occupational therapy and speech/language therapy) services, which may be provided by school divisions to their Medicaid eligible children with special education needs. As a result of the 1996 General Assembly's study of this issue, this proposed expansion entails skilled nursing services and professional consultative services.*

**12 VAC 30-50-200. Physical therapy and related services.**

A. Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written physician's order/plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements. Services shall be provided according to guidelines found in the Virginia Medicaid Rehabilitation Manual.

B. Physical therapy.

1. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, ~~services provided by a local school division employing qualified therapists,~~ or when otherwise included as an authorized service by a cost provider who provides rehabilitation services. ~~A local school division may only provide these services to children entitled to services under Public Law 94-142.~~

2. Effective with dates of service on and after October 24, 1995, DMAS will provide for the direct reimbursement to enrolled rehabilitation providers for physical therapy services when such services are rendered to patients residing in nursing facilities ~~(NFs)~~. Such reimbursement shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the ~~NF~~ *nursing facility* or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the ~~NF~~ *nursing facility* to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

C. Occupational therapy.

1. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, ~~services provided by a local school division employing qualified therapists,~~ or when otherwise included as an authorized service by a cost provider who provides rehabilitation services. ~~A local school division may only provide these services to children entitled to services under Public Law 94-142.~~

2. Effective with dates of service on and after October 24, 1995, DMAS will provide for the direct reimbursement to enrolled rehabilitation providers for occupational therapy services when such services are rendered to patients residing in nursing facilities ~~(NFs)~~. Such reimbursement shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the ~~NF~~ *nursing facility* or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the ~~NF~~ *nursing facility* to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

D. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist.)

1. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service ~~services provided by a local school division employi~~ ~~qualified therapists,~~ or when otherwise included as a authorized service by a cost provider who provides rehabilitation services. ~~A local school division may only provide these services to children entitled to services under Public Law 94-142.~~

2. Effective with dates of service on and after October 24, 1995, DMAS will provide for the direct reimbursement to enrolled rehabilitation providers for speech/language therapy services when such services are rendered to patients residing in nursing facilities ~~(NFs)~~. Such reimbursement shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the ~~NF~~ *nursing facility* or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the ~~NF~~ *nursing facility* to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

E. Authorization for outpatient rehabilitation services.

1. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, school divisions, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service annually. The provider shall maintain documentation to justify the need for services.

2. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. Documentation for medical justification must include physician orders/plans of care signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

3. Covered outpatient rehabilitative services for acute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. "Acute conditions" shall be defined as conditions which are expected to be of brief duration (less than 12 months) and in which progress toward goals is likely to occur frequently.

4. Covered outpatient rehabilitation services for long-term, nonacute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. "Nonacute conditions" shall be defined as those conditions which are of long duration (greater than 12 months) and in which progress toward established goals is likely to occur slowly.

5. Payment shall not be made for reimbursement requests submitted more than 12 months after the termination of services.

F. Service limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

1. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

2. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the physician's order/plan of care, and indicate the frequency and duration for services. Physician orders/plans of care must be personally signed and dated prior to the initiation of rehabilitative services. The certifying physician may use a signature stamp, in lieu of writing his full name, but the stamp must, at minimum, be initialed and dated at the time of the initialing (within 21 days of the order).

3. Services shall be furnished under a written plan of treatment and must be established, signed and dated (as specified in this section) and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

4. A physician recertification shall be required periodically and must be signed and dated (as specified in this section) by the physician who reviews the plan of treatment. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed. Certification and recertification must be signed and dated (as specified in this section) prior to the beginning of rehabilitation services.

5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

6. Physical therapy, occupational therapy and speech-language services are to be considered for termination regardless of the preauthorized visits or services when any of the following conditions are met:

a. No further potential for improvement is demonstrated. (The patient has reached his maximum progress and a safe and effective maintenance program has been developed.)

b. There is limited motivation of the part of the individual or caregiver.

c. The individual has an unstable condition that affects his or her ability to participate in a rehabilitative plan.

d. Progress toward an established goal or goals cannot be achieved within a reasonable period of time.

e. The established goal serves no purpose to increase meaningful *functional* or cognitive capabilities.

f. The service can be provided by someone other than a skilled rehabilitation professional.

***12 VAC 30-50-229. (Reserved.)***

***12 VAC 30-50-229.1. School health services.***

*A. School health services shall be defined as those therapy and nursing services rendered by school divisions which are enrolled with DMAS to serve children who qualify to receive special education services as described under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.).*

*B. Physical therapy and related services.*

*1. The services covered under this subsection shall include physical therapy, occupational therapy, and speech/language pathology services. All of the requirements of 12 VAC 30-50-200 applicable to these services shall continue to apply with regard to, but not necessarily limited to, necessary authorizations, documentation requirements, provider qualifications, and service limitations.*

*2. Consultation by physical therapy, occupational therapy, or speech pathology providers in meetings for the development, evaluation, or reevaluation of the Individualized Education Program (IEP) for specific*

*children shall be covered when the IEP with the physical therapy, occupational therapy, or speech pathology services is implemented within one year following the IEP meeting consultation. This consultation is to be billed to DMAS along with documentation to show that the services have been implemented no earlier than the date such services are implemented. No more than two consultations may be billed for each child annually. This annual limitation includes consultations billed to DMAS attended by either registered nurses or licensed practical nurses.*

*C. Skilled nursing services.*

*1. These must be medically necessary nursing services which are required by a child in order to benefit from an educational program, as described under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.). These services shall be limited to a maximum of six units a day of medically necessary services. Services not deemed to be medically necessary, upon utilization review, shall not be covered. A unit, for the purposes of this school-based health service, shall be defined as 15 minutes of medical care.*

*2. These services must be performed by a Virginia-licensed registered nurse (RN), or licensed practical nurse (LPN) under the supervision of a licensed RN. The service provider shall be either employed by the school division or under contract to the school division. The skilled nursing services shall be rendered in accordance with the licensing standards and criteria of the Virginia Board of Nursing. Supervision of LPNs shall be provided consistent with the regulatory standards of the Board of Nursing at 18 VAC 90-20-270.*

*3. Consultation by skilled nursing providers in meetings for the development, evaluation, or reevaluation of the IEP for specific children shall be covered when the IEP with the skilled nursing services are implemented within one year following the IEP meeting consultation. This consultation is to be billed to DMAS along with documentation to show that the services have been implemented no earlier than the date such services are implemented. No more than two consultations may be billed for each child annually. This annual limitation includes consultations billed to DMAS attended by physical therapists, occupational therapists, and speech therapists.*

*4. The services shall be of a level of complexity and sophistication which are consistent with skilled nursing services. These skilled nursing services shall include, but not necessarily be limited to, dressing changes, maintaining patent airways, and urinary catheterizations.*

*5. Skilled nursing services shall be directly and specifically related to an active, written plan of care, which has been established, signed and dated, and periodically reviewed by a physician or nurse practitioner, after any needed consultation with skilled nursing staff. The services shall be specific and provide effective treatment for the child's condition in accordance with accepted standards of medical practice.*

*6. Documentation of services shall include a written plan of care which identifies the medical condition or conditions to be addressed by skilled nursing services, goals for skilled nursing services, time tables for accomplishing such stated goals, actual skilled nursing services to be delivered and whether the services will be delivered by an RN or LPN. Services which have been delivered and for which reimbursement from Medicaid is to be claimed must be supported with like documentation.*

*7. Service limitations. The following general conditions shall apply to reimbursable skilled nursing services in school divisions:*

*a. Patient must be under the care of a physician or nurse practitioner who is legally authorized to practice and who is acting within the scope of his license.*

*b. A recertification by a physician or nurse practitioner shall be conducted at least once each school year. The recertification statement must be signed and dated by the physician or nurse practitioner who reviews the plan of care, and may be obtained when the plan of care is reviewed. The physician or nurse practitioner recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.*

*c. Physician or nurse practitioner orders for nursing services shall be required and shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.*

*d. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided.*

*e. Skilled nursing services are to be terminated when further progress toward the treatment goals are unlikely or when they are not benefiting the child or when the services can be provided by someone other than the skilled nursing professional.*

VA.R. Doc. No. R97-722; Filed December 22, 1997, 1:54 p.m.

* * * * * * * * *

Title of Regulation: **Reimbursement for Individuals with Traumatic Brain Injury.**
**12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12 VAC 30-90-52; adding 12 VAC 30-90-266 and 12 VAC 30-90-330).**

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A - Public comments may be submitted until March 20, 1998.
(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Administrative Process Act (APA) provides for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 1997. Section 9-6.14:4.1 C of the Code of Virginia requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on August 13, 1997.

42 CFR Part 447, Subpart C, contains the federal regulatory requirements which apply to reimbursement for long-term care, or nursing facilities (NF) services.

Purpose: The purpose of this proposal is to establish the Traumatic Brain Injury (TBI) additional payment within the Nursing Home Payment System (NHPS) that will provide a fixed per day payment for residents with TBI served in the program in addition to the reimbursement otherwise payable under the provisions of the NHPS.

Substance and Analysis: Individuals who have been diagnosed with Traumatic Brain Injury (TBI) may have injuries so severe that they require institutionalization for the remainder of their lives. Such individuals, who may frequently be young and active before their traumas, require methods of care and treatment which are different from that provided to the typically institutionalized, debilitated elderly patients. These young TBI patients frequently exhibit behavioral problems which render them difficult, if not impossible, to care for with the average aging population of nursing facility residents.

Medicaid recipients with TBI who require long-term institutional care were being served, prior to the agency's emergency regulation, in either the general nursing facility setting or in the specialized care nursing facility setting, when they met the criteria for comprehensive rehabilitation. Caring for TBI patients who demonstrate behavioral problems in either the general nursing facility population or in the specialized care setting has been a less than satisfactory service solution. These TBI patients require additional staffing and scheduled activities beyond those required by typical debilitated elderly nursing facility patients.

This circumstance produces a gap in the continuum of services available for this special population with special care needs which this regulatory action proposes to meet. The establishment of nursing facility units which offer specialized care and services to individuals with TBI is therefore recommended. The remainder of this package discusses the requirements that DMAS proposes to apply to these specialized units in order to qualify for the proposed additional reimbursement.

In order for patients who have been diagnosed with TBI to be approved for these specialized units they must:

1. Meet the minimum nursing facility criteria for institutionalization and have a diagnosis of traumatic brain injury;

2. Have demonstrated documented abusive, aggressive or disruptive behaviors;

3. Be at least 14 years old; and

4. Be appropriate for nursing facility placement and be able to be safeguarded by the facility so that the patient is not a physical or emotional danger to himself or to others.

The provider criteria, bed limit and other facility requirements may be modified following further discussions with providers during the regulatory review process. These proposed criteria are intended to concentrate individuals with TBI into specially dedicated units within facilities, and thereby satisfy concerns about the safety of other facility residents and achieve the economies of scale that will allow nursing facilities to provide the additional services that these individuals require. In order for nursing facilities to receive approval of their special units to care for these patients, the facilities must:

1. Dedicate a minimum of 20 beds, which must be certified for Medicaid patients, and provide the additional professional services which are necessary to support the special needs of these patients;

2. Physically separate these dedicated units from the remainder of the nursing facilities' population of patients;

3. Locate a nursing station in this dedicated unit and provide a registered nurse who is to function in a charge nurse capacity;

4. Maintain contractual agreements with a physiatrist and a neuropsychologist;

5. Ensure that each patient in this dedicated unit is evaluated at least annually by a licensed clinical

psychologist who has expertise in neuropsychology or a neurologist; and

6. Coordinate educational services for those young residents who have not met their high school education requirements in order that these requirements may be satisfied.

Additionally, several technical corrections are being made to the Nursing Home Payment System. These corrections make no substantive difference in the policies.

Issues: This regulatory change will present an advantage to both providers and recipients. Recipients will benefit because they will receive specialized, more tailored care. Providers will benefit because they will receive reimbursement appropriate to the added level of care they provide. The agency projects no negative issues involved in implementing this proposed change.

Fiscal/Budget Impact: The 1997 Appropriations Act provided $500,000 total funds ($243,000 GF) for these services in FY 1998. DMAS estimates that between one and three providers and between 10 and 50 recipients will qualify for this additional payment during the first annual period of operation. Implementation of this additional payment will not result in an expansion of the number of individuals eligible for nursing facility services since it is designed to serve individuals with TBI who are otherwise receiving nursing facility services. There are no localities which are uniquely affected by these regulations as they apply statewide.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic affects.

Summary of the proposed regulation. The proposed regulation replaces an emergency regulation that became effective on July 1, 1997. This regulation is in fulfillment of a directive by the 1996 General Assembly "to implement an adjustment to the nursing home operating rate for the additional reasonable costs of care of nursing home residents who are victims of traumatic brain injuries."

The proposed regulation establishes qualifying criteria for patients such as:

1. Meet the minimum nursing facility criteria for institutionalization;

2. Have a diagnosis of Traumatic Brain Injury;

have demonstrated documented abusive, aggressive, or disruptive behaviors;

3. Be at least 14 years old; and

4. Be appropriate for nursing facility placement.

The proposed regulation also establishes qualifying criteria for providers such as:

1. Dedicate a minimum of 20 beds to Traumatic Brain Injury patients;

2. Physically separate these 20 beds from the remainder of the nursing facility's patients;

3. Locate a nursing station in the dedicated unit;

4. Maintain contractual agreements with a physiatrist and a neuropsychologist;

5. Ensure that each patient in the dedicated unit is evaluated at least annually by a licensed clinical psychologist; and

6. Coordinate educational services for those young residents who have not met their high school education requirements.

Estimated economic impact. The proposed regulation is likely to have two main economic effects. First, it will facilitate an increase in the general level of services provided to victims of traumatic brain injuries. Prior to promulgation of the emergency regulation that this proposed regulation would replace, Medicaid recipients with traumatic brain injuries who required long-term care were treated in general or specialized nursing facility settings. Such settings are generally designed and staffed for the treatment of debilitated elderly patients. In contrast, victims of traumatic brain injuries are typically young and, moreover, frequently exhibit behavioral problems. These patients require additional staffing and scheduled activities beyond those required by geriatric nursing facility residents. As a result, treatment of victims of traumatic brain injury in general and specialized nursing facility environments has proved less than satisfactory in the past. The proposed regulation will facilitate the creation of nursing facility units that are specifically designed to serve traumatic brain injury patients, thereby increasing the level of service provided to these individuals.

The second likely economic effect of the proposed regulation will be to increase the state funding required for reimbursement of medical services to traumatic brain injury patients. The 1997 Appropriations Act allocated $500,000 ($243,000 general fund and $257,000 nongeneral fund) in additional funding for these services for fiscal year 1998.

Businesses and entities particularly affected. The proposed regulation particularly affects Virginia nursing facilities, patients suffering from traumatic brain injuries, and the general public.

Localities particularly affected. No localities are particularly affected by the proposed regulation.

Projected impact on employment. The proposed regulation is not anticipated to have a significant effect on employment.

Affects on the use and value of private property. The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

Summary of analysis. The proposed regulation replaces an emergency regulation that became effective on July 1, 1997. This regulation is in fulfillment of a directive by the 1996 General Assembly "to implement an adjustment to the nursing home operating rate for the additional reasonable costs of care of nursing home residents who are victims of traumatic brain injuries." It is anticipated that the proposed regulation is likely to have two main economic effects. First, it will facilitate an increase in the general level of services provided to victims of traumatic brain injuries. Second, it will entail a nontrivial increase in the state funding required for reimbursement of medical services to traumatic brain injury patients.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Nursing Home Payment System: Reimbursement for Individuals with Traumatic Brain Injury.

Summary:

*This action proposes to establish the Traumatic Brain Injury (TBI) additional payment within the Nursing Home Payment System (NHPS) that will provide a fixed per day payment for residents with TBI served in the program in addition to the reimbursement otherwise payable under the provisions of the NHPS. Specific criteria for both the patient and the facility are established in this action.*

*Individuals who have been diagnosed with Traumatic Brain Injury (TBI) may have injuries so severe that they require institutionalization for the remainder of their lives. Such individuals, who may frequently be young and active before their traumas, require methods of care and treatment which are different from that provided to the typically institutionalized, debilitated elderly patients. These young TBI patients frequently exhibit behavioral problems which render them difficult, if not impossible, to care for with the average aging population of nursing facility residents.*

*Medicaid recipients with TBI who require long-term institutional care were being served, prior to the agency's emergency regulation, in either the general nursing facility setting or in the specialized care nursing facility setting, when they met the criteria for comprehensive rehabilitation. Caring for TBI patients who demonstrate behavioral problems in either the general nursing facility population or in the specialized care setting has been a less than satisfactory service solution. These TBI patients require additional staffing and scheduled activities beyond those required by typical debilitated elderly nursing facility patients.*

**12 VAC 30-90-52. Administrator/owner compensation.**

A. Administrators' compensation, whether administrators are owners or nonowners, shall be based on a schedule adopted by DMAS and varied according to facility bed size. The compensation schedule shall be adjusted annually to reflect cost-of-living increases and shall be published and distributed to providers annually. The administrator's compensation schedule covers only the position of administrator and assistants and does not include the compensation of owners employed in capacities other than the ~~NF~~ *nursing facility* administrator (see 12 VAC 30-90-290).

B. Administrator compensation shall mean remuneration paid regardless of the form in which it is paid. This includes, but shall not be limited to, salaries, professional fees, insurance premiums (if the benefits accrue to the ~~employer~~ *employee*/owner or his beneficiary) director fees, personal use of automobiles, consultant fees, management fees, travel allowances, relocation expenses in excess of IRS guidelines, meal allowances, bonuses, pension plan costs, and deferred compensation plans. Management fees, consulting fees, and other services performed by owners shall be included in the total compensation if they are performing administrative duties regardless of how such services may be classified by the provider.

C. Compensation for all administrators (owner and nonowner) shall be based upon a 40-hour week to determine reasonableness of compensation.

D. Owner/administrator employment documentation.

1. Owners who perform services for a ~~NF~~ *nursing facility* as an administrator and also perform additional duties must maintain adequate documentation to show that the additional duties were performed beyond the normal 40-hour week as an administrator. The additional duties must be necessary for the operation of the ~~NF~~ *nursing facility* and related to patient care.

2. Services provided by owners, whether in employee capacity, through management contracts, or through home office relationships shall be compared to the cost and services provided in arms-length transactions.

3. Compensation for such services shall be adjusted where such compensation exceeds that paid in such arms-length transactions or where there is a duplication of duties normally rendered by an administrator. No reimbursement shall be allowed for compensation where owner services cannot be documented and audited.

***12 VAC 30-90-266. Traumatic Brain Injury (TBI) payment.***

*DMAS shall provide a fixed per day payment for nursing facility residents with TBI served in the program in accordance with resident and provider criteria, in addition to the reimbursement otherwise payable under the provisions of the Nursing Home Payment System. Effective for dates of*

*service on and after July 1, 1997, a per day rate add-on shall be paid for recipients who meet the eligibility criteria for these TBI payments and who are residents in a designated nursing facility TBI unit of 20 beds or more that meets the provider eligibility criteria. The value of the rate add-on shall be $50 on July 1, 1997. The rate add-on for any qualifying provider's fiscal year shall be adjusted for inflation using the Data Resources, Inc., moving average that is used to adjust ceilings and rates for inflation under the Nursing Home Payment System. (Refer to 12 VAC 30-90-330 for related provider and recipient requirements.)*

*PART IV.*
*TRAUMATIC BRAIN INJURY PAYMENT SYSTEM.*

***12 VAC 30-90-330. Traumatic brain injury diagnoses.***

*A. Consistent with the Nursing Home Payment System, DMAS shall provide a fixed per day payment for nursing facility residents with traumatic brain injury diagnoses. The residents and facilities must meet the criteria set out in this section.*

*B. Resident criteria. To meet the criteria for admission and continued stay for the TBI program, there shall be documented evidence in the resident's medical record of all of the following:*

*1. The resident shall meet the minimum nursing facility criteria as specified in 12 VAC 30-60-300, as well as meet the preadmission screening requirements for nursing facility level of care;*

*2. The resident has a physician's diagnosis of TBI which is also recorded on the Patient Intensity Rating System Review (DMAS-80) form by diagnosis code 85000 (trauma to the brain);*

*3. Abusive, aggressive, or disruptive behavior has been documented within 30 days prior to admission and also recorded on the Patient Intensity Rating System Review (DMAS-80) form by coding of behavior pattern 3 or 4. Behavior coding on the Patient Intensity Rating System Review form must also be supported by documentation in the medical record;*

*4. The resident is at least 14 years old; and*

*5. The resident must be appropriate for nursing facility placement and the facility must be able to safeguard him such that the resident will not be a physical or emotional danger to himself or other residents on the unit.*

*C. Provider criteria. Nursing facilities which may be approved to provide this service shall operate a dedicated unit of 20 beds or more and provide additional professional services to support the special needs of these individuals. These criteria shall concentrate individuals with TBI into specially dedicated facilities thereby satisfying safety concerns and achieving economies of scale necessary for the nursing facilities. At a minimum, the provider shall meet all of the criteria outlined below to receive the add-on reimbursement for the TBI program for residents who meet the TBI program resident criteria.*

*1. Provide all services that are available to the general nursing facility population in accordance with established standards and regulations for nursing facilities to include programming that is individualized and geared toward the needs and interests of the unit's population;*

*2. Provide a dedicated unit of at least 20 beds that is physically separated by a doorway that shall be either locked or maintained with an alarm system that sounds at the unit nursing station when opened;*

*3. Certify all beds on this dedicated unit for licensed nursing facility care. To receive payment the resident must reside in a Medicaid certified bed;*

*4. Locate at least one nursing station on the unit and that nursing station must serve the dedicated unit only;*

*5. Maintain a contractual agreement with a physiatrist and a neuropsychologist to serve the resident population as needed;*

*6. Provide a registered nurse to function in a charge nurse capacity on the unit whose sole responsibility is for the care and oversight of the designated unit. This registered nurse cannot have other responsibilities outside of the unit during the period for which she is designated as the charge nurse for the dedicated unit. The registered nurse working in a charge nurse capacity must have sufficient experience working with the population with head injuries before serving in this capacity. Temporary agency nurses cannot be used to fulfill the charge nurse requirement;*

*7. Ensure that each resident on the unit is evaluated on an annual basis by a licensed clinical psychologist with expertise in neuropsychology or a neurologist. If a resident is admitted and has not been evaluated by a neuropsychologist or neurologist in the past calendar year, an evaluation must be completed within the first 30 days of the resident's stay in the TBI program; and*

*8. Coordinate educational services for the resident with the appropriate public school system if the resident has not completed all educational requirements for high school education as specified by the State Board of Education. Coordination is defined as making the necessary contacts and providing necessary information to the appropriate school division. The facility shall keep records of such coordination contacts.*

VA.R. Doc. No. R97-723; Filed December 22, 1997, 1:55 p.m.

* * * * * * * *

Title of Regulation: **Consumer Directed Personal Attendant Services.**
**12 VAC 30-120-10 et seq. Waivered Services (adding Part VIII: 12 VAC 30-120-490 through 12 VAC 30-120-550).**

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Hearing Date: Public hearings have already been held on these regulations.

Public comments may be submitted until March 20, 1998.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Administrative Process Act (APA) provides for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency has initiated the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 1997. Section 9-6.14:4.1 C of the Code of Virginia requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on August 13, 1997.

In House Joint Resolution (HJR) 125, the 1996 General Assembly required DMAS to "request a waiver from the federal government and implement with all due haste consumer-directed personal attendant services (Consumer-Directed PAS), in conjunction with the agency-directed model currently available, to Virginians who are elderly or who have disabilities." The consumer-directed PAS regulations are therefore being promulgated due to a mandate by the General Assembly.

Purpose: The purpose of this proposal is to specify in the Virginia Administrative Code requirements and standards for the provision of consumer-directed PAS. The Consumer-Directed PAS Program will provide home and community-based care personal attendant services to consumers who meet Medicaid eligibility and financial requirements. The service will allow qualifying consumers to remain in their homes, directing their own care, rather than receiving services under the home health agency model or being institutionalized.

Substance and Analysis: The Medicaid-funded Consumer-Directed PAS Program is currently being offered under a Social Security Act § 1915(c) home and community-based care waiver, which must be a cost-effective alternative to institutionalization. Only persons eligible to receive services through the Department of Rehabilitative Services PAS program and who are determined to be at-risk of nursing facility placement are eligible for services under the Medicaid-funded consumer-directed PAS waiver during the emergency regulation's effective period. After these proposed permanent regulations complete the full Administrative Process Act, all other potentially-eligible Virginians electing to do so will be able to select Medicaid-funded consumer-directed PAS.

Personal attendant services (PAS) are being defined as long-term maintenance or support services necessary to enable an elderly or disabled individual to remain at or return to his home rather than a nursing facility. PAS assists elderly or disabled recipients with basic health-related services, such as activities of daily living (eating, bathing, grooming, dressing, ambulation, and toileting); assists with normally self-administered medications; and/or provides basic household maintenance services essential to health in the home. These services do not include the performance of skilled nursing services.

DMAS already offers an agency-directed model of PAS to Virginians through a federal home and community-based care waiver known as the elderly and disabled waiver. Currently, the elderly and disabled waiver recipients are only able to receive personal care services from approved agencies contracted with DMAS. The agency-directed model controls the structure of the service delivery system by assuming total responsibility for certifying, selecting, scheduling, and terminating the services of personal attendants, thereby leaving recipients few choices. In fiscal year 1996, DMAS spent approximately $74 million on the agency-directed model of personal care services.

In contrast to the agency-directed model, a consumer-directed model of service is based upon the principle that individuals should have the primary responsibility for making decisions regarding the assistance they receive. The proposed Medicaid-funded consumer-directed service model will allow certain elderly and disabled consumers who, after demonstrating their abilities to manage and supervise those attendants, will be able to hire their own personal attendants. Personal attendants are extensions of the consumers' bodies, performing actions that consumers are no longer able to perform. Consumer-directed services have been demonstrated in other states and the Commonwealth (through the Department of Rehabilitative Services PAS program) to have a tremendous positive impact on consumers. Consumers who hire, train, and supervise their own attendants report less staff turnover, greater flexibility in meeting the consumers' schedules and preferences, and greater satisfaction with the way the personal attendants perform their duties.

Persons who will be eligible for consumer-directed PAS must be elderly or disabled and have no cognitive impairments. If disabled, the person must be at least 18 years of age. One of the criteria to determine eligibility for consumer-directed PAS will be the consumer's ability to independently manage a personal attendant. When waiver services are requested, a Department of Medical Assistance Services (DMAS)

authorized Nursing Home Preadmission Screening (NHPAS) Team will assess, by using the Uniform Assessment Instrument (UAI)), the consumer to determine whether he is eligible for long-term care services. The NHPAS Team will also use an additional questionnaire, to determine if consumers can independently manage their personal attendants, by assessing consumers' responses in areas of daily decision making, long and short range planning, finding personal attendants, and the existence and adequacy of health and supportive networks.

Once the NHPAS team authorizes consumer-directed PAS, consumers must choose the provider agency to provide service coordination. The service coordinator, by visiting the consumer, will train him about his rights and responsibilities associated with consumer-directed PAS and will develop a plan of care, with the consumer, based on the UAI and the amount of approved personal attendant hours. The service coordinator then forwards the UAI, the additional questionnaire, and the plan of care to DMAS for final approval for consumer-directed PAS. The service coordinator will monitor implementation of the plan of care in periodic visits and ensure the continuing appropriateness of services to the consumer's needs.

The consumer is the employer in this program and, as such, is responsible for hiring, training, supervising, and firing his personal attendant. The consumer will also have access to a registry of personal attendants to be maintained by the service coordinator. The service coordinator will be available to the consumer to provide assistance as needed. The consumer will develop a contract with the personal attendant, and will document the number of hours worked by the personal attendant, and submit biweekly timesheets to the service coordinator and fiscal agent. The service coordinator and fiscal agent will verify that the approved number of hours have not been exceeded. The fiscal agent is to handle fiscal responsibilities (i.e., paying payroll taxes, filing IRS forms) on behalf of the consumer and prepares and issues the attendant's paychecks.

Consumers will be reassessed every six months to reevaluate their need for personal attendant services and the continuing appropriateness of consumer-directed PAS. At this reassessment or at any other time, if the consumer decides he no longer wishes to receive consumer-directed PAS, and prefers the alternative agency-directed model of personal care services, the service coordinator will make the arrangements for the change to personal care services under the elderly and disabled waiver.

History: A heightened interest in consumer-directed PAS by consumers and certain providers prompted an investigation of the possibilities of providing Medicaid-funded consumer-directed services in Virginia. In 1995, the General Assembly approved House Joint Resolution 539 (HJR 539), requesting the evaluation of the feasibility of amending the current Medicaid Elderly and Disabled waiver to allow individuals to hire their own personal attendants. DMAS subsequently convened a workgroup of the major stakeholders to evaluate the impact of offering a consumer-directed model of personal care services.

DMAS solicited comments in October 1996 from the stakeholders involved in the provision of personal assistance services to the elderly and consumers with disabilities. The comments received focused concern on personal attendant standards and qualifications, assurance of quality of care, liability, provider requirements, reimbursement, and supervision of the plan of care.

Over the course of the next several months, DMAS worked with other state agencies, representatives of the home care industry, and advocates for persons with disabilities and the elderly. DMAS also sought advice from the Office of the Attorney General regarding issues of liability and the scope of services performed by unlicensed personal attendants. Before and during the 1997 General Assembly, DMAS presented the Medicaid-funded consumer-directed PAS model to solicit comments and resolve concerns. Presentations to various groups were as follows:

At five meetings (between October 1996 and March 1997) of the Board of Medical Assistance Services (BMAS), the DMAS Director presented the consumer-directed PAS concept and answered questions related to the development and implementation of this service model. BMAS also reviewed the waiver application that DMAS sent to the Health Care Financing Administration (HCFA), which requested the authority to reimburse for this service as a Medicaid-funded community-based care service. The public attended the meetings and provided comments regarding consumer-directed personal attendant services during this time.

Between November 1996 and January 1997, DMAS met with the Department of Rehabilitative Services (DRS) Personal Assistance Advisory Board, the Disability Services Commission, the House Appropriations Committee, and the Health and Human Resources Subcommittee of the House Appropriations Committee to discuss or give presentations about consumer-directed PAS.

DMAS submitted its report, "Medicaid-Funded Consumer-Directed Personal Assistance Services," to the General Assembly in November 1996. The proposed model for Medicaid-funded consumer-directed PAS would be offered in conjunction with the Medicaid-funded agency-directed PAS model currently available to elderly and disabled Virginians. Based upon the recommendations of the study, the 1996 General Assembly approved HJR 125, requesting DMAS to, "with all due haste, request a waiver from the federal government and implement with all due haste consumer-directed personal attendant services, in conjunction with the agency-directed model currently available, to Virginians who are elderly or who have disabilities." The resolution is strongly supported by the Governor's Principles for Disability Service guidelines, which are committed to services which foster independence and assist people with disabilities to achieve the needed skills or technologies to remain or become independent.

The emergency regulations were approved and took effect on July 1, 1997. Although the emergency regulation process did not have a specified formal period of public comment, DMAS has consistently entertained input and addressed concerns from all interested parties. During July and August 1997, DMAS staff met with interested parties to discuss any issues or concerns related to the emergency regulations in order to develop permanent replacement regulations. These permanent regulations will supersede the emergency regulations and will allow all eligible Virginians to access consumer-directed PAS.

Issues: The advantage to the public is the availability of a new service delivery method that provides citizens with another home and community-based care alternative to institutionalization. Consumer-directed PAS provides consumers with the choice to be the employer of their own personal attendants. As employers, consumers will be responsible for hiring, training, supervising, and firing their own personal attendants. Rather than being a burden, however, it has been demonstrated that consumers of this service report fewer incidences of hospitalization and higher satisfaction with services provided.

Potential disadvantages include the risk of fraud or abuse and neglect of consumers. Recipients who constantly switch back and forth between the consumer-directed waiver and the elderly and disabled waiver will be problematical. A potential lack of providers willing to provide service coordination services may also be a disadvantage. A disadvantage to the home health industry which has been providing heretofore all personal care services will be the loss of revenue from the consumers who elect to switch over to this service care model. Even though the same agencies which have been providing personal care will be permitted by DMAS to render service coordination services, the reimbursement for only service coordination will be lower than the full range of covered personal care services (currently under the elderly and disabled waiver).

Fiscal/Budget Impact: The Medicaid-funded consumer-directed PAS program will be offered under the Social Security Act § 1915(c) home and community based-care waiver, which must be a cost-effective alternative to institutionalization. This waiver is projected to be budget neutral because the population served by this waiver is the same population that is being served under existing home and community-based waivers. Consumers eligible for Medicaid long-term care services could select consumer-directed PAS as an option to existing home and community-based services.

It is projected that 107 consumers who are receiving or are on the waiting list for Personal Attendant Services from the Virginia Department of Rehabilitative Services as of July 1, 1997, and who meet the financial and eligibility criteria for Medicaid funded long-term care services will access consumer-directed PAS services under the effective emergency regulation. Once the proposed permanent regulations complete the Administrative Process Act, all other qualified Virginians who are eligible for this waiver will be able to access consumer-directed PAS. During fiscal year 1998, an estimated 275 recipients will receive consumer-directed personal attendant services at a cost of $1.39 million. During fiscal year 1999, an estimated 557 recipients will receive consumer-directed personal attendant services at a cost of $2.89 million.

The home health care industry will be affected by the implementation of this program. During fiscal year 1996, providers of personal care services received $74 million reimbursement for providing personal care services (excluding costs for durable medical equipment and skilled/semi-skilled nursing services) to recipients. Since some existing recipients of personal care services, under the elderly and disabled waiver, may switch to the new consumer-directed PAS waiver, there is the potential for personal care providers to lose recipients (as clients). Providers of personal care services, however, are invited to become providers of service coordination services under the consumer-directed PAS waiver.

There are no localities which are uniquely affected by these regulations as they apply statewide.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation specifies the requirements and standards for the provision of consumer-directed personal attendant services. The Consumer-Directed PAS program will provide home and community-based care personal attendant services to consumers who meet Medicaid eligibility and financial requirements. The service will allow qualifying consumers to remain in their homes, directing their own care, rather than receiving services under the home health agency model or being institutionalized. This proposal is mandated by Chapter 924, 1997 Appropriation Act.

Estimated economic impact. Personal attendant services (PAS) are defined as long-term maintenance or support services necessary to enable an elderly or disabled individual to live at home rather than at a nursing facility. The PAS program assists elderly or disabled recipients with basic health-related services and activities of daily living including eating, bathing, grooming, dressing, toileting, moving around, taking self-administered medication, and performing basic

household maintenance services essential to health in the home. Personal attendants are extensions of the consumers' bodies, performing actions that consumers are no longer able to perform. These services do not include skilled nursing services.

DMAS already offers an agency-directed model of PAS to Virginians through a federal home and community-based care waiver known as the elderly and disabled waiver. Currently, the elderly and disabled waiver recipients are only able to receive personal care services from approved agencies contracted with DMAS. The agency-directed model controls the structure of the service delivery system by assuming total responsibility for certifying, selecting, scheduling, and terminating the services of personal attendants, thereby leaving recipients few choices. The consumer-directed PAS program allows individuals who can demonstrate their ability to manage and supervise personal attendants to hire, train and supervise their own attendants. The pool of providers is no longer limited to those contracting with DMAS.

For individuals with normal cognitive abilities, economic theory would suggest that any increase in the range of choices available will generally result in an improved outcome for the individual with the wider range of choice. There are three potential problems in applying this theory to the provision of consumer-directed PAS. First, many of the clientele in this program may have impaired cognitive abilities. This leads to obvious problems with applying the choice model to evaluate changes. Second, because many of the PAS services are things that people routinely do for themselves, there will be a natural tendency of individuals to substitute PAS services for services that they could provide for themselves. Since the individual is in a much better position than is DMAS to know which functions need to be performed by an assistant, some substitution will undoubtedly take place, increasing the cost of using consumer-directed PAS. Finally, consumer-directed PAS may be more subject to fraud and abuse than agency-directed services.

DMAS has designed this regulation in a way that reduces the potential for problems with cognitively impaired individuals managing consumer-directed PAS. Persons who will be eligible for Consumer-Directed PAS must be elderly or disabled and have no cognitive impairments. If disabled, the person must be at least 18 years of age. One of the criteria to determine eligibility for Consumer-Directed PAS will be the consumer's ability to independently manage a personal attendant. When waiver services are requested, a Department of Medical Assistance Services (DMAS) authorized Nursing Home Preadmission Screening (NHPAS) Team will assess, by using the Uniform Assessment Instrument (UAI)), the consumer to determine whether he is eligible for long-term care services. The NHPAS Team will also use an additional questionnaire, to determine if consumers can independently manage their personal attendants, by assessing consumers' responses in areas of daily decision making, long and short range planning, finding personal attendants, and the existence and adequacy of health and supportive networks.

Once the NHPAS team authorizes Consumer-Directed PAS, consumers must choose the provider agency to provide service coordination. The service coordinator, by visiting the consumer, will train him about his rights and responsibilities associated with Consumer-Directed PAS and will develop a plan of care, with the consumer, based on the UAI and the amount of approved personal attendant hours. The service coordinator then forwards the UAI, the additional questionnaire, and the plan of care to DMAS for final approval for Consumer-Directed PAS. The service coordinator will monitor implementation of the plan of care in periodic visits and ensure the continuing appropriateness of services to the consumer's needs. The service coordinator and fiscal agent will verify that the approved number of hours have not been exceeded. The fiscal agent is to handle fiscal responsibilities (i.e., paying payroll taxes, filing IRS forms) on behalf of the consumer and prepares and issues the attendant's paychecks.

Consumers will be reassessed every six months to reevaluate their need for personal attendant services and the continuing appropriateness of Consumer-Directed PAS. At this reassessment or at any other time, if the consumer decides he no longer wishes to receive Consumer-Directed PAS, and prefers the alternative agency-directed model of personal care services, the service coordinator will make the arrangements for the change to personal care services under the Elderly and Disabled Waiver.

Given that this process works as DMAS describes, there is reasonable assurance that those DMAS clients opting into the consumer-directed PAS will be those most likely to benefit from the program and least likely to run into problems. Indeed, past experience with consumer-directed PAS has been very encouraging. DMAS indicates that consumer-directed services have been demonstrated in other states and the Commonwealth (through the Department of Rehabilitative Services PAS program) to have a tremendous positive impact on consumers. Clients who hire, train, and supervise their own attendants report less staff turnover, greater flexibility in meeting the consumers' schedules and preferences, and greater satisfaction with the way the personal attendants perform their duties.

The asymmetry in information about a client's capabilities will result in a reduction in the amount of savings from the amount that is theoretically available. This is because, as already mentioned, some clients will substitute paid-for services of the PAS for services the client could have provided. The information asymmetry between agency and client is unavoidable. For DMAS to monitor each client closely enough to eliminate this substitution would eliminate most, if not all, of the benefits of the program. That there is this substitution does not mean that this program will not have a net benefit. It is likely that DMAS' periodic review of client abilities will limit substitution.

DMAS indicates that there may be some increase in the potential for fraud and abuse. Assuming that this is a larger problem than under the agency-directed approach, then some increase in enforcement efforts would seem appropriate. No such increase is mentioned in the material accompanying this proposal. Naturally, any increase in fraud, abuse or neglect of clients over the agency-directed model, as well as any increased enforcement costs, would have to be subtracted from any net extended benefits. Available evidence indicates that these problems will not be large but continued study by DMAS is appropriate.

According to DMAS data, the benefit to clients of the enhanced choice is very large without any net increase in expenditures. From this we conclude that this regulation is likely to have a significant positive net benefit for Virginia.

Businesses and entities affected. The primary beneficiaries of this change is the clients who will have a greater range of options in obtaining personal care. In fact, clients can always return to the agency-directed model if they find that the consumer-directed program does not offer net benefits. Another group of beneficiaries are the new providers, those chosen for personal care but not previously contracting with DMAS under the agency-directed program. The firms currently contracting with DMAS to provide care under the agency-directed model will lose some clients unless they can provide services that are competitive with other potential providers. Improvements in attention to consumer satisfaction can be expected as the market for these services becomes more competitive. Precise estimates of the dollar value of these changes are not feasible at this time.

Localities particularly affected. The impact of this change should be fairly evenly distributed across the state.

Projected impact on employment. This regulation will probably not have any net impact on employment in Virginia.

Effects on the use and value of private property. This regulation will not have any impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Home and Community Based Services: Consumer Directed Personal Attendant Services.

Summary:

*The Consumer-Directed Personal Attendant Services (PAS) Program will provide home and community-based care personal attendant services to consumers who meet Medicaid eligibility and financial requirements. The service will allow qualifying consumers to remain in their homes, directing their own care, rather than receiving services under the home health agency model or being institutionalized. This proposal specifies the requirements and standards for the provision of consumer-directed PAS.*

*The Medicaid-funded Consumer-Directed PAS Program is currently being offered under a Social Security Act § 1915(c) home and community-based care waiver and Virginia emergency regulations, which must be a cost-effective alternative to institutionalization. Only persons eligible to receive services through the Department of Rehabilitative Services PAS program and who are determined to be at-risk of nursing facility placement are eligible for services under the Medicaid-funded consumer-directed PAS waiver during the emergency regulation's effective period. After these proposed permanent regulations complete the full Administrative Process Act, all other potentially-eligible Virginians electing to do so will be able to select Medicaid-funded consumer-directed PAS.*

*Personal attendant services (PAS) are being defined as long-term maintenance or support services necessary to enable an elderly or disabled individual to remain at or return to his home rather than a nursing facility. PAS assists elderly or disabled recipients with basic health-related services, such as activities of daily living (eating, bathing, grooming, dressing, ambulation, and toileting); assists with normally self-administered medications; and/or provides basic household maintenance services essential to health in the home. These services do not include the performance of skilled nursing services.*

*PART VIII.*
*CONSUMER-DIRECTED PERSONAL ATTENDANT SERVICES FOR ELDERLY AND DISABLED INDIVIDUALS.*

***12 VAC 30-120-490. Definitions.***

*"Activities of daily living" or "ADL" means personal care tasks, i.e., bathing, dressing, toileting, transferring, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.*

*"Committee for recipient" means a person who has been legally invested with the authority, and charged with the duty of managing the estate or making decisions to promote the well-being of a person who has been determined by the circuit court to be totally incapable of taking care of his person or handling and managing his estate because of mental illness or mental retardation. A committee shall be appointed only if the court finds that the person's inability to care for himself or handle and manage his affairs is total.*

*"Current functional status" means the individual's degree of dependency in performing activities of daily living (ADL).*

*"DMAS" means the Department of Medical Assistance Services.*

*"DRS" means the Department of Rehabilitative Services. DRS currently operates the Personal Assistance Services Program, which is a state-funded program that provides a limited amount of personal care services to Virginians.*

*"DSS" means the Department of Social Services.*

*"Fiscal agent" means an agency or organization that may be contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of the recipient who is receiving consumer-directed personal attendant services (PAS).*

*"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the recipient and managing his property and protecting the rights of the recipient who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the recipient in need of a guardian has been determined to be incapacitated.*

*"Home and community-based care" means a variety of in-home and community-based services reimbursed by DMAS (personal care, adult day health care, respite care, and assisted living,) authorized under a Social Security Act § 1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services in order to avoid nursing facility placement. The Nursing Home Preadmission Screening Team or DMAS shall give prior authorization for any Medicaid-funded home and community-based care.*

*"Instrumental activities of daily living" or "IADL" means social tasks, i.e., meal preparation, shopping, housekeeping, laundry, money management. A person's degree of independence in performing these activities is part of determining appropriate level of care and services. Meal preparation is planning, preparing, cooking and serving food. Shopping is getting to and from the store, obtaining/paying for groceries and carrying them home. Housekeeping is dusting, washing dishes, making beds, vacuuming, cleaning floors, and cleaning bathroom/kitchen. Laundry is washing/drying clothes. Money management is paying bills, writing checks, handling cash transactions, and making change.*

*"Nursing Home Preadmission Screening (NHPAS)" means the process to (i) evaluate the medical, nursing, and social needs of individuals referred for preadmission screening, (ii) analyze what specific services the individuals need, (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs, and (iv) authorize Medicaid funded nursing facility or community-based care for those individuals who meet nursing facility level of care and require that level of care.*

*"Nursing Home Preadmission Screening Team" means the entity contracted with DMAS which is responsible for performing nursing home preadmission screening. For individuals in the community, this entity is a committee comprised of staff from the local health department and local DSS. For individuals in an acute care facility who require screening, the entity is a team of nursing and social work staff. A physician shall be a member of both the local committee or acute care team.*

*"Participating provider" means an institution, facility, agency, partnership, corporation, or association that meets the standards and requirements set forth by DMAS, and has a current, signed contract with DMAS.*

*"Personal attendant" means, for purposes of this part and exemption from Worker's Compensation, a domestic servant. Consumers shall be restricted from employing more than two personal attendants simultaneously at any given time.*

*"Personal attendant services" or "PAS" means long-term maintenance or support services necessary to enable the mentally alert and competent individual to remain at or return home rather than enter a nursing care facility. Personal attendant services include hands-on care specific to the needs of a medically stable, physically disabled individual. Personal attendant services include assistance with ADLs, bowel/bladder programs, range of motion exercises, routine wound care which does not include sterile technique, and external catheter care as further defined in the Consumer-Directed PAS Manual. Supportive services are those which substitute for the absence, loss, diminution, or impairment of a physical function. When specified, supportive services may include assistance with IADLs which are incidental to the care furnished, or which are essential to the health and welfare of the recipient. Personal attendant services shall not include either practical or professional nursing services as defined in Chapters 30 and 34 of Title 54.1 of the Code of Virginia, as appropriate.*

*"Plan of care" or "POC" means the written plan of services certified by the screening team physician and approved by DMAS as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.*

*"Providers" means those individuals, agencies or facilities registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.*

*"Service coordinator" means the registered nurse, social worker, or case manager who is responsible for ensuring that the assessment, development and monitoring of the plan of care, management training, and review activities as required by DMAS are accomplished. This individual is an employee of a provider that contracts with DMAS to provide consumer-directed PAS.*

*"State Plan for Medical Assistance" or "the Plan" means the document describing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.*

*"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire which assesses a person's social, physical health, mental health, and functional abilities. The UAI is used to gather information for the determination of a person's care needs and service eligibility, and for planning and monitoring a customer's care across various agencies for long-term care services.*

**12 VAC 30-120-500. General coverage and requirements r consumer-directed PAS as a home and community-ased care waiver service.**

A. Coverage statement. Coverage of consumer-directed PAS shall be provided under the administration of the DMAS to disabled and elderly individuals who must be mentally alert and have no cognitive impairments who would otherwise require the level of care provided in a nursing facility. Individuals must be able to manage their own affairs without help from another individual and not have a guardian or committee. If disabled, individuals receiving services must be at least 18 years of age. Individuals eligible for consumer-directed PAS must have the capability to hire and train their own personal attendants and supervise the attendant's performance.

B. Individuals receiving services under this waiver must meet the following requirements:

1. Individuals receiving services under this waiver must be eligible under one of the following eligibility groups: aged, blind or disabled recipients eligible under 42 CFR 435.121, and the special home and community-based waiver group at 42 CFR 435.217 which includes individuals who would be eligible under the State Plan if they were institutionalized.

2. Under this waivered service, the coverage groups authorized under § 1902(a)(10)(C)(i)(III) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules.

3. Virginia shall reduce its payment for home and community-based services provided for an individual by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made according to the guidelines in 42 CFR 435.735. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after deducting the amounts as specified in 42 CFR 435.726, listed below:

a. For individuals to whom § 1924(d) applies and for whom Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B), deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a non-institutionalized individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) disregarded for maintenance exceed 300% of SSI.

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

b. For individuals to whom § 1924(d) does not apply, deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a non-institutionalized individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) disregarded for maintenance exceed 300% of SSI.

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

C. Assessment and authorization of home and community-based care services.

1. To ensure that Virginia's home and community-based care waiver programs serve only individuals who would otherwise be placed in a nursing facility, home and

*community-based care services shall be considered only for individuals who are seeking nursing facility admission or for individuals who are at risk of nursing facility admission in the near future. "Near future" is defined as within one month. Home and community-based care services shall be the critical service that enables the individual to remain at home rather than being placed in a nursing facility.*

*2. The individual's status as an individual in need of home and community-based care services shall be determined by the NHPAS Team after completion of a thorough assessment of the individual's needs and available support. Screening and preauthorization of home and community-based care services by the NHPAS Team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care services.*

*3. An essential part of the NHPAS Team's assessment process is determining the level of care required by applying existing criteria for nursing facility care according to established nursing home preadmission screening processes.*

*4. The team shall explore alternative settings or services to provide the care needed by the individual. If nursing facility placement or a combination of other services are determined to be appropriate, the screening team shall initiate referrals for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid nursing facility placement, the screening team shall develop an appropriate plan of care and initiate referrals for service.*

*5. The annual cost of care for home-and-community-based-care services for a recipient shall not exceed the average annual cost of nursing facility care. For purposes of this subdivision, the annual cost of care for home-and-community-based-care services for a recipient shall include all costs of all Medicaid covered services which would actually be received by the recipient. The average annual cost of nursing facility care shall be determined by DMAS, and shall be updated annually.*

*6. Home and community-based care services shall not be provided to any individual who resides in a board-and-care facility or adult care residences (ACRs) nor who is an inpatient in general acute care hospitals, skilled or intermediate nursing facilities, or intermediate care facilities for the mentally retarded. Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.*

*7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by the NHPAS Team.*

*8. Any authorization and POC for home and community-based care services will be subject to the approval o DMAS prior to Medicaid reimbursement for waive services.*

***12 VAC 30-120-510. General conditions and requirements for home and community-based care participating service coordination providers.***

*A. Service coordination providers approved for participation shall, at a minimum, perform the following activities:*

*1. Accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis.*

*2. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 (42 USC 2000 et seq.) which prohibits discrimination on the grounds of race, color, religion, or national origin and of § 504 of the Rehabilitation Act of 1973 (29 USC 70 et seq.) which prohibits discrimination on the basis of a disability.*

*3. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services were performed. Also assure the recipient's freedom to reject medical care and treatment.*

*4. Provide services and supplies to recipients in th same quality and mode of delivery as provided to the general public.*

*5. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.*

*a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.*

*b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.*

*6. Submit charges to DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public. The provider will accept as payment in full the amount established by DMAS payment methodology from the first day of eligibility.*

7. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS. The provider will use program-designated billing forms for submission of charges.

8. Furnish to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit information on request and in the form requested. The Commonwealth's right of access to provider agencies and records shall survive any termination of this agreement.

9. Disclose all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.

10. Hold confidential and use for authorized DMAS purposes only all medical and identifying information regarding recipients served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of DMAS. DMAS shall not disclose medical information to the public.

11. When ownership of the provider agency changes, notify DMAS within 15 calendar days prior to the date of the change.

B. Requests for participation will be screened by DMAS to determine whether the provider applicant meets the basic requirements for participation.

C. For DMAS to approve contracts with home and community based care providers the following provider participation standards shall be met:

1. Financial solvency.

2. Disclosure of ownership.

3. Staffing requirements.

D. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts.

E. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and annually recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider must take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies which have been cited.

F. If there is more than one approved provider agency in the community, the individual will have the option of selecting the provider agency of his choice.

G. A participating service coordinator provider may voluntarily terminate his participation in Medicaid by providing 30 days written notification. DMAS shall be permitted to administratively terminate a service coordinator provider from participation upon 30 days written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided to recipients subsequent to the date specified in the termination notice.

H. A provider shall have the right to appeal adverse action taken against it by DMAS. Adverse action includes, but shall not be limited to, termination of the provider agreement by DMAS, and retraction of payments from the provider by DMAS for noncompliance with applicable law, regulation, policy or procedure. All disputes regarding provider reimbursement or termination of the agreement by DMAS for any reason shall be resolved through administrative proceedings conducted at the office of DMAS in Richmond, Virginia. These administrative proceedings and judicial review of such administrative proceedings shall be conducted pursuant to the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia and duly promulgated regulations. Court review of final agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act.

I. Section 32.1-325 C of the Code of Virginia mandates that "Any such (Medicaid) agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. Reinstatement will be contingent upon provisions of state law. Additionally, termination of a provider contract will occur as may be required for federal financial participation.

J. It is the responsibility of the provider agency to notify DMAS and DSS, in writing on form DMAS-122, when any of the following circumstances occur:

1. Home and community-based care services are implemented.

2. A recipient dies.

3. A recipient is discharged or terminated from services.

4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.

K. It shall be the responsibility of the provider agency to notify DMAS, in writing, within five days when any of the following changes in the authorized hours or termination of provider agency services occur:

1. Decreases in amount of authorized care by the provider.

a. The provider agency may decrease the amount of authorized care only if the recipient and the participating provider both agree that a decrease in care is needed and that the amount of care in the revised POC is appropriate.

b. The participating provider is responsible for devising the new POC and calculating the new hours of service delivery.

c. The individual responsible for supervising the recipient's care shall discuss the decrease in care with the recipient, document the conversation in the recipient's record, and shall notify the recipient of the change by letter.

d. If the recipient disagrees with the decrease proposed, DMAS shall be notified to conduct a special review of the recipient's service needs.

2. Increases in amount of authorized care. If a change in the recipient's condition (physical, mental, or social) necessitates an increase in care, the participating provider shall assess the need for increase and, if appropriate, develop a plan of care with the recipient for services to meet the changed needs. The provider may implement the increase in hours without approval from DMAS as long as the amount of service does not exceed the amount established by DMAS as the maximum for the level of care designated for that recipient. Any increase to a recipient's plan of care which exceeds the number of hours allowed for that recipient's level of care or any change in the recipient's level of care must be pre-approved by DMAS.

3. Nonemergency termination of home and community-based care services by the participating provider. The participating provider shall give the recipient 10 days written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.

4. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, DMAS must be notified prior to termination. The 10-day written notification period shall not be required. If appropriate, the local DSS Adult Protective Services supervisor must be notified immediately.

L. If a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately but no later than 48 hours from first knowledge to the local DSS adult protective services worker and to DMAS.

M. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS regulations, policies and procedures may result in retraction of funds or termination of the provider agreement.

**12 VAC 30-120-520. Personal attendant services (PAS).**

A. Consumer-directed PAS may be offered to individuals in their homes as an alternative to more costly institutional nursing facility care. When the individual referred for consumer-directed PAS is already receiving another home and community-based care service, the DMAS utilization review staff shall assess the individual to determine the eligibility for consumer-directed PAS and authorize it if necessary to avoid more costly nursing facility care. In no event shall the services exceed cost effectiveness for this individual.

B. In addition to the general requirements above, to be enrolled as a Medicaid service coordination provider and maintain provider status, the following requirements shall be met:

1. The service coordination provider shall operate from a business office.

2. The service coordination provider must have sufficient qualified staff who will function as service coordinators to perform the needed POC development and monitoring, reassessments, service coordination, and support activities as required by the Consumer-Directed Personal Attendant Services Program.

3. It is preferred that the individual employed as the service coordinator possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth of Virginia. In addition, it is preferable that the service coordinator have two years of satisfactory experience in the human services field working with persons with severe physical disabilities or the elderly. The service coordinator shall possess a combination of work experience and relevant education which indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation. or observed during the interview. Observations during the interview must be documented. The knowledge, skills, and abilities shall include, but not necessarily be limited to:

a. Knowledge of:

(1) Types of functional limitations and health problems that are common to different disability types and the aging process, as well as strategies to reduce limitations and health problems;

*(2) Physical assistance typically required by people with severe physical disabilities or elderly persons, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;*

*(3) Equipment and environmental modifications commonly used and required by people with physical disabilities or elderly persons which reduces the need for human help and improves safety;*

*(4) Various long-term care program requirements, including nursing home and adult care residence placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal assistance services;*

*(5) DMAS consumer directed personal attendant services program requirements, as well as the administrative duties for which the recipient will be responsible;*

*(6) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning;*

*(7) Interviewing techniques;*

*(8) The recipient's right to make decisions about, direct the provisions of, and control his attendant care services, including hiring, training, managing, approving time sheets, and firing an attendant;*

*(9) The principles of human behavior and interpersonal relationships; and*

*(10) General principles of record documentation.*

*b. Skills in:*

*(1) Negotiating with recipients and service providers;*

*(2) Observing, recording, and reporting behaviors;*

*(3) Identifying, developing, or providing services to persons with severe disabilities or elderly persons; and*

*(4) Identifying services within the established services system to meet the recipient's needs;*

*c. Abilities to:*

*(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for persons who have visual impairments;*

*(2) Demonstrate a positive regard for recipients and their families;*

*(3) Be persistent and remain objective;*

*(4) Work independently, performing position duties under general supervision;*

*(5) Communicate effectively, verbally and in writing; and*

*(6) Develop a rapport and communicate with different types of persons from diverse cultural backgrounds.*

*4. If the service coordinator employed by the service coordination provider is not a registered nurse, the service coordination provider must have registered nurse (RN) consulting services available, either by a staffing arrangement or through a contracted consulting arrangement. The RN consultant is to be available as needed to consult with recipients/service coordinators on issues related to the health needs of the recipient.*

*5. Service coordinator duties.*

*a. The service coordinator must make an initial, comprehensive home visit to develop the POC with the recipient and provide management training. Recipients who cannot receive management training at the time of the initial visit must receive management training within seven days of the initial visit. After the initial visit, two routine onsite visits must occur in the recipient's home within 60 days of the initiation of care or the initial visit to monitor the POC. The service coordinator will continue to monitor the POC on an as needed basis, not to exceed a maximum of one routine onsite visit every 30 days or a minimum of one routine onsite visit every 90 days per recipient. The initial comprehensive visit is done only once upon the recipient's entry into the program. If a waiver recipient changes service coordinator agencies the new service coordinator shall bill for a reassessment in lieu of a comprehensive visit.*

*b. A reevaluation of the recipient's level of care will occur six months after initial entry into the program, and subsequent reevaluations will occur at a minimum of every six months. During visits to the recipient's home, the service coordinator shall observe, evaluate and document the adequacy and appropriateness of personal attendant services with regard to the recipient's current functioning and cognitive status, medical and social needs. The service coordinator shall discuss the recipient's satisfaction with the type and amount of service. The service coordinator's summary shall include, but not necessarily be limited to:*

*(1) Whether personal attendant services continue to be appropriate and medically necessary to prevent institutionalization;*

*(2) Whether the POC is adequate to meet the needs of the recipient;*

*(3) Any special tasks performed by the attendant and the attendant's qualifications to perform these tasks;*

*(4) Recipient's satisfaction with the service;*

(5) Hospitalization or change in medical condition, functioning or cognitive status;

(6) Other services received and their amount; and

(7) The presence or absence of the attendant in the home during the service coordinator's visit.

5. The service coordinator shall be available to the recipient by telephone.

6. The service coordinator will submit a criminal record check pertaining to the personal attendant on behalf of the recipient and report findings of the criminal record check to the recipient. Personal attendants will not be reimbursed for services provided to the recipient effective with the date the criminal record check confirms a personal attendant has been found to have been convicted of a crime as described in 12 VAC 30-90-180.

7. The service coordinator shall verify biweekly timesheets signed by the recipient and the personal attendant to ensure the number of approved hours on the POC are not exceeded. If discrepancies are identified, the service coordinator will contact the recipient to resolve discrepancies and will notify the fiscal agent. If a recipient is consistently being identified as having discrepancies in his timesheets, the service coordinator will contact DMAS to resolve the situation. Service coordinators shall not verify timesheets for personal attendants who have been convicted of crimes described in 12 VAC 30-90-180 and will notify the fiscal agent.

C. The service coordination provider shall maintain a personal attendant registry. The registry shall contain names of persons who have experience with providing personal attendant services or who are interested in providing personal attendant services. The registry shall be maintained as a supportive source for the recipient who may use the registry to obtain names of potential personal attendants.

D. The service coordination provider shall maintain all records of each consumer-directed PAS recipient. At a minimum these records shall contain:

1. All copies of the completed UAIs, the Long-Term Care Preadmission Screening Authorization (DMAS-96), all plans of care, and all DMAS-122's.

2. All DMAS utilization review forms.

3. Service coordinator's notes contemporaneously recorded and dated during any contacts with the recipient and during visits to the recipient's home.

4. All correspondence to the recipient and to DMAS.

5. Reassessments made during the provision of services.

6. Records of contacts made with family, physicians, DMAS, formal, informal service providers and all professionals concerning the recipient.

7. All training provided to the personal attendant or attendants on behalf of the recipient.

8. All recipient progress reports, as specified in subsection E of this section.

9. All management training provided to the recipients, including the recipient's responsibility for the accuracy of the timesheets.

E. The service coordination provider is required to submit to DMAS biannually, for every recipient, a recipient progress report, an updated UAI, and any monthly visit/progress reports. This information is used to assess the recipient's ongoing need for Medicaid-funded long-term care and appropriateness and adequacy of services rendered.

F. Recipients will hire their own personal attendants and manage and supervise the attendants' performance.

1. Attendant qualifications include, but shall not be necessarily limited to the following requirements. The attendant must:

a. Be 18 years of age or older;

b. Have the required skills to perform attendant care services as specified in the recipient's POC;

c. Possess basic math, reading, and writing skills;

d. Possess a valid social security number;

e. Submit to a criminal records check. The personal attendant will not be compensated for services provided to the recipient if the records check verifies the personal attendant has been convicted of crimes described in 12 VAC 30-90-180;

f. Be willing to attend training at the recipient's request;

g. Understand and agree to comply with the DMAS Consumer-Directed PAS Program requirements; and

h. Be willing to register in a personal attendant registry, which will be maintained by the provider agency chosen by the recipient.

2. Restrictions. Attendants shall not be members of the recipients' family. Family is defined as a parent or stepparent, spouse, children or stepchildren, siblings or stepsiblings, grandparents or stepgrandparents, grandchildren, or stepgrandchildren. In addition, anyone who has legal guardianship or is a committee for the recipient shall also be prohibited from being an attendant under this program.

G. The recipient's inability to obtain personal attendant services and substitution of attendants. The service coordination provider shall note on the Plan of Care what constitutes the recipient's backup plan in case the personal attendant does not report for work as expected or terminates employment without prior notice. Upon the recipient's request, the service coordination provider shall provide the recipient with a list of persons on the personal attendant

registry who can provide temporary assistance until the attendant returns or the recipient is able to select and hire a new personal attendant. If a recipient is consistently unable to hire and retain the employment of an attendant to provide personal attendant services, the service coordination provider must:

1. Contact DMAS to transfer the recipient to a provider which provides Medicaid-funded agency-directed personal care services. The service coordination provider will make arrangements to have the recipient transferred, or

2. Contact the local health department and request a Nursing Home Preadmission Screening to determine if another long-term care option is appropriate.

**12 VAC 30-120-530. Fiscal services.**

A. DMAS shall be permitted to contract for the services of a fiscal agent. The fiscal agent will be reimbursed by the DMAS to perform certain tasks as an agent for the recipient/employer who is receiving consumer-directed PAS. The fiscal agent will handle responsibilities for the recipient for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all these duties.

B. A fiscal agent may be a state agency or other organization, and will sign a contract with the DMAS that clearly defines the roles and tasks expected of the fiscal agent and the DMAS and enroll as a provider of consumer-directed PAS. Roles and tasks which will be defined for the fiscal agent in the contract will consist of but not necessarily be limited to the following:

1. The fiscal agent will file for and obtain employer agent status with the federal and state tax authorities;

2. Once the recipient has been authorized to receive consumer-directed PAS, the fiscal agent will register the recipient as an employer, including providing assistance to the recipient in completing forms required to obtain employer identification numbers from federal agencies, state agencies, and unemployment insurance agencies;

3. The fiscal agent will prepare and maintain original and file copies of all forms needed to comply with federal, state, and local tax payment, payment of unemployment compensation insurance premiums, and all other reporting requirements of employers;

4. Upon receipt of the required completed forms from the recipient, the fiscal agent will remit the required forms to the appropriate agency and maintain copies of the forms in the recipient's file. The fiscal agent will return copies of all forms to the recipient for the recipient's permanent personnel records;

5. The fiscal agent will prepare all unemployment tax filings on behalf of the recipient as employer, and make all deposits of unemployment taxes withheld according to the appropriate schedule;

6. The fiscal agent will receive and verify the attendant biweekly timesheets do not exceed the maximum hours approved for the recipient and will process the timesheets.

7. The fiscal agent will prepare and process the payroll for the recipient's attendants, performing appropriate income tax, FICA and other withholdings according to federal and state regulations. Withholdings include, but are not limited to, all judgments, garnishments, tax levies or any related holds on the funds of the attendants as may be required by local, state, or federal law;

8. The fiscal agent will prepare payrolls for the recipient's personal attendant according to approved time sheets and after making appropriate deductions;

9. The fiscal agent will make payments on behalf of the recipient for federal withholding FICA (employer and employee shares), state withholding, unemployment compensation taxes, and other payments required and as appropriate;

10. The fiscal agent will distribute biweekly payroll checks to the recipient's attendants on behalf of the recipient;

11. The fiscal agent will maintain accurate payroll records by preparing and submitting to DMAS, at the time the fiscal agent bills DMAS for personal attendant services, an accurate accounting of all payments on personal attendants to whom payments for services were made, including a report of FICA payments for each covered attendant;

12. The fiscal agent will maintain such other records and information as DMAS may require, in the form and manner prescribed by DMAS;

13. The fiscal agent will generate W-2 forms for all personal attendants who meet statutory threshold amounts during the tax year;

14. The fiscal agent will establish a customer service mechanism in order to respond to calls from recipients and personal attendants regarding lost or late checks, or other questions regarding payments that are not related to the authorization amounts generated from DMAS;

15. The fiscal agent will keep abreast of all applicable state and federal laws and regulations relevant to the responsibilities it has undertaken with regard to these filings;

16. The fiscal agent will use program-designated billing forms or electronic billing to bill DMAS; and

17. The fiscal agent will be capable of requesting electronic transfer of funds from DMAS.

C. The fiscal agent and all subcontracting bookkeeping firms, as appropriate, will maintain the confidentiality of Medicaid information in accordance with the following:

1. The fiscal agent agrees to ensure that access to Medicaid information will be limited to the fiscal agent. The fiscal agent shall take measures to prudently safeguard and protect unauthorized disclosure of the Medicaid information in its possession. The fiscal agent shall establish internal policies to ensure compliance with federal and state laws and regulations regarding confidentiality including, but not limited to, 42 CFR Part 431, Subpart F, and Chapter 26 (§ 2.1-377 et seq.) of Title 2.1 of the Code of Virginia. In no event shall the fiscal agent provide, grant, allow, or otherwise give, access to Medicaid information to anyone without the express written permission of the DMAS Director. The fiscal agent shall assume all liabilities under both state and federal law in the event that the information is disclosed in any manner.

2. Upon the fiscal agent receiving any requests for Medicaid information from any individual, entity, corporation, partnership or otherwise, the fiscal agent must notify DMAS of such requests within 24 hours. The fiscal agent shall ensure that there will be no disclosure of the data except through DMAS. DMAS will treat such requests in accordance with DMAS policies.

3. In cases where the information requested by outside sources can be released under the Freedom of Information Act (FOIA), as determined by DMAS, the fiscal agent shall provide support for copying and invoicing such documents.

D. A contract between the fiscal agent and the recipient will be used to clearly express those aspects of the employment relationship that are to be handled by the fiscal agent, and which are to be handled by the recipient. The contract will reflect that the fiscal agent is performing these tasks on behalf of the recipient who is the actual employer of the attendant. Before the recipient begins receiving services, the fiscal agent will send the contract to the recipient to review and sign. The fiscal agent must have a signed contract with the recipient prior to the reimbursement of personal attendant services.

**12 VAC 30-120-540. Recipient responsibilities.**

A. The recipient must be authorized for consumer-directed PAS and successfully complete management training performed by the service coordinator before the recipient can hire a personal attendant.

B. The recipient is the employer in this program and is responsible for hiring, training, supervising and firing personal attendants. Specific duties include checking references of personal attendants, determining that personal attendants meet basic qualifications, training personal attendants, supervising the personal attendants' performance, and submitting timesheets to the service coordinator and fiscal agent on a consistent and timely basis. The recipient must have an emergency back-up plan in case the personal attendant does not show up for work as expected or terminates employment without prior notice.

C. The recipient shall cooperate with the development of the plan of care with the service coordinator, who monitors the plan of care and provides supportive services to the recipient. The recipient shall also cooperate with the fiscal agent, who handles fiscal responsibilities on behalf of the recipient. Recipients who do not cooperate with the service coordinator and fiscal agent will be disenrolled from consumer-directed PAS.

D. Recipients will acknowledge they will not knowingly continue to accept receiving consumer-directed personal attendant services when the services are no longer appropriate or necessary for their care needs and will inform the service coordination provider.

**12 VAC 30-120-550. DMAS termination of eligibility to receive home and community-based care services.**

A. DMAS shall have the ultimate responsibility for assuring appropriate placement of the recipient in home and community-based care services and the authority to terminate such services to the recipient for any of these reasons, but not necessarily limited to the provisions of this section.

B. Reasons eligibility for consumer directed PAS may be terminated:

1. The home and community-based care service is not the critical alternative to prevent or delay institutional (nursing facility) placement.

2. The recipient no longer meets the nursing or prenursing facility level of care or cognitive criteria for consumer-directed PAS. Cognitive criteria includes not having a cognitive impairment while having the ability to independently manage a personal attendant.

3. The recipient's environment does not provide for his health, safety, and welfare.

4. An appropriate and cost-effective POC cannot be developed.

C. DMAS shall notify the recipient by letter. The effective date of termination shall be at least 10 days from the date of the termination notification letter. At the same time, DMAS will also advise the recipient in writing of his right to appeal the decision.

NOTICE: The forms used in administering 12 VAC 30-120-10 et seq., Waivered Services, are not being published due to their length; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Virginia Uniform Assessment Instrument *(UAI), 1994.*

Medicaid Funded Long-Term Care ~~Preadmission Screening~~ *Service Authorization* Form, DMAS-96, revised 8/97.

*Service Coordinator Plan of Care, DMAS-97B, revised 6/97.*

*Patient Information, DMAS-122, revised 11/84.*

*Questionnaire: Assessing a Recipient's Ability to Independently Manage Personal Attendant Services, 3/97.*

VA.R. Doc. No. R97-724; Filed December 22, 1997, 1:53 p.m.

# TITLE 13. HOUSING

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13 VAC 5-61-10 et seq. Virginia Uniform Statewide Building Code (amending 13 VAC 5-61-440).**

Statutory Authority: §§ 36-98 and 36-99.3 of the Code of Virginia.

Public Hearing Date: February 23, 1998 - 10 a.m.

Public comments may be submitted until March 20, 1998.

(See Calendar of Events section for additional information)

Basis: The statutory authority for the board to promulgate the regulations regarding standards for fire sprinklers in certain college and university dormitories is found in the General Assembly's mandate to the board in § 36-99.3 B of the Code of Virginia, which directs the board to "promulgate regulations establishing standards for automatic sprinkler systems throughout all public or private college or university buildings which are (i) more than seventy-five feet or more than six stories high and (ii) used, in whole or in part, as dormitories to house students."

Purpose: The purpose of the proposed regulation is to provide reasonable fire safety provisions for existing buildings which house students at Virginia's colleges and universities in order to safeguard those students health, safety and welfare.

Substance: The key provision of the regulation that changes the current status of law is the regulation's applicability to existing buildings which house students at institutions of higher education by requiring such buildings to be retrofitted with automatic fire suppression systems throughout.

Issues: The primary advantage for the public and the Commonwealth of implementing the new regulation will be the increased fire safety of the existing buildings which house students at Virginia's colleges and universities. The agency sees no disadvantages for the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Section 36-99.3 B of the Code of Virginia directs the Board of Housing and Community Development to require the installation of automatic sprinkler systems in college and university buildings that are (i) more than 75 feet or more than six stories high and (ii) used, in whole or in part, as dormitories to house students. These proposed regulations implement the Code requirement.

Estimated economic impact. Since all newer buildings have automatic sprinkler systems, the only impact of this rule is to require that older dormitories be retrofitted with sprinkler systems. The rule is only expected to affect 12 buildings and will cost approximately $8 million. According to economic principles, an expenditure such as this is justified if the current expenditure is greater than or equal to the discounted expected value of the lives saved and reduced injuries. To undertake this calculation would require that, for each year in the future lives of the buildings to be retrofitted, we find a value for the reduction in the probability of injury or death. The value of risk reduction in each future year must then be discounted to account for the greater value we place on lives saved in the present over those saved in the future. Adding all of these amounts up over the expected years of operation of the dormitories would give us the maximum amount that we should be willing to pay for the risk reduction.

To carry out this analysis satisfactorily would require much more information than is available at this time. However, the General Assembly implicitly made such a calculation when it approved this section of the Code. The $8 million expenditure is not greatly out of line with other expenditures that are made to reduce morbidity and mortality. Thus, we are inclined to defer to the judgment of the General Assembly that the economic value of the reduced risks are greater than the cost of installing the sprinkler systems. We conclude that this proposal will likely result in a net economic gain to Virginia.

Businesses and entities affected. Only a small number of colleges and universities are directly affected by this proposal.

Localities particularly affected. The gains and losses will not fall disproportionately on any particular localities.

Projected impact on employment. There will be no net impact on employment in Virginia.

Effects on the use and value of private property. If any private colleges or universities are affected, this rule would result in a reallocation of resources away from other uses and could have a net negative impact on these institutions. Given the magnitude of the expenditures, the impact will not be large enough to change the competitive standing of any private institutions.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*This regulatory amendment to the Uniform Statewide Building Code is being made to replace the emergency regulation currently in effect. This amendment requires buildings (75 feet or six stories high), used as dormitories, at all colleges and universities be equipped with automatic fire sprinkler systems. The regulation provides that modifications be allowed to some required technical standards when certain other provisions are met. The systems must be installed by September 1, 1999.*

**13 VAC 5-61-440. BNBC Section 3402.0 General requirements.**

A. Change subsection 3402.2 to read:

3402.2. Replacement glass: Any replacement glass installed in buildings constructed prior to the initial effective date of this code shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation.

B. Change subsection 3402.3 to read:

3402.3. Smoke detectors in colleges and universities: College and university buildings containing dormitories for sleeping purposes shall be provided with battery-powered or AC-powered smoke detector devices installed therein in accordance with this code in effect on July 1, 1982. All public and private college and university dormitories shall have installed and use due diligence in maintaining in good working order such detectors regardless of when the building was constructed.

The chief administrative ~~officer~~ *office* of the college or university shall obtain a certificate of compliance with the provisions of this subsection from the building official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

The provisions of this section shall not apply to any dormitory at a state-supported military college or university which is patrolled 24 hours a day by military guards.

C. Change subsection 3402.4 to read:

3402.4. Smoke detectors in certain juvenile care facilities: Battery-powered or AC-powered smoke detectors shall be installed and maintained in all local and regional detention homes, group homes, and other residential care facilities for children and juveniles which are operated by or under the auspices of the Virginia Department of Juvenile Justice, regardless of when the building was constructed, by July 1, 1986, in accordance with the provisions of this code that were in effect on July 1, 1984. Administrators of such homes and facilities shall be responsible for the installation and maintenance of the smoke detector devices.

D. Change subsection 3402.5 to read:

3402.5. Smoke detectors for the deaf and hearing impaired: Smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than 20 individuals;

2. All multiple-family dwellings having more than two dwelling units, including all dormitories, boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or

3. All buildings arranged for use of one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each 70 units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than 35 units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing impaired. Visual detectors shall be provided for all meeting rooms for which an advance request has been made.

E. Change subsection 3402.6 to read:

3402.6. Smoke detectors in adult care residences, adult day care centers and nursing homes and facilities: Battery-powered or AC-powered smoke detector devices shall be installed in all adult care residences and adult day care centers licensed by the Virginia Department of Social Services, regardless of when the building was constructed. The location and installation of the smoke detectors shall be determined by the provisions of this code in effect on October 1, 1990.

The licensee shall obtain a certificate of compliance from the building official of the locality in which the residence or center is located, or in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

The licensee shall maintain the smoke detector devices in good working order.

Fire alarm or fire detector systems, or both, as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing homes and nursing facilities licensed by the Virginia Department of Health by August 1, 1994, and shall be maintained in good working order.

F. Change subsection 3402.7 to read:

3402.7. Fire suppression systems in nursing homes and facilities: Fire suppression systems as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing facilities licensed by the Virginia Department of Health by January 1, 1993, regardless of when such facilities or institutions were constructed, and shall be maintained in good working order. Units consisting of certified long-term care beds located on the ground floor of general hospitals shall be exempt from the requirements of this section.

G. Delete subsection 3402.9.

H. Add subsection 3402.10 to read:

3402.10. Fire suppression systems in hospitals: Fire suppression systems shall be installed in all hospitals licensed by the Virginia Department of Health as required by the edition of this code in effect on October 1, 1995, regardless of when such facilities were constructed, and shall be maintained in good working order.

I. Add subsection 3402.11 to read:

3402.11. Identification of handicapped parking spaces by above grade signs: All parking spaces reserved for the use of handicapped persons shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space was reserved for the use of handicapped persons. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the handicapped within the meaning of this section.

All above grade handicapped parking space signs shall have the bottom edge of the sign no lower than four feet (1219 mm) nor higher than seven feet (2133 mm) above the parking surface. Such signs shall be designed and constructed in accordance with the provisions of Chapter 11 of this code.

J. Add subsection 3402.12 to read:

3402.12. Smoke detectors in hotels and motels: Smoke detectors shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, by the dates indicated, regardless of when constructed, and shall be maintained in good working order.

K. Add subsection 3402.13 to read:

3402.13. Sprinkler systems in hotels and motels: By September 1, 1997, an automatic sprinkler system shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, regardless of when constructed, and shall be maintained in good working order.

*L. Add subsection 3402.14 to read:*

*3402.14. Fire suppression systems in dormitories: An automatic fire suppression system shall be provided throughout all buildings having a Use Group R-2 fire area which are more than 75 feet (22,860 mm) or six stories above the lowest level of exit discharge and which are used, in whole or in part, as a dormitory to house students by any public or private institution of higher education, regardless of when such buildings were constructed, in accordance with the requirements of this code and Section 906.2.1. The automatic fire suppression system shall be installed by September 1, 1999. The chief administrative office of the college or university shall obtain a certificate of compliance from the code official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Virginia Department of General Services.*

*Exceptions:*

*1. Buildings equipped with an automatic fire suppression system in accordance with Section 906.2.1 or the 1983 or later editions of NFPA 13.*

*2. Where the requirements of this section are modified by Section 3402.14.1.*

*3. Any dormitory at a state-supported military college or university which is patrolled 24 hours a day by military guards.*

*3402.14.1. Modifications to requirements of Section 3402.14: The application of the requirements of Section 3402.14 shall be modified in accordance with this section.*

*1. Building systems, equipment or components other than the fire suppression system shall not be required to be added or upgraded except as necessary for the installation of the fire suppression system and shall only be required to be added or upgraded where the installation of the fire suppression system creates an unsafe condition.*

*2. Residential sprinklers shall be used in all sleeping rooms. Other sprinklers shall be quick response or residential unless deemed unsuitable for a space. Standard response sprinklers shall be used in elevator hoist ways and machine rooms.*

*3. Sprinklers shall not be required in wardrobes in sleeping rooms which are considered part of the building construction or in closets in sleeping rooms, when such wardrobes or closets (i) do not exceed 24 square feet (2.23 $m^2$) in area, (ii) have the smallest dimension less than 36 inches (914 mm), and (iii) comply with the following:*

*a. A single station smoke detector monitored by the building fire alarm system is installed in the room containing the wardrobe or closet which will activate the general alarm for the building if the single station smoke detector is not cleared within five minutes after activation;*

*b. The minimum number of sprinklers required for calculating the hydraulic demand of the system for the room shall be increased by two and the two additional sprinklers shall be corridor sprinklers where the wardrobe or closet is used to divide the room. Rooms divided by a wardrobe or closet shall be considered one room for the purpose of this requirement; and*

*c. The ceiling of the wardrobe, closet or room shall have a fire resistance rating of not less than ½ hour.*

*4. Not more than one sprinkler shall be required in bathrooms within sleeping rooms or suites having a floor area between 55 square feet (5.12 $m^2$) and 120 square feet (11.16 $m^2$) provided the sprinkler is located to protect the lavatory area and the plumbing fixtures are of a noncombustible material.*

*5. Existing standpipe residual pressure shall be permitted to be reduced when the standpipe serves as the water supply for the fire suppression system provided the water supply requirements of NFPA 13 listed in Chapter 35 are met.*

*6. Limited service controllers shall be permitted for fire pumps when used in accordance with their listing.*

*7. Where a standby power system is required, a source of power in accordance with Section 701-11 (d) or 701-11 (e) of NFPA 70 listed in Chapter 35 shall be permitted.*

VA.R. Doc. No. R98-64; Filed December 30, 1997, 4:30 p.m.

# FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

**Symbol Key**

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulation.

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

NOTICE: Effective July 1, 1984, the Marine Resources Commission was exempted from the Administrative Process Act for the purpose of promulgating certain regulations. However, the Commission is required to publish the full text of final regulations.

Title of Regulation: **4 VAC 20-335-10 et seq. Pertaining to On-Bottom Shellfish Aquaculture Activities.**

Statutory Authority: §§ 28.2-103 and 28.2-201 of the Code of Virginia.

Effective Date: January 1, 1998.

Summary:

*The Commonwealth of Virginia has a long history of leasing state-owned submerged land for private shellfish culture and recognizes the potential economic and environmental benefits associated with increased shellfish production.*

*In recent years, some shellfish growers have begun using low-profile structures such as nets and trays to provide additional protection for the shellfish placed on their leased ground.*

*This regulation authorizes shellfish aquaculture structures that may be placed on and immediately above privately leased shellfish grounds without an individual permit from the Habitat Management Division of the Marine Resources Commission.*

Agency Contact: Robert C. Neikirk, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2254.

*CHAPTER 335.*
*PERTAINING TO ON-BOTTOM SHELLFISH AQUACULTURE ACTIVITIES.*

***4 VAC 20-335-10. Purpose.***

*The purpose of this chapter is to specify the criteria for shellfish aquaculture structures that may be employed on privately leased shellfish planting ground.*

***4 VAC 20-335-20. Definitions.***

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

*"Commission" means the Marine Resources Commission.*

*"Shellfish" means native molluscan species or molluscan species imported in accordance with § 28.2-825 of the Code of Virginia.*

***4 VAC 20-335-30. Requirements and conditions.***

*A. The activity must be conducted on planting ground leased in accordance with Chapter 6 (§ 28.2-600 et seq.) of Title 28.2 of the Code of Virginia.*

*B. Leased planting ground must be properly marked in accordance with § 28.2-607 and subsequent regulations (4 VAC 20-290-10 et seq.).*

*C. In addition to the required marking of the boundary of the lease, the boundary of the area containing the structures shall be identified with markers meeting the description for markers identified in 4 VAC 20-290-30 while structures are located on the bottom.*

*D. Any structures placed on the bottom must be nontoxic and shall not be known to leach any materials which would violate any water quality standards set by the Department of Environmental Quality.*

*E. Structures shall not extend higher than 12 inches above the bottom substrate.*

*F. No new structures shall be placed on existing stands of submerged aquatic vegetation.*

*G. No structures may cause more than a minimal adverse effect on navigation.*

*H. Shellfish must be harvested in accordance with all applicable laws and regulations.*

*I. The commission may direct removal of any structures which fail to meet the requirements and conditions of this chapter.*

VA.R. Doc. No. R98-161; Filed December 22, 1997, 2:02 p.m.

* * * * * * * *

Title of Regulation: **4 VAC 20-336-10 et seq. General Permit No. 3 Pertaining to Noncommercial Riparian Shellfish Growing Activities.**

Statutory Authority: § 28.2-103 of the Code of Virginia.

Effective Date: January 1, 1998.

Summary:

*This general permit is for noncommercial riparian shellfish growing (i.e. "gardening") activities which conform to certain criteria and are undertaken over or on*

*state-owned subaqueous lands in the tidal waters of the Commonwealth.*

Agency Contact: Copies of the regulation may be obtained from Robert C. Neikirk, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2254.

*CHAPTER 336.*
*GENERAL PERMIT NO. 3 PERTAINING TO NONCOMMERCIAL RIPARIAN SHELLFISH GROWING ACTIVITIES.*

***4 VAC 20-336-10. Definitions.***

*For the purposes of this general permit, riparian shellfish gardening is defined as the grow-out of native shellfish species in protective structures such as floats, bags, cages, etc., adjacent to a private, noncommercial pier or otherwise within a waterfront property owner's riparian area, exclusively for private, noncommercial purposes.*

***4 VAC 20-336-20. Discussion.***

*A. A principal objective of the permit streamlining efforts of this agency is the achievement of a single permit wherever possible for minor projects with minimal cumulative impacts.*

*B. The Norfolk District of the U. S. Army Corps of Engineers has approved a Regional Permit (97-RP-19) for certain aquaculture/mariculture activities in waters of the Commonwealth of Virginia which are authorized by a local wetlands board or the Virginia Marine Resources Commission, or both.*

***4 VAC 20-336-30. Procedures.***

*The Chief, Habitat Management Division, will administer the general permit and ensure that:*

*1. The approved Local-State-Federal Permit Application form, or General Permit No. 3 Application Form, is completed and filed in accordance with the instructions contained therein.*

*2. Aquaculture activities authorized by this permit achieve the policy and standards implicit in Chapter 12 (§ 28.2-1200 et seq.) of Title 28.2 of the Code of Virginia and reasonably accommodate guidelines promulgated by the commission.*

*3. Riparian shellfish gardening structures proposed meet the following criteria: (i) the proposed structures must be secured to a private pier which meets the criteria set forth in § 28.2-1203 (5) of the Code of Virginia, or other duly authorized structure in such a manner that they do not adversely impact navigation and are wholly within the permittee's riparian area; (ii) shellfish grown in such structures will not be commercially marketed; (iii) the permittee shall be responsible for complying with Virginia Department of Health requirements and fisheries regulations regarding shellfish grown in condemned or otherwise restricted waters; (iv) structures being used will not exceed 160 square feet in total area; and (v) structures will be located so as not to impact existing stands of submerged aquatic vegetation.*

*4. Projects which do not meet the criteria in subdivisions 1 through 3 of this section will be processed for an individual permit with appropriate fees and royalties.*

***4 VAC 20-336-40. Authorization and conditions.***

*All proposals for noncommercial shellfish aquaculture structures to encroach in, on or over state-owned subaqueous land which meet the criteria in subdivisions 1 through 3 of 4 VAC 20-336-30 are hereby approved subject to the following conditions:*

*1. This permit grants no authority to the permittee to encroach upon property rights, including riparian rights, of others.*

*2. The duly authorized agents of the commission shall have the right to enter upon the premises at reasonable times for the purposes of inspecting the work being done pursuant to this permit.*

*3. The permittee shall comply with the water quality standards as established by the Department of Environmental Quality and all other applicable laws, ordinances, rules and regulations affecting the conduct of this project. The granting of this permit shall not relieve the permittee of the responsibility of obtaining any and all other permits or authorization for this project.*

*4. The permit shall not affect or interfere with the right vouchsafed to the people of Virginia concerning fowling and the catching of and taking of oysters and other shellfish in and from the waters not included within the terms of this permit.*

*5. The permittee shall, to the greatest extent practicable, minimize adverse impacts of the project on adjacent properties and wetlands and upon the natural resources of the Commonwealth.*

*6. This permit may be revoked at any time by the commission upon the failure of the permittee to comply with the terms and conditions hereof or at the will of the General Assembly of Virginia.*

*7. There is expressly excluded from this permit any portion of the waters within the Baylor Survey (Public Oyster Ground).*

*8. This permit is subject to any lease of oyster planting ground in effect on January 1, 1998. Nothing in this permit shall be construed as allowing the permittee to encroach on any lease without the consent of the leaseholder. The permittee shall be liable for any damages to such lease.*

*9. The issuance of this permit does not confer upon the permittee any interest or title to the beds of the waters.*

*10. All structures authorized by this permit which are not maintained in good repair or displaced to areas not authorized shall be completely removed from state-owned bottom within 30 days after notification by the commission or its designated representatives.*

*11. The permittee agrees to indemnify and save harmless the Commonwealth of Virginia from any liability arising from the establishment, operation or maintenance of said project.*

*12. This permit authorizes no claim to archaeological artifacts which may be encountered during the construction or operation of the project. If, however, archaeological remains are encountered, the permittee agrees to notify the commission, who will, in turn, notify the Virginia Department of Historic Resources. The permittee further agrees to cooperate with agencies in the recovery of archaeological remains if deemed necessary.*

*13. The permittee agrees to respond to any inquiries or studies conducted by the commission concerning the permittee's aquaculture efforts.*

*14. This general permit shall remain valid for a period of five years from the date of issuance. It may be extended upon a request from the applicant provided the request is made prior to the permit expiration.*

*15. This general permit should be retained by the permittee for the life of the project as evidence of authorization.*

VA.R. Doc. No. R98-160; Filed December 22, 1997, 2:02 p.m.

* * * * * * * * *

Title of Regulation: **4 VAC 20-620-10 et seq. Pertaining to Summer Flounder (amending 4 VAC 20-620-30, 4 VAC 20-620-40, and 4 VAC 20-620-50; and adding 4 VAC 20-620-45).**

Statutory Authority: §§ 28.1-201 and 28.2-204 of the Code of Virginia.

Effective Date: January 1, 1998.

Summary:

*This regulation establishes limitations on the commercial and recreational harvest of summer flounder in order to reduce the fishing mortality rate and to rebuild the severely depleted stock of Summer Flounder. The limitations include a commercial harvest quota and possession limits, minimum size limits, and a recreational possession and season limit. The purpose of these amendments is to prevent the rapid harvest of the first quarter Summer Flounder quota, to maximize economic benefits to Virginia from the commercial harvest quota of Summer Flounder, to comply with the ASMFC/Mid-Atlantic Council Summer Flounder Plan to improve law enforcement of the minimum size limit, and to minimize bycatch discards in the offshore trawl fishery.*

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

**4 VAC 20-620-30. Commercial harvest quotas.**

A. During each calendar year, commercial landings of Summer Flounder shall be limited to the total pounds calculated pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, as approved by the National Marine Fisheries Service on August 6, 1992 (50 CFR Part 625); and shall be distributed as described in subsections B through H of this section:

B. The commercial harvest of Summer Flounder from Virginia tidal waters for each calendar year shall be limited to 300,000 pounds.

C. During the period of January 1 through March 31 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 64.3% of the total specified in subsection A of this section after deducting the amount specified in subsection B of this section.

D. During the period of April 1 through June 30 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 6.4% of the total specified in subsection A of this section after deducting the amount specified in subsection B.

~~*E. During the period of July 1 through October 13 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be prohibited.*~~

~~F.~~ *E.* During the period of ~~*October 14*~~ *November 15* through December 31 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 29.3% of the total specified in subsection A of this section after deducting the amount specified in subsection B of this section and as may be further modified by subsection ~~G.~~ *F.*

~~G.~~ *F.* During the periods set forth in subsections C, *and* D~~,~~ ~~and E~~ of this section, should landings exceed or fall short of the quota specified for that period any such excess shall be deducted from, and any such shortage shall be added to, the quota for the period set forth in subsection ~~F~~ *E* of this section. During the period specified in subsection B of this section, should landings be projected to fall short of the quota specified for that period, any such shortage shall be added to the quota for the period set forth in subsection ~~F~~ *E* of this section. A projection of harvest under this subsection will be made on or about November ~~1~~ *15*.

~~H.~~ *G.* For each of the time periods and quotas set forth in subsections C, D, *and* E~~, F and G~~ of this section, the Marine Resources Commission will give timely notice to the industry

of the calculated poundages and any adjustments thereto. It shall be unlawful for any person to harvest or to land Summer Flounder for commercial purposes after the commercial harvest or landing quota as described in this section has been attained and announced as such.

~~I.~~ *H.* It shall be unlawful for any buyer of seafood to receive any Summer Flounder after any commercial harvest or landing quota as described in this section has been attained and announced as such.

**4 VAC 20-620-40. Commercial vessel possession limitations.**

A. During the period of January 1 through March 31 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of ~~9,000~~ *5,000* pounds except that when it is projected and announced that ~~80~~ *85%* of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of ~~5,000~~ *200* pounds.

B. During the period of April 1 through June 30 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 2,500 pounds , *except that when it is projected and announced that 85% of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 100 pounds.*

*C. During the period of July 1 through November 14 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 100 pounds.*

~~C.~~ *D.* During the period ~~October 14~~ *November 15* through December 31 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 5,000 pounds, except that when it is projected and announced that 85% of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of ~~2,500~~ *100* pounds.

~~D.~~ *E.* For each of the time periods set forth in subsections A ~~and C~~ , B and D of this section, the Marine Resources Commission will give timely notice of any changes in possession limits.

~~E.~~ *F.* For each possession limit described in subsections A, B, ~~and~~ C and D of this section, there shall be a tolerance of 10% of Summer Flounder by weight. Persons in possession of Summer Flounder, aboard any vessel, in excess of the possession limit plus the tolerance shall be in violation of this chapter. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit plus the tolerance shall be in violation of this chapter.

~~F.~~ *G.* Any person found in violation of any of the possession limits described in this section shall be subject to having the entire amount of Summer Flounder confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine patrol officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth. Following disposition of any case involving confiscation of Summer Flounder, the collected funds will be returned to the accused upon a finding of innocence, whereas a finding of guilty will result in forfeiture of such funds to the Commonwealth.

~~G.~~ *H.* It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 10 p.m. to 7 a.m.

~~H.~~ *I.* Any boat or vessel possessing more than the lawful limit of Summer Flounder which has entered Virginia waters for safe harbor shall not offload any Summer Flounder.

~~I.~~ *J.* After any commercial harvest or landing quota as described in 4 VAC 20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

***4 VAC 20-620-45. Catch reports.***

*The owner of any vessel licensed to land Summer Flounder harvested outside of Virginia's waters shall report all Summer Flounder bycatch and discards on forms approved by the commission for each trip landed in Virginia. The completed forms shall be forwarded to the commission within five days of landing. Failure to accurately complete such reports or provide them to the commission within the specified time frame shall be a violation of this chapter.*

**4 VAC 20-620-50. Minimum size limits.**

A. The minimum size for Summer Flounder harvested by commercial fishing gear shall be 14 inches, total length.

B. The minimum size of Summer Flounder harvested by recreational fishing gear, including but not limited to, hook-and-line, rod-and-reel, spear and gig, shall be 14½ inches, total length.

C. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to ~~catch and retain possession of~~ *possess* any Summer Flounder smaller than the designated minimum size limit.

VA.R. Doc. No. R98-152; Filed December 19, 1997, 10:37 a.m.

* * * * * * * * *

Title of Regulation: **4 VAC 20-950-10 et seq. Pertaining to Black Sea Bass (amending 4 VAC 20-950-30).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: January 1, 1998.

Summary:

*This regulation establishes minimum size limits, gear restrictions, and quotas for the harvest of black sea bass. The purpose of this amendment is to reduce over exploitation of the black sea bass resources.*

Agency Contact: Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

**4 VAC 20-950-30. Minimum size limit.**

A. The minimum size ~~limit of~~ *for* black sea bass *harvested by commercial fishing gear* shall be ~~nine~~ *10* inches, total length.

B. ~~It shall be unlawful for any person to possess any black sea bass smaller than~~ *The minimum size of black sea bass harvested by recreational gear, including but not limited to, hook and line, rod and reel, spear and gig, shall be* nine inches, total length.

*C. It shall be unlawful for any person to possess any black sea bass smaller than the minimum size limit, as designated respectively, in subsections A and B of this section.*

~~C.~~ *D.* It shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any black sea bass less than ~~9~~ *10* inches, total length.

~~D.~~ *E.* Total length shall be measured in a straight line from tip of nose to tip of tail.

VA.R. Doc. No. R98-151; Filed December 19, 1997, 10:36 a.m.

# TITLE 9. ENVIRONMENT

## STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The State Water Control Board has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9 VAC 25-31-10 et seq. Virginia Pollutant Discharge Elimination System Permit (amending 9 VAC 25-31-290).**

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Effective Date: March 1, 1998.

Summary:

*The amendments require that upon receipt of an application for a permit, the board shall notify local governments and riparian property owners in the vicinity of the discharge point. The content of the notice is also specified in the amendments.*

Agency Contact: Copies of the regulation may be obtained from and questions may be addressed to Richard W. Ayers, Environmental Technical Services Administrator, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075.

**9 VAC 25-31-290. Public notice of permit actions and public comment period.**

A. Scope.

1. The board shall give public notice that the following actions have occurred:

a. A draft permit has been prepared under 9 VAC 25-31-260 D;

b. A public hearing has been scheduled under 9 VAC 25-31-310; or

c. A VPDES new source determination has been made under 9 VAC 25-31-180.

2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under 9 VAC 25-31-370 B. Written notice of that denial shall be given to the requester and to the permittee. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

3. Public notices may describe more than one permit or permit actions.

B. Timing.

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.

2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

C. Methods.

Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

a. The applicant (except for VPDES general permits when there is no applicant);

b. Any other agency which the board knows has issued or is required to issue a VPDES, sludge management permit;

c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);

d. Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

e. Any user identified in the permit application of a privately owned treatment works;

f. Persons on a mailing list developed by:

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for area lists from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The board may update the mailing list from time to time by requesting written indication of continued interest from those listed. The board may delete from the list the name of any person who fails to respond to such a request.).

g. (1) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(2) To each state agency having any authority under state law with respect to the construction or operation of such facility.

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of VPDES draft general permits;

c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for VPDES general permits when there is no application;

d. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

f. A general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice or practices and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area; and

g. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9 VAC 25-31-310 shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

3. Public notice of a VPDES draft permit for a discharge where a request for alternate thermal effluent limitations has been filed shall include:

a. A statement that the thermal component of the discharge is subject to effluent limitations incorporated in 9 VAC 25-31-30 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under ~~CWA §~~ § 301 or 306 of the CWA;

b. A statement that an alternate thermal effluent limitation request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the law and § 316(a) of the CWA and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

c. If the applicant has filed an early screening request for a CWA § 316(a) variance, a statement that the applicant has submitted such a plan.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a, b, c, and d of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

~~F. Upon receipt of an application for a permit or for a modification of a permit, the board shall cause to be notified, in writing, the locality wherein the discharge does or is proposed to take place. This notification shall, at a minimum, include:~~

~~1. The name of the applicant;~~

~~2. The nature of the application and proposed discharge; and~~

~~3. Upon request, any other information known to, or in the possession of the board or the department regarding the applicant except as restricted by 9 VAC 25-31-80.~~

*F. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the board shall notify, in writing, the locality wherein the discharge does or is proposed to take place of, at a minimum:*

*1. The name of the applicant;*

*2. The nature of the application and proposed discharge;*

*3. The availability and timing of any comment period; and*

*4. Upon request, any other information known to, or in the possession of, the board or the department regarding the applicant not required to be held confidential by this chapter.*

*The board shall make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one-quarter mile downstream and one-quarter mile upstream or to the fall line whichever is closer on tidal waters and (ii) each locality and riparian property owner to a distance one-half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river at the point or proposed point of discharge is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the commissioners of the revenue or the tax assessor's office of the affected jurisdictions upon request by the board.*

G. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged; and

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the board for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

VA.R. Doc. No. R98-164; Filed December 24, 1997, 11:05 a.m.

* * * * * * * *

REGISTRAR'S NOTICE: The amendments to the following regulation are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9 VAC 25-31-10 et seq. Virginia Pollutant Discharge Elimination System Permit Regulation (amending 9 VAC 25-31-800, 9 VAC 25-31-830, 9 VAC 25-31-840, and 9 VAC 25-31-900).**

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Effective Date: March 1, 1998.

Summary:

*The amendments are necessitated by changes to the federal pretreatment regulations at 40 CFR Part 403, which were promulgated July 7, 1997. They address development of pretreatment programs by publicly owned treatment works, approval procedures for pretreatment programs, reporting requirements and procedures for modifications of existing pretreatment programs.*

Agency Contact: Copies of the regulation may be obtained from and questions may be directed to Richard W. Ayers, Environmental Technical Services Administrator, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075.

**9 VAC 25-31-800. Pretreatment program requirements: development and implementation by POTW.**

A. ~~POTWs~~ *POTW* required to develop a pretreatment program. Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than five million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards will be required to establish a POTW pretreatment program unless the director exercises his or her option to assume local responsibilities. The regional administrator or director may require that a POTW with a design flow of five mgd or less develop ~~and submit for conditional approval~~ a POTW pretreatment program ~~which would include legal authority and control of significant industrial users~~ if he finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, violations of water quality standards, or other circumstances warrant in order to prevent interference with the POTW or pass through.

B. Deadline for program approval. POTWs identified as being required to develop a POTW pretreatment program under subsection A of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the director of such identification. The approved program shall be in operation within two years of the effective date of the permit. The POTW pretreatment program shall meet the criteria set forth in subsection F of this section and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

C. Incorporation of approved programs in permits. A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in subsection B of this section. The POTW's VPDES permit will be reissued or modified to incorporate the approved program ~~conditions~~ as enforceable conditions of the permit. The modification of a POTW's VPDES permit for the purposes of incorporating a POTW pretreatment program approved in accordance with the procedures in 9 VAC 25-31-830 shall be deemed a minor permit modification subject to the procedures in 9 VAC 25-31-400.

D. Incorporation of compliance schedules in permits. (Reserved.)

E. Cause for revocation and reissuance or modification of permits. Under the authority of the law and § 402 (b)(1)(C) of the CWA, the director may modify, or alternatively, revoke and reissue a POTW's permit in order to:

1. Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

2. Coordinate the issuance of § 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

3. Incorporate a modification of the permit approved under § 301(h) or 301(i) of the CWA;

4. Incorporate an approved POTW pretreatment program in the POTW permit;

5. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit; or

6. Incorporate the removal credits (established under 9 VAC 25-31-790) in the POTW permit.

F. POTW pretreatment requirements. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

1. Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of §§ 307(b), (c) and (d), and 402(b)(8) of the CWA and any regulations implementing those sections. Such authority may be contained in a statute or ordinances which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW to:

a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its VPDES permit;

b. Require compliance with applicable pretreatment standards and requirements by industrial users;

c. Control through permit, or order the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under 9 VAC 25-31-10, this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(1) Statement of duration (in no case more than five years);

(2) Statement of nontransferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(3) Effluent limits based on applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the law;

(4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the law;

(5) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements; and

(6) Any applicable compliance schedules, which may not extend beyond applicable federal deadlines.

d. Require:

(1) The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and

(2) The submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in 9 VAC 25-31-840;

e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under 9 VAC 25-31-840 ~~M~~ O to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under § 308 of the CWA;

f. (1) Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of $1,000 a day for each violation by industrial users of pretreatment standards and requirements.

(2) Pretreatment requirements which will be enforced through the remedies set forth in subdivision 1 f (1) of this subsection, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or this part. The POTW shall have authority and procedures (after informal notice to the discharger) to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the director believes to be insufficient; and

g. Comply with the confidentiality requirements set forth in 9 VAC 25-31-860.

2. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

a. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this paragraph shall be made available to the regional administrator or department upon request;

b. Identify the character and volume of pollutants contributed to the POTW by the industrial users

identified under subdivision 2 a of this subsection. This information shall be made available to the regional administrator or department upon request;

c. Notify industrial users identified under subdivision 2 a of this subsection, of applicable pretreatment standards and any applicable requirements under §§ 204(b) and 405 of the CWA and subtitles C and D of the Resource Conservation and Recovery Act (42 USC § 6901 et seq.). Within 30 days of approval pursuant to 9 VAC 25-31-800 F 6, of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status;

d. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in 9 VAC 25-31-840;

e. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or noncustomary batch discharge. The results of such activities shall be available to the department upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 9 VAC 25-31-770 B, with procedures for follow-up written notification within five days; and

(4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment necessary for emergency response;

f. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under 9 VAC 25-31-840, or indicated by analysis, inspection and surveillance activities described in subdivision 2 of this subsection. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

g. Comply with the public participation requirements of the Code of Virginia and 40 CFR Part 25 *(1995)* in the enforcement of national pretreatment standards. These procedures shall include provisions for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at any time during the previous 12 months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(2) Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the control authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under subdivision 1 f (2) of this subsection to halt or prevent such a discharge;

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation or group of violations which the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

3. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in subdivisions 1 and 2 of this subsection. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements described in this section, and (ii) a limited aspect of the program does not need to be implemented immediately (see 9 VAC 25-31-810 B).

4. The POTW shall develop local limits as required in 9 VAC 25-31-770 C 1, using current influent, effluent and sludge data, or demonstrate that they are not necessary.

5. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official or officials responsible for each type of response; and

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in subdivisions 1 and 2 of this subsection.

6. The POTW shall prepare *and maintain* a list of its significant industrial users. The list shall identify the criteria in the definition of significant industrial user in Part I (9 VAC 25-31-10 et seq.) *of this chapter* which are applicable to each industrial user and, for industrial users meeting the criteria in paragraph ~~(1)(ii)~~ *1 b* of that definition, shall also indicate whether the POTW has made a determination pursuant to paragraph (2) of that definition that such industrial user should not be considered a significant industrial user. This list~~, and any subsequent modifications thereto,~~ shall be submitted to the department as a nonsubstantial program modification pursuant to 9 VAC 25-31-900 B 2. ~~Discretionary designations or de designations by the control authority shall be deemed to be approved by the director 90 days after submission of the list or modifications thereto, unless the director determines that a modification is in fact a substantial modification.~~ *Modifications to the list shall be submitted to the department pursuant to 9 VAC 25-31-840 I 1.*

**9 VAC 25-31-830. Approval procedures for POTW pretreatment programs and POTW granting of removal credits.**

The following procedures shall be adopted in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization:

A. The director shall have 90 days from the date of public notice of any submission complying with the requirements of 9 VAC 25-31-810 B and, where removal credit authorization is sought with 9 VAC 25-31-790 E and 9 VAC 25-31-810 D, to review the submission. The director shall review the submission to determine compliance with the requirements of 9 VAC 25-31-800 B and F, and, where removal credit authorization is sought, with 9 VAC 25-31-790. The director may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in subdivision B 1 b of this section is extended beyond 30 days or if a public hearing is held as provided for in subdivision B 2 of this section. In no event, however, shall the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission meeting the requirements of 9 VAC 25-31-810 B and, in the case of a removal credit application, 9 VAC 25-31-790 E and 9 VAC 25-31-810 B.

B. Upon receipt of a submission the director shall commence its review. Within 20 work days after making a determination that a submission meets the requirements of 9 VAC 25-31-810 B and, where removal allowance approval is sought, 9 VAC 25-31-790 D and 9 VAC 25-31-810 D, the director shall:

1. Issue a public notice of request for approval of the submission.

a. This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice shall include:

(1) Mailing notices of the request for approval of the submission to designated 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies *(unless such agencies have asked not to be sent the notices)*; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

(2) Publication of a notice of request for approval of the submission in ~~the largest daily newspaper within the jurisdiction or jurisdictions served by the POTW~~ *a newspaper(s) of general circulation within the jurisdiction(s) served by the POTW that provides meaningful public notice.*

b. The public notice shall provide a period of not less than 30 days following the date of the public notice

during which time interested persons may submit their written views on the submission.

c. All written comments submitted during the 30-day comment period shall be retained by the director and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the director.

2. Provide an opportunity for the applicant, any affected state, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

a. This request for public hearing shall be filed within the 30-day (or extended) comment period described in subdivision 1 b of this subsection and shall indicate the interest of the person filing such request and the reasons why a public hearing is warranted.

b. The director shall hold a public hearing if the POTW so requests. In addition, a public hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt should be resolved in favor of holding the public hearing.

c. Public notice of a public hearing to consider a submission and sufficient to inform interested parties of the nature of the public hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the submission under subdivision 1 a (2) of this subsection In addition, notice of the public hearing shall be sent to those persons requesting individual notice.

C. At the end of the 30-day (or extended) comment period and within the 90-day (or extended) period provided for in subsection A of this section, the director shall approve or deny the submission based upon the evaluation in subsection A of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the director makes a determination to deny the request, the director shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the director may allow the requestor additional time to bring the submission into compliance with applicable requirements.

D. No POTW pretreatment program or authorization to grant removal allowances shall be approved by the director if following the 30-day (or extended) evaluation period provided for in subdivision B 1 b of this section and any public hearing held pursuant to subdivision B 2 of this section the regional administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the regional administrator's objections shall be provided to the applicant, and each person who has requested individual notice. The regional administrator shall provide an opportunity for written comments and may convene a public hearing on his objections. Unless retracted, the regional administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program c authorization to grant removal allowances 90 days after the date the objections are issued.

E. The director shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the director shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the submission was published. The director shall identify in any notice of POTW pretreatment program approval any authorization to modify categorical pretreatment standards which the POTW may make, in accordance with 9 VAC 25-31-790, for removal of pollutants subject to pretreatment standards.

F. The director shall ensure that the submission and any comments upon such submission are available to the public for inspection and copying.

**9 VAC 25-31-840. Reporting requirements for POTWs and industrial users.**

A. The term "control authority" as it is used in this section refers to:

1. The POTW if the POTW's submission for its pretreatment program, as defined in 9 VAC 25-31-10, has been approved in accordance with the requirements of 9 VAC 25-31-830; or

2. The director if the submission has not been approved.

B. Reporting requirements for industrial users upon effective date of categorical pretreatment standard baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under 9 VAC 25-31-780 A 4, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 7 of this subsection. At least 90 days prior to commencement of discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 5 of this subsection. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in subdivisions 4 and 5 of this subsection:

1. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners;

2. Permits. The user shall submit a list of any environmental control permits held by or for the facility;

3. Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation or operations carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes;

4. Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

a. Regulated process streams; and

b. Other streams as necessary to allow use of the combined wastestream formula of 9 VAC 25-31-780 E. (See subdivision 5 e of this subsection.) The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

5. Measurement of pollutants.

a. The user shall identify the pretreatment standards applicable to each regulated process.

b. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations.

c. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The control authority may waive flow-proportional composite sampling for any industrial user that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.

d. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

e. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of 9 VAC 25-31-780 E in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 9 VAC 25-31-780 E this adjusted limit along with supporting data shall be submitted to the control authority.

f. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator.

g. The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

h. The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

6. Certification. A statement, reviewed by an authorized representative of the industrial user (as defined in subsection L of this section) and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) or additional pretreatment, or both are required for the industrial user to meet the pretreatment standards and requirements; and

7. Compliance schedule. If additional pretreatment or O and M, or both will be required to meet the pretreatment standards; the shortest schedule by which the industrial user will provide such additional pretreatment or O and M, or both. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

a. Where the industrial user's categorical pretreatment standard has been modified by a removal allowance (9 VAC 25-31-790), the combined wastestream formula (9 VAC 25-31-780 E), or a fundamentally different factors variance (9 VAC 25-31-850), or any of them, at the time the user submits the report required by subsection B of this section, the information required by subdivisions 6 and 7 of this subsection shall pertain to the modified limits.

b. If the categorical pretreatment standard is modified by a removal allowance (9 VAC 25-31-790), the combined wastestream formula (9 VAC 25-31-780 E),

or a fundamentally different factors variance (9 VAC 25-31-850), or any of them, after the user submits the report required by this subsection, any necessary amendments to the information requested by subdivisions 6 and 7 of this subsection shall be submitted by the user to the control authority within 60 days after the modified limit is approved.

C. Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by subdivision B 7 of this section:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);

2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the control authority.

D. Report on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subdivisions B 4 through B 6 of this section. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9 VAC 25-31-780 C, this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

E. Periodic reports on continued compliance.

1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subdivision B 4 of this section except that the control authority may require more detailed reporting of flows. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted.

2. Where the control authority has imposed mass limitations on industrial users as provided for by 9 VAC 25-31-780 D, the report required by subdivision 1 of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

3. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9 VAC 25-31-780 C, the report required by subdivision 1 of this subsection shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by subdivision 1 of this subsection shall include the user's actual average production rate for the reporting period.

F. Notice of potential problems, including slug loading. All categorical and non-categorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 9 VAC 25-31-770 B, by the industrial user.

G. Monitoring and analysis to demonstrate continued compliance with pretreatment standards and requirements.

1. The reports required in subsections B, D, and E of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under subsections B 6 and D of this section. In addition, where the POTW itself collects all the information required for the report, including flow data,

the industrial user will not be required to submit the report.

2. If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation, except the industrial user is not required to resample if:

a. The control authority performs sampling at the industrial user at a frequency of at least once per month; or

b. The control authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

3. The reports required in subsection E of this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

4. All analyses shall be performed in accordance with procedures contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by EPA, and shall be reported to the control authority. Sampling shall be performed in accordance with EPA approved techniques. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by EPA.

5. If an industrial user subject to the reporting requirement in subsection E of this section monitors any pollutant more frequently than required by the control authority, using the procedures prescribed in subdivision 4 of this subsection, the results of this monitoring shall be included in the report.

H. Reporting requirements for industrial user s not subject to categorical pretreatment standards. The control authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users shall submit to the control authority at least once every six months (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the administrator. This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

I. Annual POTW reports. POTWs with approved pretreatment programs shall provide the department with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program, and at least annually thereafter, and shall include, at a minimum, the following:

1. An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements;

2. A summary of the status of industrial user compliance over the reporting period;

3. A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; ~~and~~

*4. A summary of changes to the POTW's pretreatment program that have not been previously reported to the department; and*

~~4.~~ *5.* Any other relevant information requested by the director.

J. Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under the Code of Virginia and 9 VAC 25-31-840.

K. Compliance schedule for ~~POTW's~~ *POTWs*. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by 9 VAC 25-31-800:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

2. No increment referred to in subdivision H 1 of this section shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the department including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the department.

L. Signatory requirements for industrial user reports. The reports required by subsections B, D, and E of this section shall include the certification statement as set forth in 9 VAC 25-31-780 A 2 b, and shall be signed as follows:

1. By a responsible corporate officer, if the industrial user submitting the reports required by subsections B, D and E of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. By a general partner or proprietor if the industrial user submitting the reports required by subsections B, D and E of this section is a partnership or sole proprietorship respectively;

3. By a duly authorized representative of the individual designated in subdivisions 1 or 2 of this subsection if:

a. The authorization is made in writing by the individual described in subdivisions 1 or 2 of this subsection;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

c. The written authorization is submitted to the control authority; or

4. If an authorization under subdivision 3 of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision 3 of this subsection must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

M. Signatory requirements for POTW reports. Reports submitted to the department by the POTW in accordance with subsection I of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

N. Provision governing fraud and false statements. The reports and other documents required to be submitted or maintained under this section shall be subject to:

1. The provisions of 18 USC § 1001 relating to fraud and false statements;

2. The provisions of the law or § 309(c)(4) of the CWA, as amended, governing false statements, representation or certification; and

3. The provisions of § 309(c)(6) of the CWA regarding responsible corporate officers.

O. Recordkeeping requirements.

1. Any industrial user and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

b. The dates analyses were performed;

c. Who performed the analyses;

d. The analytical techniques/methods use; and

e. The results of such analyses.

2. Any industrial user or POTW subject to the reporting requirements established in this section shall be required to retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and

copying by the director and the regional administrator (and POTW in the case of an industrial user ). This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director or the regional administrator.

3. Any POTW to which reports are submitted by an industrial user pursuant to subsections B, D, E, and H of this section shall retain such reports for a minimum of three years and shall make such reports available for inspection and copying by the director and the regional administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the director or the regional administrator.

P. 1. The industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under the Code of Virginia and 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in the Code of Virginia and 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under subsection J of this section. The notification requirement in this section does not apply to pollutants already reported under self-monitoring requirements of subsections B, D, and E of this section.

2. Dischargers are exempt from the requirements of subdivision 1 of this subsection during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR ~~Parts~~ 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR ~~Parts~~ 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations under § 3001 of RCRA (42 USC § 6901 et seq.) identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of any notification made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

**9 VAC 25-31-900. Modification of POTW pretreatment programs.**

A. Either the director or a POTW with an approved POTW pretreatment program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under 9 VAC 25-31-830.

~~B. POTW pretreatment program modifications shall be accomplished as follows:~~

~~1. For substantial modifications, as defined in subsection C of this section:~~

~~a. The POTW shall submit to the department a statement of the basis for the desired modification, a modified program description (See, 9 VAC 25-31-810 B), or such other documents the director determines to be necessary under the circumstances;~~

~~b. The director shall approve or disapprove the modification based on the requirements of 9 VAC 25-31-800 F, following the procedures in 9 VAC 25-31-830 B through F;~~

~~c. The modification shall be incorporated into the POTW's VPDES permit after approval. The permit will be modified to incorporate the approved modification in accordance with 9 VAC 25-31-390; and~~

~~d. The modification shall become effective upon approval by the director. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification under 9 VAC 25-31-830 B 1 a (2); and~~

~~2. The POTW shall notify the department of any other (i.e., nonsubstantial) modifications to its pretreatment program at least 30 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in subdivision 1 a of this subsection. Such nonsubstantial program modifications shall be deemed to be approved by the director, unless the director determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the director, such modifications shall be incorporated into the POTW's permit in accordance with 9 VAC 25-31-390. If the director determines that a modification reported by a POTW in its statement is in fact a substantial modification, the director shall notify the POTW and initiate the procedures in subdivision 1 of this subsection.~~

~~C. Substantial modifications.~~

~~1. The following are substantial modifications for purposes of this section:~~

~~a. Changes to the POTW's legal authorities;~~

~~b. Changes to local limits, which result in less stringent local limits;~~

~~c. Change to the POTW's control mechanism, as described in 9 VAC 25-31-800 F 1 c;~~

~~d. Changes to the POTW's method for implementing categorical pretreatment standards (e.g., incorporation by reference, separate promulgation, etc.);~~

~~e. A decrease in the frequency of self-monitoring or reporting required of industrial users;~~

~~f. A decrease in the frequency of industrial user inspections or sampling by the POTW;~~

~~g. Changes to the POTW's confidentiality procedures;~~

~~h. Significant reductions in the POTW's pretreatment program resources (including personnel commitments, equipment, and funding levels); and~~

~~i. Changes in the POTW's sludge disposal and management practices.~~

~~2. The director may designate other specific modifications, in addition to those listed in subdivision 1 of this subsection, as substantial modifications.~~

~~3. A modification that is not included in subdivision 1 of this subsection is nonetheless a substantial modification for purposes of this section if the modification:~~

~~a. Would have a significant impact on the operation of the POTW's pretreatment program;~~

~~b. Would result in an increase in pollutant loadings at the POTW; or~~

~~c. Would result in less stringent requirements being imposed on industrial users of the POTW.~~

*B. Substantial modifications defined. Substantial modifications include:*

*1. Modifications that relax POTW legal authorities (as described in 9 VAC 25-31-800 F 1, except for modifications that directly reflect a revision to this part or to 40 CFR Chapter I, Subchapter N (1997), and are reported pursuant to subsection D of this section;*

*2. Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the maximum allowable industrial loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to subsection D of this section. Maximum allowable industrial loading means the total mass of a pollutant that all industrial users of a POTW (or a subgroup of industrial users identified by the POTW) may discharge pursuant to limits developed under 9 VAC 25-31-770 C;*

*3. Changes to the POTW's control mechanism as described in 9 VAC 25-31-800 F 1 c;*

*4. A decrease in the frequency of self-monitoring or reporting required of industrial users;*

*5. A decrease in the frequency of industrial user inspections or sampling by the POTW;*

*6. Changes to the POTW's confidentiality procedures; and*

*7. Other modifications designated as substantial modifications by the director on the basis that the modification could have a significant impact on the operation of the POTW's pretreatment program, could result in an increase in pollutant loadings at the POTW, or could result in less stringent requirements being imposed on industrial users of the POTW.*

*C. Approval procedures for substantial modifications.*

*1. The POTW shall submit to the department a statement of the basis for the desired program modification, a modified program description (see 9 VAC 25-31-810 B), or such other documents the director determines to be necessary under the circumstances.*

*2. The director shall approve or disapprove the modification based on the requirements of 9 VAC 25-31-800 F and using the procedures in 9 VAC 25-31-830 B through F, except as provided in subdivisions C 3 and C 4 of this section. The modification shall become effective upon approval by the director.*

*3. The director need not publish a notice of decision under 9 VAC 25-31-830 E provided (i) the notice of request for approval under 9 VAC 25-31-830 B states that the request will be approved if no comments are received by a date specified in the notice; (ii) no substantive comments are received; and (iii) the request is approved without change.*

*4. Notices required by 9 VAC 25-31-830 may be performed by the POTW provided that the director finds that the POTW notice otherwise satisfies the requirements of 9 VAC 25-31-830.*

*D. Approval procedures for nonsubstantial modifications.*

*1. The POTW shall notify the department of any nonsubstantial modification at least 45 days prior to implementation by the POTW in a statement similar to that provided for in subdivision C 1 of this section.*

*2. Within 45 days after the submission of the POTW's statement, the director shall notify the POTW of his decision to approve or disapprove the nonsubstantial modification.*

*3. If the director does not notify the POTW within 45 days of his decision to approve or deny the modification or to treat the modification as substantial under subdivision B 7 of this section, the POTW may implement the modification.*

*E. Incorporation in permit. All modifications shall be incorporated into the POTW's VPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 9 VAC 25-31-400.*

COMMONWEALTH of VIRGINIA

E.M. MILLER, JR.
ACTING REGISTRAR OF REGULATIONS

JANE D. CHAFFIN
DEPUTY REGISTRAR

**VIRGINIA CODE COMMISSION**
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591
FAX (804) 692-0625

January 7, 1998

Mr. Thomas L. Hopkins, Director
Department of Environmental Quality
629 East Main Street
Richmond, Virginia 23219

Dear Mr. Hopkins:

This letter acknowledges receipt of the amendments to 9 VAC 25-31-10 et seq., Virginia Pollution Discharge Elimination System Permit Regulation, submitted by the State Water Control Board.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

E. M. Miller, Jr.
Acting Registrar of Regulations

VA.R. Doc. No. R98-163; Filed December 24, 1997, 11:06 a.m.

* * * * * * * *

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 12 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 9-6.14:7.1 F; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9 VAC 25-120-10 et seq. ~~Corrective Action Plan (CAP)~~ General ~~Permit~~ *Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges from Petroleum Contaminated Sites* (amending 9 VAC 25-120-10, 9 VAC 25-120-20, 9 VAC 25-120-40, 9 VAC 25-120-50, 9 VAC 25-120-60, 9 VAC 25-120-70, and 9 VAC 25-120-80; adding 9 VAC 25-120-31; and repealing 9 VAC 25-120-30).**

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Effective Date: February 24, 1998.

Summary:

*This regulatory action creates a general permit regulation that authorizes the discharge of wastewater from sites contaminated by petroleum products. This general permit replaces the Corrective Action Plan general permit, VAG000002, which expires February 24, 1998. Owners covered under the expiring general permit who wish to continue to discharge under a general permit must register for coverage under the new general permit. Coverage under the new general permit is not allowed where regulations require the issuance of an individual permit. The general permit will not be issued to facilities proposing to discharge to state waters designated as public water supplies, to waters specifically named in other board regulations or policies which prohibit such discharge, or to facilities where central wastewater treatment is reasonably available.*

*When the structural integrity of storage tanks or pipelines is tested with water pressure, the water may become contaminated with petroleum products. For the purposes of this general permit, "petroleum products" means petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. Petroleum products does not include hazardous waste as defined by the Virginia Hazardous Waste Regulations, 9 VAC 20-60-10 et seq.*

*The following specific activities are covered under the general permit: excavation dewatering, bailing groundwater monitoring wells, groundwater pump tests to characterize site conditions, hydrostatic testing of petroleum storage tanks or pipelines, groundwater pumping associated with petroleum product recovery, or discharges resulting from another petroleum product cleanup activity approved by the Department of Environmental Quality. Based on public comments, groundwater well development was deleted from the list of covered activities.*

*The effluent limits are established according to the type of petroleum product causing the contamination and the nature of the waterbody receiving the discharge. Due to concern for potential impact to endangered species expressed by the U.S. Environmental Protection Agency, effluent limits will not vary according to the duration and frequency of the discharge, as in the proposed regulation. The final general permit establishes effluent limits or monitoring requirements for all covered discharges for the following parameters: flow, benzene, toluene, ethylbenzene, xylene, methyl tert-butyl ether, naphthalene, total petroleum hydrocarbons, lead, hardness, pH, volatile and semi-volatile organic compounds, and heavy metals. The regulation also establishes minimum information requirements for all requests for coverage under the general permit.*

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the Office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Richard Ayers, Enivronmental Technical Services Administrator, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075.

CHAPTER 120.
~~CORRECTIVE ACTION PLAN (CAP)~~ GENERAL ~~PERMIT~~ *VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES.*

**9 VAC 25-120-10. Definitions.**

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law, ~~9 VAC 25-30-10 (Permit Regulation) and 9 VAC 25-580-10 et seq. (Underground Storage Tanks; Technical Standards and Corrective Action Requirements)~~ *and 9 VAC 25-31-10 et seq. (VPDES permit regulation)* unless the context clearly indicates otherwise, except that for the purposes of this chapter:

*"Petroleum products"* means ~~gasoline, diesel, jet fuel and kerosene~~ *petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. "Petroleum products" does not include hazardous waste as defined by the Virginia Hazardous Waste Regulations, 9 VAC 20-60-10 et seq.*

**9 VAC 25-120-20. Purpose.**

This general permit regulation governs the ~~cleanup of releases of~~ *discharge of wastewaters from sites contaminated by* petroleum products ~~from regulated underground storage tank systems~~. *Petroleum-contaminated wastewater may be discharged from the following activities: excavation dewatering, bailing groundwater monitoring wells,* [ ~~*groundwater well development,*~~ ] *conducting pump tests to characterize site conditions, hydrostatic tests of petroleum storage tanks or pipelines, pumping contaminated groundwater to remove free product from the ground, or discharges resulting from another petroleum product cleanup activity approved by the department. Discharges not associated with petroleum-contaminated water are not covered under this general permit.*

**9 VAC 25-120-30. ~~Authority for regulation.~~** *(Repealed.)*

~~The authority for this chapter is pursuant to the State Water Control Law §§ 62.1-44.15 (7), (9), (10), (14); 62.1-44.16; 62.1-44.17; 62.1-44.21; § 62.1-44.34:9 of the Code of Virginia and 33 USC 1251 et seq. and 9 VAC 25-30-320 of the Permit Regulation (9 VAC 25-30-10 et seq.) and Part VI of the Underground Storage Tanks; Technical Standards and Corrective Action Requirements (9 VAC 25-580-10 et seq.).~~

**9 VAC 25-120-31.** *Evaluation of chapter and petitions for reconsideration or revision.*

*A. Within three years after* [ ~~*the effective date of this chapter*~~ *February 24, 1998* ], *the department shall perform an analysis of this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.*

*B. The board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this chapter.*

**9 VAC 25-120-40. Delegation of authority.**

The ~~executive~~ director, or ~~his designee~~ *an authorized representative*, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

**9 VAC 25-120-50. Effective date of the permit.**

This general permit will become effective on February 24, ~~1993~~ *1998*. This general permit will expire five years from the effective date. This general permit is effective as to any covered owner ~~or operator~~ upon compliance with all the [ ~~*applicable*~~ ] provisions of 9 VAC 25-120-60 and [ ~~*, except for discharges authorized under 9 VAC 25-120-60 B,*~~ ] the receipt of this ~~GAP~~ general permit.

**9 VAC 25-120-60. Authorization to ~~clean up contaminated underground storage tank sites~~** *discharge.*

*A.* Any owner ~~or operator~~ governed by this general permit is hereby authorized to ~~clean up a contaminated underground storage tank site~~ *discharge to surface waters* within the Commonwealth of Virginia provided that the owner ~~or operator~~ files and receives acceptance by the board of the registration statement of 9 VAC 25-120-70~~,~~ *and* complies with the *applicable* effluent limitations and other requirements of 9 VAC 25-120-80, and provided that:

1. Individual permit. The owner ~~or operator~~ shall not have been required to obtain an individual permit ~~as may be required in 9 VAC 25-30-320 B of the Permit Regulation,~~ *according to 9 VAC 25-31-170 B;*

2. Prohibited discharge locations. The owner ~~or operator~~ shall not be authorized by this general permit to discharge to state waters ~~where~~ *designated as public water supplies or specifically named in* other board regulations or policies *which* prohibit such discharges~~.~~*; and*

3. Central wastewater treatment facilities. The owner ~~or operator~~ shall not be authorized by this general permit to discharge to surface waters where there are *permitted* central wastewater treatment facilities reasonably available, as determined by the board.

~~4. Local government notification. The owner or operator shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.~~

~~5. Corrective action plan (CAP). The owner or operator shall have submitted a corrective action plan and CAP checklist to the board and the board shall have approved the plan after ensuring that implementation of the plan will adequately protect human health, safety and the environment.~~

[ ~~*B. The requirements of 9 VAC 25-120-70 do not apply to discharges of wastewaters from sites contaminated by petroleum products if the duration of the discharge from a particular site does not exceed a period of 72 consecutive hours and if the discharge does not occur more than once in*~~

~~three years. Discharges of wastewaters contaminated by petroleum products which meet these duration and frequency criteria are authorized under this general permit provided the discharge does not result in a visible sheen on the receiving waters and does not otherwise violate the general water quality standard of 9 VAC 25-260-20. Any owner discharging under the provisions of this subsection shall:~~

~~1. Prior to commencing the discharge, provide notice to the department and the locality wherein the discharge is proposed to take place of the location of the discharge and the anticipated volume and duration of the discharge;~~

~~2. Allow the department to inspect the location where the discharge is to occur; and~~

~~3. Within five days of completion of the discharge, submit a written report to the department and the locality which contains:~~

~~a. A description of the nature and location of the discharge;~~

~~b. The cause of the discharge;~~

~~c. The date on which the discharge occurred;~~

~~d. The duration and estimated volume of the discharge;~~

~~e. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges at that location; and~~

~~f. The name and title of the local government official notified prior to the discharge.~~ ]

~~Receipt of~~ [ ~~C.~~ *B.* ] *Coverage under* this ~~CAP~~ general permit does not relieve any owner ~~or operator~~ of the responsibility to comply with any other appropriate federal, state or local statute, ordinance or regulation.

**9 VAC 25-120-70. Registration statement.**

The owner ~~or operator~~ shall file a complete ~~CAP~~ general permit registration statement. The required registration statement shall ~~be in the following form~~ *contain the following information*:

~~CORRECTIVE ACTION PLAN~~ GENERAL *VPDES* PERMIT REGISTRATION STATEMENT

FOR ~~CLEANUP OF RELEASES OF~~ *DISCHARGES FROM* PETROLEUM ~~PRODUCTS FROM UNDERGROUND STORAGE TANK (UST) SYSTEMS~~ *CONTAMINATED SITES*

1. Legal Name of ~~UST System~~ *Facility*

_____

2. Location of ~~UST System~~ *Facility* (Address and Telephone Number)

_____

_____

_____

3. ~~UST System~~ *Facility* Owner ~~or Operator~~

Last Name _____ First Name _____ M.I. ___

4. Address of Owner ~~or Operator~~

Street _____

City _____ State _____ Zip _____

5. Phone

Home _____ Work _____

*6. Nature of the business conducted at the facility*

_____

~~6.~~ *7.* Type of petroleum products causing or that caused contamination.

_____

*8. Which activities will result in a point source discharge from the petroleum contaminated site? (Check all that apply)*

___ *Excavation dewatering*

___ *Bailing groundwater monitoring wells*

[ ~~___ Groundwater well development~~ ]

___ *Pump tests to characterize site conditions*

___ *Hydrostatic tests of petroleum storage tanks or pipelines*

___ *Pumping contaminated groundwater to remove petroleum products from the ground*

___ *Other (specify)* _____

~~7.~~ *9.* Has ~~the corrective action plan~~ *a site characterization report* for this site been submitted to the ~~State Water Control Board, in accordance with 9 VAC 25-580-280~~ *Department of Environmental Quality?* Yes___ No___

~~8. Will the cleanup result in a point source discharge to surface waters? Yes.... No....~~

~~9. If yes,~~ *10.* Identify *the discharge point and* the waterbody into which the discharge will occur.

_____

~~If no, identify the procedures that will be utilized to prevent a point source discharge to surface waters.~~

*11. How often will the discharge occur (e.g., daily, monthly, continuously)?* _____

*12. Estimate how long each discharge will last* _____ *hours/days.*

*13. Estimate total volume of wastewater to be discharged* _____ *gal.*

*14. Estimate maximum flow rate of the discharge* _____ *gal/day.*

*15. Attach a diagram of the proposed wastewater treatment system identifying the individual treatment units.*

~~10.~~ *16.* Attach a topographic or other map which indicates ~~the UST system,~~ the receiving waterbody name ~~and~~, the discharge ~~point, as well as~~ *points, the* property boundaries, *as well as springs, other surface waterbodies, drinking water* wells, ~~downstream houses, etc.~~ *and public water supplies, which are identified in the public record or are otherwise known to the applicant,* within a 1/2 mile radius of the ~~site~~ *proposed discharges.*

~~11. The owner or operator must attach to this registration statement the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.~~

~~12.~~ *17.* Are central wastewater treatment facilities available to this site? Yes___ No___ If yes, has the option of discharging to the central facilities been evaluated? What was the result of that evaluation?

~~13.~~ *18.* Does this ~~UST system~~ *facility* currently have a permit issued by the board? Yes___ No___

If yes, please provide permit number: _____

*19. Pollution complaint number (if applicable)* _____

*20. Is the material being treated or discharged classified as a hazardous waste under the Virginia Hazardous Waste Regulation, 9 VAC 20-60-10 et seq.? Yes___ No___*

Certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations. *I do also hereby grant duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit.*

Signature:_____ Date:_____

*Print Name:* _____

*Title:* _____

For ~~Water Control Board~~ *department* use only:

Registration Statement Accepted/Not Accepted by:

Date:_____

Basin _____ Stream Class _____ Section _____

Special Standards _____

**9 VAC 25-120-80. General permit.**

Any owner ~~or operator~~ whose ~~registration statement~~ *request for coverage under this general permit* is accepted by the board ~~will receive the following permit and~~ shall comply with the requirements ~~therein~~ *of the general permit* and be subject to all requirements of ~~9 VAC 25-30-320~~ *9 VAC 25-31-170 B* of the *VPDES* permit regulation. Not all pages of Part I *A* [ ~~or B~~ ] of the general permit will apply to every permittee. The determination of which pages apply will be based on the type of contamination ~~and the medium, soil or water, contaminated~~ at the individual site [ ~~, the duration of the discharge~~ ] *and the nature of the waters receiving the discharge.* [ *Part I B and* ] all pages of ~~Parts~~ *Part* II~~, III and IV~~ apply to all permittees.

General Permit No.: ~~VAG000002~~ *VAG83*

Effective Date:

Expiration Date:

~~CORRECTIVE ACTION PLAN~~ GENERAL *VPDES* PERMIT *FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES*

AUTHORIZATION TO ~~CLEANUP RELEASES OF PETROLEUM PRODUCTS FROM UNDERGROUND STORAGE TANK (UST) SYSTEMS AND TO~~ DISCHARGE ~~OR MANAGE POLLUTANTS~~ UNDER THE ~~CORRECTIVE ACTION PLAN, THE~~ VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, the State Water Control Law and regulations adopted pursuant ~~to it~~ *thereto,* ~~owners or operators are~~ *the owner is* authorized to ~~clean up releases of petroleum products from UST systems and to manage pollutants or~~ discharge to surface waters at the locations identified in the accepted registration statement within the boundaries of the Commonwealth of Virginia, except to designated public water supplies or waters ~~where~~ *specifically named in other* board regulations or policies *which* prohibit such discharges.

The authorized ~~cleanup of the contamination and the~~ discharge ~~or management of pollutants~~ shall be in accordance with ~~the Corrective Action Plan,~~ this cover page, Part I - Effluent Limitations and Monitoring Requirements and ~~CAP Monitoring Requirements, Part II Corrective Action Plan Requirements, and Post Operational Monitoring and Closure Requirements, Part III Monitoring and Reporting Requirements, and Part IV Management Requirements~~ *Part II - Conditions Applicable to All VPDES Permits,* as set forth ~~here~~ *herein.*

If there is any conflict between the requirements of ~~the Corrective Action Plan~~ *a Department of Environmental Quality approved cleanup plan* and this permit, the requirements of this permit shall govern.

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

*1.* GASOLINE CONTAMINATION - FRESHWATER *RECEIVING WATERS.*

~~1.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies ~~treated groundwater that has been contaminated with gasoline~~ from outfall serial number ~~001~~ *XXXX.* [ ~~*THIS AUTHORIZATION APPLIES TO DISCHARGES THAT ARE NOT CONFINED TO A PERIOD OF 72 CONSECUTIVE HOURS OR THAT OCCUR MORE FREQUENTLY THAN ONCE IN THREE YEARS.*~~ ] Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

| EFFLUENT CHARACTERISTICS | DISCHARGE LIMITATIONS | | MONITORING REQUIREMENTS | |
|---|---|---|---|---|
| | Instantaneous Minimum | Instantaneous Maximum | Frequency | Sample Type |
| Flow (MGD) | NA | NL | 1/Month | Estimate |
| Benzene *(ug/l)* | NA | 50 ~~ug/l~~ | 1/Month | Grab* |
| Toluene *(ug/l)* | NA | 175 ~~ug/l~~ | 1/Month | Grab* |
| Ethylbenzene *(ug/l)* | NA | 320 ~~ug/l~~ | 1/Month | Grab* |
| Total xylenes *(ug/l)* | NA | ~~*74 ug/l*~~ *82* | 1/Month | Grab* |
| *MTBE (methyl tert-butyl ether) (ug/l)* | *NA* | *NL* | *1/Month* | *Grab** |
| pH (standard units) | 6.0 | 9.0 | 1/Month | Grab |
| Total recoverable lead* *(ug/l)* | NA | $e^{(1.273(\ln \text{hardness}^{**})) - 4.705}$ | 1/Month | Grab*** |
| Hardness (mg/l as $CaCO_3$)* | NL | NA | 1/Month | Grab*** |

NL = No Limitation, monitoring required

NA = Not Applicable

* Benzene, Toluene, Ethylbenzene ~~and~~, Total Xylenes *and MTBE* shall be analyzed according to EPA *Method 602 (40 CFR Part 136, 1996) or* SW 846 Method [ ~~8020 (1986) (1992)~~ *8021 (1995)* ] .

** Hardness of the effluent.

*** Monitoring for this parameter is required only when contamination results from leaded fuel. Lead analysis shall be according to EPA *Method 239.2 (40 CFR Part 136, 1996) or* SW 846 Method 7421 (1986).

~~2. There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

PART ~~II~~ *I.*

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

~~KEROSENE, JET FUEL, DIESEL~~ *2.* CONTAMINATION *BY PETROLEUM PRODUCTS OTHER THAN GASOLINE* - FRESHWATER *RECEIVING WATERS.*

~~1.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies ~~treated around water that has been contaminated with kerosene, jet fuel or diesel~~ from outfall serial number ~~001~~ *xxxx.* [ ~~*THIS AUTHORIZATION APPLIES TO DISCHARGES THAT ARE NOT CONFINED TO A PERIOD OF 72 CONSECUTIVE HOURS OR THAT OCCUR MORE FREQUENTLY THAN ONCE IN THREE YEARS.*~~ ] Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

| EFFLUENT CHARACTERISTICS | DISCHARGE LIMITATIONS | | MONITORING REQUIREMENTS | |
|---|---|---|---|---|
| | Instantaneous Minimum | Instantaneous Maximum | Frequency | Sample Type |
| Flow (MGD) | NA | NL | 1/Month | Estimate |
| Naphthalene *(ug/l)* | NA | 62 ~~ug/l~~ | 1/Month | Grab* |
| Total petroleum hydrocarbons *(mg/l)* | NA | ~~NL~~ *15* | 1/Month | Grab** |
| pH (standard units) | 6.0 | 9.0 | 1/Month | Grab |
| *Semi-volatile organics**** | *NA* | *NL* | *1/Year***** | *Grab* |
| *Volatile organics**** | *NA* | *NL* | *1/Year***** | *Grab* |
| *Dissolved metals**** | *NA* | *NL* | *1/Year***** | *Grab* |

NL = No Limitation, monitoring required

NA = Not Applicable

* Naphthalene analysis shall be according to *either* EPA Method 610 ~~(1991)~~ *(40 CFR Part 136, 1996) or EPA SW 846 Method 8270 (1995).*

** TPH shall be analyzed using ~~the GC FID method as specified in the California Department of Health Services LUFT Manual (1989) using the appropriate standards with EPA SW 846 Method 3510 (1987) for sample preparation~~ *either the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin publication SW-141 (1995) or EPA Method 1664 (1996).*

~~2. There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

*** *Monitoring for these parameters is required only when contamination is from used oils. The permittee shall report concentrations of all compounds or elements detected by the following analytical methods: Semi-volatile organics according to EPA Method 1625 (40 CFR Part 136, 1996) or SW 846 Method 8270 (1995); Volatile organics according to EPA Method 1624 (40 CFR Part 136, 1996) or SW 846 Method 8260 (1995); Dissolved metals according to EPA Method 200.7 (40 CFR Part 136, 1996) or SW 846 Method 6010 (1995) [ or other equivalent EPA 40 CFR Part 136 (1997) methods with comparable detection limits and target analyte specificity ] .*

**** *The first annual sample shall be collected within 72 hours of commencement of the discharge.*

PART ~~III~~ *I.*

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

*3.* GASOLINE CONTAMINATION - SALTWATER *RECEIVING WATERS.*

~~1.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies ~~treated groundwater that has been contaminated with gasoline~~ from outfall serial number ~~001~~ *xxxx.* [ ~~*THIS AUTHORIZATION APPLIES TO DISCHARGES THAT ARE NOT CONFINED TO A PERIOD OF 72 CONSECUTIVE HOURS OR THAT OCCUR MORE FREQUENTLY THAN ONCE IN THREE YEARS.*~~ ] Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

| EFFLUENT CHARACTERISTICS | DISCHARGE LIMITATIONS | | MONITORING REQUIREMENTS | |
|---|---|---|---|---|
| | Instantaneous Minimum | Instantaneous Maximum | Frequency | Sample Type |
| Flow (MGD) | NA | NL | 1/Month | Estimate |
| Benzene *(ug/l)* | NA | 50 ~~ug/l~~ | 1/Month | Grab* |
| Toluene *(ug/l)* | NA | 500 ~~ug/l~~ | 1/Month | Grab* |
| Ethylbenzene *(ug/l)* | NA | 4.3 ~~ug/l~~ | 1/Month | Grab* |
| Total xylenes *(ug/l)* | NA | ~~13 ug/l~~ *74* | 1/Month | Grab* |

| | | | | |
|---|---|---|---|---|
| *MTBE (methyl tert-butyl ether) (ug/l)* | *NA* | *NL* | *1/Month* | *Grab** |
| pH (standard units) | 6.0 | 9.0 | 1/Month | Grab |
| Total recoverable lead* *(ug/l)* | NA | 8.5 ~~ug/l~~ | 1/Month | Grab** |

NL = No Limitation, monitoring required

NA = Not Applicable

* Benzene, Toluene, Ethylbenzene ~~and~~, Total Xylenes *and MTBE* shall be analyzed according to EPA *Method 602 (40 CFR Part 136, 1996) or* SW 846 Method [ ~~8020 (1986) (1992)~~ *8021 (1995)* ] .

** Monitoring for this parameter is required only when contamination results from leaded fuel. Lead analysis shall be according to EPA *Method 239.2 (40 CFR Part 136, 1996) or* SW 846 Method 7421 (1986).

~~2. There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

PART ~~IV~~ *I.*

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

~~KEROSENE, JET FUEL, DIESEL~~ *4.* CONTAMINATION *BY PETROLEUM PRODUCTS OTHER THAN GASOLINE* - SALTWATER *RECEIVING WATERS.*

~~1.~~ During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies ~~treated groundwater that has been contaminated with kerosene, jet fuel or diesel~~ from outfall serial number ~~001~~ *xxxx*. [ ~~*THIS AUTHORIZATION APPLIES TO DISCHARGES THAT ARE NOT CONFINED TO A PERIOD OF 72 CONSECUTIVE HOURS OR THAT OCCUR MORE FREQUENTLY THAN ONCE IN THREE YEARS.*~~ ] Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

| EFFLUENT CHARACTERISTICS | DISCHARGE LIMITATIONS | | MONITORING REQUIREMENTS | |
|---|---|---|---|---|
| | Instantaneous Minimum | Instantaneous Maximum | Frequency | Sample Type |
| Flow (MGD) | NA | NL | 1/Month | Estimate |
| Naphthalene *(ug/l)* | NA | 23.5 ~~ug/l~~ | 1/Month | Grab* |
| Total petroleum hydrocarbons *(mg/l)* | NA | ~~NL~~ *15* | 1/Month | Grab** |
| pH (standard units) | 6.0 | 9.0 | 1/Month | Grab |
| *Semi-volatile organics**** | *NA* | *NL* | *1/Year***** | *Grab* |
| *Volatile organics**** | *NA* | *NL* | *1/Year***** | *Grab* |
| *Dissolved metals**** | *NA* | *NL* | *1/Year***** | *Grab* |

NL = No Limitation, monitoring required

NA = Not Applicable

* Naphthalene analysis shall be according ~~the EPS~~ *to either EPA* Method 610 ~~(1991)~~ *(40 CFR Part 136, 1996) or EPA SW 846 Method 8270 (1995).*

** TPH shall be analyzed using ~~the GC FID method as specified in the California Department of Health Services LUFT Manual (1989) using the appropriate standards with EPS SW 846 Method 3510 (1987) for sample preparation~~ *either the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin publication SW-141 (1995) or EPA Method 1664 (1996).*

~~2. There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

*** *Monitoring for these parameters is required only when contamination is from used oils. The permittee shall report concentrations of all compounds or elements detected by the following analytical methods: Semi-volatile organics according to*

*EPA Method 1625 (40 CFR Part 136, 1996) or SW 846 Method 8270 (1995); Volatile organics according to EPA Method 1624 (40 CFR Part 136, 1996) or SW 846 Method 8260 (1995); Dissolved metals according to EPA Method 200.7 (40 CFR Part 136, 1996) or SW 846 Method 6010 (1995) [ or other equivalent EPA 40 CFR Part 136 (1997) methods with comparable detection limits and target analyte specificity ] .*

***** The first annual sample shall be collected within 72 hours of commencement of the discharge.*

PART ~~V~~ *I.*

~~A. CAP MONITORING REQUIREMENTS - MONITORING FREE PRODUCT.~~

~~1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor free product. Samples taken in compliance with the monitoring requirements specified below shall be taken at the locations identified in the Corrective Action Plan.~~

~~Monitoring of the contaminated area during the cleanup operation shall be required as specified below:~~

| ~~PARAMETERS~~ | ~~MONITORING REQUIREMENTS~~ | |
|---|---|---|
| | ~~FREQUENCY~~ | ~~SAMPLE TYPE~~ |
| ~~Free Product~~ | ~~1/Quarter~~ | ~~Measurement*~~ |

~~* Free Product measurement shall be done by probe or bailer prior to well bailing or sample collection and shall measure product thickness to an accuracy within 0.01 feet.~~

~~2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II B 1. See Part II A 4 c for the requirements for system shutdown.~~

~~3. There shall be no discharge to surface water from this free product monitoring operation.~~

~~[ *A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.*~~

~~*5. ALL PETROLEUM PRODUCTS - ONE DISCHARGE IN THREE YEARS - ALL WATERS.*~~

~~*During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number 001. THESE DISCHARGES SHALL OCCUR WITHIN A PERIOD OF 72 CONSECUTIVE HOURS AND THERE SHALL BE AT LEAST THREE YEARS BETWEEN DISCHARGES AT THE SITE.*~~

~~*Such discharges shall be limited as specified below:*~~

~~*Discharges of wastewaters contaminated by petroleum products which meet these duration and frequency criteria are authorized under this general permit provided the discharge does not result in a visible sheen on the receiving waters and does not otherwise violate the general water quality standard of 9 VAC 25-260-20. Any permittee discharging under this provision shall:*~~

~~*a. Prior to commencing the discharge, provide notice to the department and the locality wherein the discharge is proposed to take place of the location of the discharge and the anticipated volume and duration of the discharge;*~~

~~*b. Allow the department to inspect the location where the discharge is to occur; and*~~

~~*c. Within five days of completion of the discharge, submit a written report to the department and the locality which contains:*~~

~~*(1) A description of the nature and location of the discharge;*~~

~~*(2) The cause of the discharge;*~~

~~*(3) The date on which the discharge occurred;*~~

~~*(4) The duration and estimated volume of the discharge;*~~

~~*(5) Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges at that location; and*~~

~~*(6) The name and title of the local government official notified prior to the discharge.* ]~~

~~PART VI.~~

~~A. CAP MONITORING REQUIREMENTS - MONITORING SOIL VAPOR.~~

~~1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor soil vapor at the well or sample locations identified in the Corrective Action Plan.~~

~~Monitoring of the contaminated area during the cleanup operation shall be required as specified below:~~

| ~~PARAMETERS~~ | ~~MONITORING REQUIREMENTS~~ | |
|---|---|---|
| | ~~FREQUENCY~~ | ~~SAMPLE TYPE~~ |
| ~~Volatile Organics~~ | ~~1/Quarter~~ | ~~Air Sample*~~ |

~~* Air sample collection shall be according to EPA stationary source Method 18 (1992) and sample analysis shall be according to EPA Method TO 3 (1984) for volatile organics or other staff approved method.~~

~~2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in~~

Part II B 1. See Part II A 4 c for the requirements of system shutdown.

PART VII.

A. CAP MONITORING REQUIREMENTS - MONITORING RESIDUAL PRODUCT IN SOIL FOR IN SITU TREATMENT - GASOLINE CONTAMINATION.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor residual product in soil that has been contaminated with gasoline at the location specified in the Corrective Action Plan.

Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

| PARAMETERS | MONITORING REQUIREMENTS | |
|---|---|---|
| | FREQUENCY | SAMPLE TYPE |
| Benzene | 1/Year | Soil Sample* |
| Toluene | 1/Year | Soil Sample* |
| Ethylbenzene | 1/Year | Soil Sample* |
| Total Xylenes | 1/Year | Soil Sample* |

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II B 1. See Part II A 4 c for the requirements for system shutdown.

3. There shall be no discharge to surface water from this monitoring of residual product in soil or from the in situ treatment operation.

* Benzene, Toluene, Ethylbenzene and Total Xylenes BTEX soil samples shall be collected using either a split spoon sampler or hand auger and shall be screened using a Photoionization or Flame Ionization Detector (PID/FID) type instrument. When a split spoon sampler is used the sample shall be screened using a PID/FID detector and the segment of the boring that gave the highest PID/FID reading shall be analyzed. When a hand auger is used soil shall be removed in one foot increments and screened with the PID/FID as they are removed. A discrete BTEX soil sample from the segment of the boring that gives the highest PID/FID reading shall be analyzed using EPA SW 846 Method 8020 (1986) modified for soils.

PART VIII.

A. CAP MONITORING REQUIREMENTS - MONITORING RESIDUAL PRODUCT IN SOIL FOR IN SITU TREATMENT - KEROSENE, JET FUEL, DIESEL CONTAMINATION.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor residual product in soil that has been contaminated with kerosene, jet fuel or diesel at the locations specified in the Corrective Action Plan.

Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

| PARAMETERS | MONITORING REQUIREMENTS | |
|---|---|---|
| | FREQUENCY | SAMPLE TYPE |
| Total Petroleum Hydrocarbons (TPH) | 1/Year | Soil Sample* |

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II B 1. See Part II A 4 c for the requirements for system shutdown.

3. There shall be no discharge to surface water from this monitoring of residual product in soil or from the in situ treatment operation.

* TPH soil samples shall be collected using either a split spoon sampler or hand auger and shall be screened using a Photoionization or Flame Ionization Dector (PID/FID) type instrument. When a split spoon sampler is used the sample shall be screened using a PID/FID detector and the segment of the boring that gave the highes plus PID/FID reading shall be analyzed. When a hand auger is used soil shall be removed in one foot increments and screened with the PID/FID as they are removed. A discrete TPH soil sample from the segment of the boring that gives the highest PID/FID reading shall be analyzed using the GC FID method as specified in the California Department of Health Services LUFT Manual (1989) using the appropriate standards with EPA SW 846 Method 3550 (Sonication) (1986) for sample preparation.

PART IX.

A. CAP MONITORING REQUIREMENTS - MONITORING RESIDUAL PRODUCT IN EXCAVATED SOIL - GASOLINE CONTAMINATION.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor residual product in the excavated soil that has been contaminated with gasoline at the locations identified in the Corrective Action Plan.

Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

| PARAMETERS | MONITORING REQUIREMENTS | |
|---|---|---|
| | FREQUENCY | SAMPLE TYPE |
| Benzene | 1/Quarter | Grab* |
| Toluene | 1/Quarter | Grab* |
| Ethylbenzene | 1/Quarter | Grab* |
| Total Xylenes | 1/Quarter | Grab* |

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in

Part II B 1. See Part II A 4 c for the requirements for system shutdown.

3. There shall be no discharge to surface water from this monitoring of residual product in excavated soil or from this treatment operation.

* Benzene, Toluene, Ethylbenzene and Total Xylenes (BTEX) soil samples shall be collected using a hand auger and shall be screened using a photoionization or flame ionization detector (PID/FID) type instrument. A discrete BTEX soil sample from the segment of the boring that gives the highest PID/FID reading shall be analyzed using EPA SW 846 Method 8020 (1986) modified for soils.

PART X.

A. CAP MONITORING REQUIREMENTS — MONITORING RESIDUAL PRODUCT IN EXCAVATED SOIL — KEROSENE, JET FUEL, DIESEL CONTAMINATION.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor residual product in the excavated soil that has been contaminated with kerosene, jet fuel or diesel at the locations identified in the Corrective Action Plan.

Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

| PARAMETERS | MONITORING REQUIREMENTS | |
|---|---|---|
| | FREQUENCY | SAMPLE TYPE |
| Total Petroleum Hydrocarbons (TPH) | 1/Quarter | Grab* |

2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II B 1. See Part II A 4 c for the requirements for system shutdown.

3. There shall be no discharge to surface water from this monitoring of residual product in excavated soil or from this treatment operation.

* TPH soil samples shall be collected using a hand auger and shall be screened using a photoionization or flame ionization detector (PID/FID) type instrument. A discrete TPH soil sample from the segment of the boring that gives the highest PID/FID reading shall be analyzed using the GC-FID method as specified in the California Department of Health Services LUFT Manual (1989) using the appropriate standards with EPA SW 846 Method 3550 (Sonication) (1986) for sample preparation.

PART XI.

A. CAP MONITORING REQUIREMENTS — MONITORING GROUNDWATER — GASOLINE CONTAMINATION

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor groundwater that has been contaminated with gasoline at the well or sample locations identified in the Corrective Action Plan.

Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

| PARAMETERS | MONITORING REQUIREMENTS | |
|---|---|---|
| | FREQUENCY | SAMPLE TYPE |
| Benzene | 1/Quarter | Grab* |
| Toluene | 1/Quarter | Grab* |
| Ethylbenzene | 1/Quarter | Grab* |
| Total Xylenes | 1/Quarter | Grab* |
| Total Lead** | 1/Quarter | Grab** |
| Ground Water Elevation (Ft.) | 1/Quarter | Measure*** |

2. Post operational monitoring of the contaminated area after shutdown shall be required as described in Part II B 1. See Part II A 4 c for the requirements for system shutdown.

3. There shall be no discharge to surface water from this groundwater monitoring operation, except as authorized elsewhere in Part I A of this permit.

* Benzene, Toluene, Ethylbenzene and Total Xylenes shall be analyzed according to EPA SW 846 Method 8020 (1986).

** Monitoring for this parameter is required only when contamination results from leaded fuel. Total lead analysis shall be according to EPA SW 846 Method 7421 (1986).

*** The ground water elevation shall be determined prior to bailing or sampling of wells. Groundwater measurement accuracy shall be within 0.01 feet and reported in relation to mean sea level.

PART XII.

A. CAP MONITORING REQUIREMENTS — MONITORING GROUNDWATER — KEROSENE, JET FUEL, DIESEL CONTAMINATION.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is required to monitor groundwater that has been contaminated with kerosene, jet fuel or diesel at the well/sample locations identified in the Corrective Action Plan.

Monitoring of the contaminated area during the cleanup operation shall be required as specified below:

| PARAMETERS | MONITORING REQUIREMENTS | |
|---|---|---|
| | FREQUENCY | SAMPLE TYPE |

| | | |
|---|---|---|
| ~~Total Petroleum Hydrocarbons (TPH)~~ | ~~1/Quarter~~ | ~~Grab*~~ |
| ~~Ground Water Elevation (Ft.)~~ | ~~1/Quarter~~ | ~~Measure**~~ |

~~* TPH shall be analyzed using the GC FID method as specified in the California Department of Health Services LUFT Manual (1989) using the appropriate standards with EPA SW 846 Method 3510 (1987) for sample preparation.~~

~~** The groundwater elevation shall be determined prior to bailing or sampling of wells. Groundwater measurement accuracy shall be within 0.01 feet and reported in relation to mean sea level.~~

~~2. Post operational monitoring of the contaminated area after system shutdown shall be required as described in Part II B 1. See Part II A 4 c for the requirements for system shutdown.~~

~~3. There shall be no discharge to surface water from this groundwater monitoring operation, except as authorized elsewhere in Part I A of this permit.~~

PART ~~XIII~~ *I.*

~~A. Corrective action plan requirements.~~ *B. Special Conditions.*

1. ~~In accordance with State Water Control Board Regulation 9 VAC 25 580 10 et seq. the permittee shall immediately provide an alternate water supply to any user of groundwater should monitoring of the release covered by the corrective action plan and this permit indicate pollutant contamination of existing water supply wells for any parameter listed in the groundwater monitoring requirement found in Part I A of this permit.~~ *There shall be no discharge of floating solids or visible foam in other than trace amounts.*

*2. The permittee shall sample each permitted outfall each calendar month in which a discharge occurs. When no discharge occurs from an outfall during a calendar month, the discharge monitoring report for that outfall shall be submitted indicating "No Discharge."*

~~2.~~ *3.* O & M Manual. ~~The owner or operator~~ [ *If the permitted discharge is through a treatment works,* ] *within 30 days of coverage under this general permit, the permittee* shall develop and ~~submit within 30 days of coverage under this general permit~~ *maintain on site*, an Operations and Maintenance (O & M) Manual for the treatment works permitted ~~here~~ *herein*. This manual shall detail practices and procedures which will be followed to ensure compliance with the requirements of this permit. The ~~owner or operator~~ *permittee* shall operate the ~~remediation program and~~ treatment works in accordance with the O & M Manual. *The manual shall be made available to the department upon request.*

~~3. Corrective action plan. Coverage under this general permit constitutes approval of the corrective action plan (CAP). The approved CAP and any subsequent modifications approved by the board are incorporated into this permit and noncompliance with the CAP is a violation of this permit. Cleanup of the release of petroleum products from the UST system shall be conducted in accordance with the CAP.~~

~~If, at any given time during the life of this permit the board determines that cleanup is not proceeding in a satisfactory manner, the permittee will be required to reevaluate the cleanup approach and submit CAP modifications within 30 days of notification from the board. This notification will include a summary of the existing CAP deficiencies. The permittee may at any time request CAP modifications.~~

~~4. Cleanup endpoints.~~

~~a. Cleanup endpoints for each phase of contamination are specified in the approved corrective action plan.~~

~~b. The endpoints must be achieved within the zone of contamination, as evidenced by Part I.A. CAP monitoring requirements and using specific board approved methods of analysis.~~

~~c. After demonstrating that the cleanup endpoints in the approved corrective action plan have been maintained for two consecutive quarters, the permittee may request that the executive director allow a shutdown of the system and the permittee shall initiate post operational monitoring (as described in Part II B 1).~~

~~5.~~ *4.* Operation schedule. The permittee shall construct, install and begin operating the ~~cleanup system approved by the board within 60 days of coverage under this general permit~~ *treatment works described in the registration statement prior to discharging to surface waters.* The permittee shall notify the ~~board's~~ *department's* regional office within five days after the completion of installation and commencement of operation.

~~6. CAP permit reopener. This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under §§ 301(b) (2) (C), (D), and (E), 304 (b) (2) (3) (4), and 307 (a) (2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:~~

~~a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or~~

~~b. Controls any pollutant not limited in the permit. The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.~~

~~7. Resumption of cleanup. The permittee shall resume cleanup immediately at the site if post operational~~

~~monitoring results indicate that the cleanup goals are no longer being maintained. The permittee shall resume cleanup operations in accordance with the approved CAP and this permit.~~

~~8. Annual evaluation reports. The permittee shall submit annual reports which evaluate the effectiveness of the corrective action plan and its progress toward achieving cleanup endpoints to the board's regional office. The first report shall be submitted within 12 months of coverage under this general permit and yearly thereafter.~~

~~9. Other requirements~~ *5. Materials storage*. Except as expressly authorized by this permit or another permit issued by the board, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.

*6. If the permittee discharges to surface waters through a municipal separate storm sewer system, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following information: the name and location of the facility, a contact person and telephone number; the nature of the discharge; and the number of outfalls.*

~~B. Post operational monitoring and closure requirements.~~

~~1. Post operational monitoring requirements. After system shutdown, the permittee shall initiate post operational monitoring, which shall be a continuation of the monitoring required in Part I A, for a period of one year.~~

~~Post operational monitoring for in situ treatment of residual product in the soil shall be conducted at the end of the one year period.~~

~~2. Closure requirement~~ *7. Termination of coverage*. Provided that the ~~post operational monitoring confirms the remediation endpoints have been maintained~~ *department agrees that the discharge covered under this general permit is no longer needed*, the permittee may request ~~site closure and~~ termination of coverage under the general permit, *for the entire facility or for specific outfalls, by submitting a request for termination of coverage*. This request *for termination of coverage* shall be sent to the ~~board's~~ *department's* regional office with appropriate documentation or references to documentation already in the ~~board's~~ *department's* possession. Upon *the permittee's* receipt of the regional director's approval, ~~the site shall be deemed closed and~~ coverage under this general permit *will be* terminated. *Termination of coverage under this general permit does not relieve the permittee of responsibilities under other board regulations or directives.*

~~PART XIV.~~
~~MONITORING AND REPORTING.~~

~~A. Sampling and analysis methods.~~

~~1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.~~

~~2. Unless otherwise specified in the permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in (i) this permit, (ii) guidelines establishing test procedures for the analysis of pollutants under the Clean Water Act as published in the Federal Register (40 CFR 136 or (iii) other methods approved by the board.~~

~~3. The sampling and analysis program to demonstrate compliance with the permit shall, at a minimum, conform to Part I of this permit.~~

~~4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.~~

~~B. Recording of results. For each measurement or sample taken pursuant to the~~ requirements of this permit, the permittee shall record the following information:

~~1. The date, exact place and time of sampling or measurements;~~

~~2. The persons who performed the sampling or measurements;~~

~~3. The dates analyses were performed;~~

~~4. The persons who performed each analysis;~~

~~5. The analytical techniques or methods used;~~

~~6. The results of such analyses and measurements;~~

~~7. The method detection limit;~~

~~8. The sample medium (soil, water); and~~

~~9. The units of measure.~~

~~C. Records retention. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for three years from the date of the sample, measurement or report or for three years following approval of site closure, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.~~

~~D. Additional monitoring by permittee. If the permittee monitors any pollutant at the locations designated here more~~

frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring. The board may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutants on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the board's regulations.

The permittee shall obtain and report such information if requested by the board. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the board.

F. Reporting requirements.

1. The permittee shall submit original monitoring reports of each month's performance to the State Water Control Board regional office once per quarter by the 10th of the month following the end of the quarter. Reports shall be submitted on or before April 10, July 10, October 10 and January 10. *This report shall include the results of all* monitoring required by Part I A Effluent Limitations and Monitoring Requirements and CAP Monitoring Requirements, and Part II Corrective Action Plan Requirements and Post Operational Monitoring and Closure Requirements.

2. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the board with the monitoring report at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The board may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information specified in Part III F 2 a through c regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (vi) flooding or other acts of nature.

If the regional office cannot be reached, the board maintains a 24 hour telephone service in Richmond (804 527 5200) to which the report required above is to be made.

G. Signatory requirements. Any registration statement, report, or certification required by this permit shall be signed as follows:

1. Registration statement.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (*A principal executive officer* of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency).

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the board shall be signed by:

a. One of the persons described in subdivision 1 a, b or c of this subsection; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 a, b or c of this subsection;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or registration statement to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

PART XV.
MANAGEMENT REQUIREMENTS.

A. Change in discharge or management of pollutants.

1. Any permittee proposing a new discharge or the management of additional pollutants shall submit an amended corrective action plan and a registration statement at least 180 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at any facility. There shall be no commencement of treatment or management of pollutants activities until a permit is received.

2. All discharges or pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit to the board an amended corrective action plan and a registration statement 180 days prior to all expansions, production increases, or process modifications, that will result in new or increased pollutants. The discharge or management of any pollutant more frequently than, or at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

3. The permittee shall promptly provide written notice to the board of the following:

a. Any new introduction of pollutants, into treatment works or pollutant management activities which represents a significant increase in the discharge or management of pollutants which may interfere with, pass through, or otherwise be incompatible with such works or activities, from an establishment, treatment works, or discharges, if such establishment, treatment works, or discharges were discharging or has the potential to discharge pollutants to state waters;

b. Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by an establishment, treatment works, pollutant management activities, or discharges that was introducing pollutants into such treatment works at the time of issuance of the permit; and

c. Any reason to believe that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4 dinitrophenol and for 2 methyl 4, 6 dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for the pollutant in the registration statement; or

(4) The level established in accordance with regulation under § 307(a) of the Clean Water Act and accepted by the board.

d. Any activity has occurred or will occur which would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the registration statement; or

(4) The level established by the board.

Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works or pollutant

management activities; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be discharged from such treatment works or pollutants managed at a pollutant management activity; and (iii) any additional information that may be required by the board.

B. Treatment works operation and quality control.

1. Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the corrective action plan and registration statement filed with the State Water Control Board and in conformity with the conceptual design, or the plans, specifications, or other supporting data approved by the board. The approval of the treatment works conceptual design or the plans and specifications does not relieve the permittee of the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design or operation, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and pollutant management activities shall be operated in accordance with the Operation and Maintenance (O&M) Manual and in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation requirements are not violated.

d. Collected sludges shall be stored in such a manner as to prevent entry of those wastes (or run-off from the wastes) into state waters, and disposed of in accordance with this permit or plans approved by the board.

C. Adverse impact. The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitations or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitations or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability. The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing. Any bypass ("Bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited unless:

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall notify the board promptly at least 10 days prior to the bypass. After considering its adverse effects the board may approve an anticipated bypass if:

a. The bypass is unavoidable to prevent a loss of life, personal injury, or severe property damage ("Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.); and

b. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down-time. However, if a bypass occurs during normal periods of equipment down-time, or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

2. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the board as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in Part IV F 1 above and in light of the information reasonably available to the permittee at the time of the bypass.

G. Conditions necessary to demonstrate an upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance for only technology based effluent limitations. In order to establish an affirmative

defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. The facility permitted here was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. The permittee submitted a notification of noncompliance as required by Part III F above; and

4. The permittee took all reasonable steps to minimize or correct any adverse impact to state waters resulting from noncompliance with the permit.

H. Compliance with state and federal law. Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under § 307(a) of the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act.

I. Property rights. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

J. Severability. The provisions of this permit are severable.

K. Duty to reregister. If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 180 days prior to the expiration date of this permit.

L. Right of entry. The permittee shall allow or secure necessary authority to allow authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharges are located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or by product; and

5. To inspect at reasonable times any collection, treatment, pollutant management activities or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

M. Transferability of permits. This permit may be transferred to another person by a permittee if:

1. The current owner notifies the board 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the board includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The board does not within the 30-day time period notify the existing owner and the proposed owner of its intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

N. Public access to information. All information pertaining to permit processing or in reference to any source of discharge of any pollutant, shall be available to the public, unless the information has been identified by the applicant as a trade secret, of which the effluent data remain open public information. All information claimed confidential must be identified as such at the time of submission to the board or EPA. Otherwise, all information will be made available to the public. Notwithstanding the foregoing, any supplemental information that the board may obtain from filings made under the Virginia Toxics Substance Information Act (TSIA) shall be subject to the confidentiality requirements of TSIA.

O. Permit modification. The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Clean Water Act; or

3. When the level of discharge of or management of a pollutant not limited in the permit exceeds applicable Water Quality Standards or Water Quality Criteria, or the level which can be achieved by technology based treatment requirements appropriate to the permittee.

P. Permit termination. After public notice and opportunity for a hearing, the general permit may be terminated for cause.

~~Q. When an individual permit may be required. The board may require any permittee authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:~~

~~1. The dischargers are significant contributors of pollution;~~

~~2. Conditions at the operating facility change altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for a General Permit;~~

~~3. The discharge violates the terms or conditions of this permit;~~

~~4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;~~

~~5. Effluent limitation guidelines are promulgated for the point sources covered by this permit; and~~

~~6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.~~

~~This permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.~~

~~R. When an individual permit may be requested. Any owner or operator operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to an owner or operator the applicability of this general permit to the individual owner or operator is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an owner or operator already covered by an individual permit, such owner or operator may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.~~

~~S. Civil and criminal liability. Except as provided in permit conditions on "bypassing" (Part IV F), and "upset" (Part IV G) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.~~

~~T. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.~~

~~U. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee to:~~

~~1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or~~

~~2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.~~

*PART II.*
*CONDITIONS APPLICABLE TO ALL VPDES PERMITS.*

*A. Monitoring.*

*1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.*

*2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.*

*3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.*

*B. Records.*

*1. Records of monitoring information shall include:*

*a. The date, exact place, and time of sampling or measurements;*

*b. The individuals who performed the sampling or measurements;*

*c. The dates and times analyses were performed;*

*d. The individuals who performed the analyses;*

*e. The analytical techniques or methods used; and*

*f. The results of such analyses.*

*2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of all reports required by this permit; and records of all data used to complete the registration statement for this permit for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.*

*C. Reporting monitoring results.*

*1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th*

*day of the month after monitoring takes place unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.*

*2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.*

*3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.*

*4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.*

*D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.*

*E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.*

*F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:*

*1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or*

*2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, [ ~~or~~ ] to animal or aquatic life, [ ~~or~~ ] to the use of such waters for domestic or industrial consumption, [ ~~or~~ ] for recreation, or for other uses.*

*G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:*

*1. A description of the nature and location of the discharge;*

*2. The cause of the discharge;*

*3. The date on which the discharge occurred;*

*4. The length of time that the discharge continued;*

*5. The volume of the discharge;*

*6. If the discharge is continuing, how long it is expected to continue;*

*7. If the discharge is continuing, what the expected total volume of the discharge will be; and*

*8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.*

*Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.*

*H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall submit the report to the department in writing within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:*

*1. Unusual spillage of materials resulting directly or indirectly from processing operations;*

*2. Breakdown of processing or accessory equipment;*

*3. Failure or taking out of service some or all of the treatment works; and*

*4. Flooding or other acts of nature.*

*I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health as follows:*

*1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subsection:*

*a. Any unanticipated bypass; and*

*b. Any upset which causes a discharge to surface waters.*

*2. A written report shall be submitted within five days and shall contain:*

*a. A description of the noncompliance and its cause;*

*b. The period of noncompliance including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and*

*c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.*

*The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.*

*3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.*

*NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone or by FAX. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.*

*J. Notice of planned changes.*

*1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:*

*a. The permittee plans an alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:*

*(1) After promulgation of standards of performance under § 306 of the Clean Water Act which are applicable to such source; or*

*(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the Act within 120 days of their proposal;*

*b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or*

*c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.*

*2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.*

*K. Signatory requirements.*

*1. Registration statement. All registration statements shall be signed as follows:*

*a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;*

*b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or*

*c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.*

*2. Reports. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:*

*a. The authorization is made in writing by a person described in Part II K 1;*

*b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field,*

*superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative thus may be either a named individual or any individual occupying a named position; and*

*c. The written authorization is submitted to the department.*

*3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.*

*4. Certification. Any person signing a document under Parts II K 1 or 2 shall make the following certification:*

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

*L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.*

*The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.*

*M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.*

*N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.*

*O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.*

*P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Article 11 (§ 62.1-44.34:14 et seq.) of the State Water Control Law.*

*Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.*

*R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.*

*S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.*

*T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.*

*U. Bypass.*

*1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient*

operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset and before an action for noncompliance is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;

*b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and*

*c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.*

FORMS

~~Department of Environmental Quality Water Division Permit Application fee.~~

~~Local Government Ordinance Form (eff. 8/93)~~

~~Corrective Action Plan Permit Application for Remedial Action Treatment at Sites with Ground Water and/or Soils Contaminated with Petroleum Products - CAP Form 1 (eff. 2/92).~~

~~Corrective Action Plan General Permit Registration Statement for Cleanup of Releases of Petroleum Products from Underground Storage Tank (UST) Systems, (eff. 5/93).~~

~~Initial Abatement Measures Report Checklist.~~

~~Site Characterization Report Checklist.~~

~~Corrective Action Plan Checklist (eff. 11/91).~~

~~CAP General Permit Summary Worksheet (eff. 5/93).~~

~~Instructions for Completing CAP General Permit Summary Worksheet (eff. 5/93).~~

~~Public Notice Verification (eff. 5/93).~~

*General VPDES Permit Registration Statement for Discharges From Petroleum Contaminated Sites (eff. 9/97).*

DOCUMENTS INCORPORATED BY REFERENCE

*Wisconsin Publication SW-141 (1995).*

EPA Method TO-3 (1984).

EPA Method 18 (1992).

*EPA Method 1664 (1996).*

EPA SW 846 Method 3550 (1986).

*EPA SW 846 Method 6010 (1995).*

EPA SW 846 Method 7421 (1986).

EPA SW 846 Method [ ~~8020 (1986 1992)~~ *8021 (1995)* ] .

*EPA SW 846 Method 8260 (1995).*

*EPA SW 846 Method 8270 (1995).*

GENERAL VPDES PERMIT REGISTRATION STATEMENT
FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES

1. Legal Name of Facility_____

2. Location of Facility (Address and Telephone Number)

_____

_____

3. Facility Owner_____
Last Name First Name M.I.

4. Address of Owner_____
Street

_____
City State Zip

5. Phone_____
Home Work

6. Nature of the business conducted at the facility_____
_____

7. Type of petroleum product(s) causing or that caused the contamination._____

8. Which activities will result in a point source discharge from the petroleum contaminated site? (Check all that apply)
_____ Excavation Dewatering
_____ Bailing Ground Water Monitoring Wells
_____ Pump Tests to Characterize Site Conditions
_____ Hydrostatic Tests of Petroleum Storage Tanks or Pipelines
_____ Pumping Contaminated Ground Water to Remove Petroleum Products From The Ground
_____ Other (specify)_____

9. Has a site characterization report for this site been submitted to the Department of Environmental Quality? Yes____ No____

10. Identify the discharge point and the waterbody into which the discharge will occur._____
_____

11. How often will the discharge occur (e.g. daily, monthly, continuously)? _____

12. Estimate how long each discharge will last_____hours/days

13. Estimate total volume of wastewater to be discharged_____Gal.

14. Estimate maximum flow rate of the discharge_____Gal/day.

OVER

GENERAL VPDES PERMIT REGISTRATION STATEMENT
FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES
Page 2.

15. Attach a diagram of the proposed wastewater treatment system identifying the individual treatment units.

16. Attach a topographic or other map which indicates the receiving waterbody name, the discharge point(s), the property boundaries, as well as springs, other surface waterbodies, drinking water wells, and public water supplies, which are identified in the public record or are otherwise known to the applicant, within a 1/2 mile radius of the proposed discharge(s).

17. Are central wastewater treatment facilities available to this site? Yes____ No____ If yes, has the option of discharging to the central facilities been evaluated? What was the result of that evaluation?
_____

18. Does this facility currently have a permit issued by the Board?
Yes____ No____
If yes, please provide permit number:_____

19. Pollution Complaint Number (if applicable)_____

20. Is the material being treated or discharged classified as a hazardous waste under the Virginia Hazardous Waste Regulation, 9 VAC 20-60-10 et seq.? Yes____ No____

Certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations. I do also hereby grant duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit.

Signature:_____ Date:_____

Print Name: _____

Title: _____

For Department use only:

Registration Statement Accepted/Not Accepted by:_____
Date:_____

Basin_____ Stream Class_____ Section_____

Special Standards_____

# INSTRUCTIONS FOR COMPLETING THE GENERAL VPDES PERMIT REGISTRATION STATEMENT FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES

General
A registration statement must be submitted to the Department of Environmental Quality in order for a discharge to be covered under the General VPDES Permit for Discharges from Petroleum Contaminated Sites. Discharges that are confined to a consecutive 72 hour period and which will not occur more often than once in three years may be authorized under the general permit without filing the registration statement. Owners who believe that their discharge will meet these short-term discharge criteria should contact their local DEQ regional office.

Questions 1 and 2: Facility Information
Give the name of the business or other entity that occupies the site where the discharge is proposed to occur. Provide either the street address or other information that will allow DEQ personnel to locate the site. Give a telephone number at the site so that DEQ can contact someone at the facility.

Questions 3, 4 and 5: Owner Information
Provide the full name, street address and telephone numbers of the owner to whom the permit will be issued. This person, firm, public organization or other entity is the party responsible for the control of the facility's operation.

Question 6: Nature of Business
Give a brief statement as to what usual business activities are conducted at the site of contamination.

Question 7: Type of petroleum products involved
The type of petroleum products that are involved in the contamination will determine the conditions under which the general permit is issued. It is important to list or describe all of the materials involved.

Question 8: Proposed activities
Select all of the categories that apply to this proposed discharge. If events at the facility will cause the discharge to change over time from one category to another, indicate all categories that are anticipated.

Question 9: Site Characterization
Please indicate if a site characterization report has been submitted to the DEQ. NOTE: An SCR is required from the person responsible for conducting the release investigation and performing corrective action. If you are not a Responsible Person (RP), you are NOT required to submit an SCR.

Question 10: Discharge Location
Provide a narrative description of the point of discharge (e.g. northwest corner of intersection of First St. and Second Ave.) Give the name of the stream, lake, river, etc. that the discharge will go into (e.g. Unnamed Tributary to Clear Creek). If the discharge is to enter a storm drain, give the name of the owner of the storm drain system (e.g. Fairfax Co. storm drain inlet).

Questions 11, 12, 13 and 14: Discharge Information
Provide estimates of the frequency at which the discharge will occur, the duration of the discharge and of the amount and flow rate of wastewater to be discharged.

Question 15: Treatment Works Design
Attach a line drawing that traces the flow of wastewater from one treatment unit to the next. This drawing may be a sketch that shows, conceptually, what system will be used to treat wastewater so that it will meet the effluent quality requirements of the general permit. Identify all treatment technologies that will be employed at the facility.

Question 16: Topographic Map
The topo map should be a copy of the USGS 7.5 minute quadrangle that encompasses the facility and the surrounding property for at least 1/2 mile in all directions. Maps other than the USGS quadrangle may be substituted if they provide at least the same level of detail. The required information should be clearly marked on the map. Information regarding public water supplies and private wells may be obtained from local health department officials.

Question 17: Central Wastewater Availability
The owner should investigate the possibility of discharging to central sewer prior to requesting coverage under this general permit. If central sewer is in the vicinity but access for this discharge is denied, make that statement in the space provided.

Questions 18 and 19: Permit/Pollution Complaint Numbers
If the facility has already been permitted to discharge and has a discharge permit number, or if the facility is responsible for the release and the DEQ has issued a Pollution Complaint Number for the site, fill in the appropriate blanks with the permit or pollution complaint number. In some instances the applicant should fill in both questions; in others only one question may apply.

Question 20: Hazardous Material Statement
Indicate yes or no in the blanks provided. The general permit cannot be used to cover the treatment or discharge of hazardous materials.

Certification Statement:
State statutes provide for severe penalties for submitting false information on this registration statement. State regulations require that the registration statement be signed as follows:

For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. {If the title of the individual signing is Plant Manager, submit a written verification that the facility employs more than 250 people or has gross annual sales or expenditures in excess of $25 million (in 1980 dollars) and that authority to sign the registration statement has been delegated to the Plant Manager in accordance with corporate procedures.};

For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

VA.R. Doc. No. R97-764; Filed December 24, 1997, 11:02 a.m.

* * * * * * * * *

Title of Regulation: **9 VAC 25-196-10 et seq. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges.**

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Effective Date: March 1, 1998.

Summary:

*The regulatory action sets forth guidelines for the permitting of discharges of cooling water and cooling equipments blowdown. The general permit consists of limitations and monitoring requirements on discharges of cooling water to surface waters. In addition, depending upon the types of chemical used in the cooling equipment, additional monitoring parameters may be required. The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit.*

*Several changes were made to the regulation after it was published for public comment. Regulatory evaluation and petitions language (9 VAC 25-196-80) was added to the regulation as required by Executive Order Thirteen (94) and the Administrative Process Act (§ 9-6.14:4.1 C of the Code of Virginia). In 9 VAC 25-196-70, the permit boilerplate language previously found in Part II and Part III was replaced with a single new Part II, and a notification levels special condition was added as required by the VPDES Permit Regulation (9 VAC 25-31-10 et seq.). Based on the provision promulgated under 40 CFR Part 749 that prohibits the use of hexavalent chromium-based water treatment chemicals in comfort cooling towers, the general permit has been revised to restrict the use of hexavalent chromium-based water treatment chemicals in the cooling water system. The specific analytical methods and the respective quantification levels for metals monitoring have been added to the permit Part I A.*

*Additional changes were made to the regulation based on the comments received during the public comment period. In order to assure compliance with the halogen ban of the Water Quality Standards, 9 VAC 25-260-110, chlorine or any other halogen compounds are not allowed to be used for disinfection or other treatment purposes, including biocide applications, for any discharges to water containing endangered or threatened species as identified in the Water Quality Standards, 9 VAC 25-260-320.*

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from and questions may be directed to Lily Choi, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4054.

*CHAPTER 196.*
*GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT FOR COOLING WATER DISCHARGES.*

***9 VAC 25-196-10. Definitions.***

*The words and terms used in this chapter shall have the meanings defined in § 62.1-44.2 et seq. of the Code of Virginia (State Water Control Law), and 9 VAC 25-31-10 et seq. (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:*

*"Blowdown" means a discharge of recirculating water from any cooling equipment or cooling process in order to maintain a desired quality of the recirculating water. Boiler blowdown is excluded from this definition.*

*"Cooling water" means water used for cooling which does not come into direct contact with any raw product, intermediate product (other than heat) or finished product. For the purposes of this general permit, cooling water can be generated from any cooling equipment blowdown or produced as a result of any noncontact cooling process through either a single pass (once through) or recirculating system.*

*"Department" means the Virginia Department of Environmental Quality.*

*"Director" means the Director of the Virginia Department of Environmental Quality, or an authorized representative.*

[ ~~*"Municipal separate storm sewer" means a conveyance or system of conveyances that discharges to surface waters (including roads with drainage systems, municipal streets, catch basin, curbs, gutters, ditches, man made channels, or storm drains): (i) owned or operated by a state, city, town, county, district, association or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).*~~ ]

***9 VAC 25-196-20. Purpose.***

*This general permit regulation governs the point source discharge of cooling water to surface waters.*

***9 VAC 25-196-30. Delegation of authority.***

*The director, or an authorized representative, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.*

**9 VAC 25-196-40. Effective date of the permit.**

*This general permit will become effective on [ March 1, 1998 ]. This general permit will expire five years from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of 9 VAC 25-196-50 and the receipt of this general permit.*

**9 VAC 25-196-50. Authorization to discharge.**

*A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner files and receives acceptance by the board of the registration statement of 9 VAC 25-196-60, files the required permit fee, complies with the effluent limitations and other requirements of 9 VAC 25-196-70, and provided that:*

*1. The owner shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation.*

*2. The owner shall not discharge to Class V put and take trout waters, Class VI natural trout waters, or any state waters specifically named in other board regulations or policies which prohibit such discharges. [ Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9 VAC 25-260-320 of the Water Quality Standards. ]*

*3. The owner shall [ ~~not~~ neither ] use tributyltin [ ~~or~~ and ] any chemical additives containing tributyltin [ , nor use any hexavalent chromium-based water treatment chemicals ] in the cooling water systems.*

*4. The owner shall not use groundwater remediation wells as the source of cooling water.*

*B. Receipt of this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.*

**9 VAC 25-196-60. Registration statement.**

*The owner shall file a complete general VPDES permit registration statement for cooling water discharges. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing [ ~~construction or~~ ] operation of the new discharge. Any owner of an existing discharge covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing discharge not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. The required registration statement shall contain the following information:*

*VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM*
*GENERAL PERMIT REGISTRATION STATEMENT FOR COOLING WATER DISCHARGES*

*1. APPLICANT INFORMATION*

*A. Name of Facility:* _____

*B. Facility Owner:* _____

*C. Owner's Mailing Address*

*a. Street or P.O. Box* _____

*b. City or Town* _____ *c. State* __ *d. Zip Code* ____

*e. Phone Number* _____

*D. Facility Location:* _____
*Street No., Route No., or Other Identifier*

_____
*County*

*E. Is the operator of the facility also the owner?*
*Yes* ___ *No* ___ *If No, complete F. & G.*

*F. Name of Operator:* _____

*G. Operator's Mailing Address*

*a. Street or P.O. Box* _____

*b. City or Town* _____ *c. State* __ *d. Zip Code* ___

*e. Phone Number* _____

*2. FACILITY INFORMATION*

*A. Does this facility currently have a VPDES permit?*
*Yes* ___ *No* ___ *If yes, give permit number.* _____

*B. List any point source discharges that are not composed entirely of cooling water* _____

*C. List type and size (tons) of cooling equipment or noncontact cooling water process:*

*[ Type* *Size (tons)*

_____
_____
_____
_____ ]

*D. Complete the following if any chemical and/or nonchemical treatment is employed in [ each of ] the cooling water system:*

*a. Describe the chemical and/or nonchemical treatment to be employed and its purpose;*

_____

*If chemical additives other than chlorine are used, complete b, c, d and e below.*

*b. Provide name and manufacturer of each additive used;*

_____

c. Provide list of active ingredients and percent composition;

_____

d. Give the proposed schedule and quantity of chemical usage, and estimate the concentration in the discharge; and

_____

e. Attach available aquatic toxicity information for each additive proposed for use.

E. Describe any type of treatment or retention being provided to the wastewater before discharge (i.e., retention ponds, settling ponds, etc.)

_____

3. FACILITY [ ~~LINE~~ SCHEMATIC ] DRAWING

Attach a [ ~~line drawing of the facility~~ schematic drawing of the cooling water equipment ] which shows the source of the cooling water, its flow through the facility, and each cooling water discharge point.

4. MAP

[ For cooling water systems with a direct discharge to surface waters, ] attach a topographic map extending to at least one mile beyond property boundary. The map must show the outline of the facility, and the location of each of its existing and proposed intake and discharge points. Include all springs, rivers and other surface water bodies.

DISCHARGE INFORMATION

A. List all cooling water discharges by a number that is the same as on the map required in Question 4 [ , if applicable ]. Identify the source of cooling water. Estimate the maximum daily discharge flow in gallons per day (gpd). Give the name of the waterbody receiving direct discharge or discharge through the municipal separate storm sewer system.

| Outfall No. | Source | Max. Daily Flow (gpd) | Receiving Stream |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

B. Identify the duration and frequency of the discharge for each separate discharge point:

a. Continuous: _____

b. Intermittent: (please describe) _____

c. Seasonal: _____

C. Give the name of the owner of the municipal separate storm sewer system that receives the discharge (if applicable):

_____

6. CERTIFICATION:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

Signature _____ Date: _____

Name of person(s) signing above: _____
(printed or typed)

Title(s): _____

REQUIRED ATTACHMENTS

Aquatic Toxicity Information For Chemical Additives (if applicable)
Facility [ ~~Line~~ Schematic ] Drawing
Topographic Map [ (if applicable) ]

For Department Use Only:

Accepted/Not Accepted by: _____ Date: ____
Basin _____ Stream Class _____ Section _____
Special Standards _____

**9 VAC 25-196-70. General permit.**

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the VPDES Permit Regulation.

General Permit No.: VAG25

Effective Date:
Expiration Date:

GENERAL PERMIT FOR COOLING WATER DISCHARGES

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of cooling water discharges are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies which prohibit such discharges. [ Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9 VAC 25-260-320 of the Water Quality Standards. ]

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, [ and ] Part II - [ ~~Monitoring and Reporting,~~

~~and Part III Management Requirements~~ Conditions Applicable to all VPDES Permits ], as set forth herein.

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location(s): outfall(s) serial number .

Such discharges shall be limited and monitored by the permittee as specified below:

| EFFLUENT CHARACTERISTICS | DISCHARGE LIMITATIONS Maximum | Minimum | MONITORING REQUIREMENTS Frequency | Sample Type |
|---|---|---|---|---|
| Flow (MGD) | 0.05 | NA | 1/3 Months | Estimate |
| Temperature (°C) | (1) | NA | 1/3 Months | Immersion Stabilization |
| pH (SU) | 9(2) | 6(2) | 1/3 Months | Grab |
| Total Residual Chlorine(3)(mg/l) | Non-detectable | NA | 1/3 Months | Grab |
| [ ~~Chemical Oxygen Demand(mg/l)~~ | ~~NL~~ | ~~NA~~ | ~~1/3 Months~~ | ~~Grab~~ ] |
| Hardness (mg/l $CaCO_3$) | NL | NA | 1/3 Months | Grab |
| Total Dissolved Copper [ (4) ] (µg/l) | NL | NA | 1/3 Months | Grab |
| Total Dissolved Zinc [ (4) ] (µg/l) | NL | NA | 1/3 Months | Grab |
| [ ~~Total Dissolved Chromium(4) (µg/l)~~ | ~~NL~~ | ~~NA~~ | ~~1/3 Months~~ | ~~Grab~~ |
| ~~Hexavalent Chromium(4) (µg/L)~~ | ~~NL~~ | ~~NA~~ | ~~1/3 Months~~ | ~~Grab~~ ] |
| Total Dissolved Silver [ (4), ] (5) (µg/l) | NL | NA | 1/3 Months | Grab |
| Total Phosphorus(6) (mg/l) | NL | NA | 1/3 Months | Grab |

NL = No limitation, monitoring required
NA = Not applicable

(1) The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmount waters, or 31°C for mountain and upper piedmount waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

(2) Where the Water Quality Standards (9 VAC 25-260-10 et seq.) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

(3) Chlorine limitation [ of nondetectable (<0.1 mg/1) ] and monitoring [ ~~are~~ ] only [ apply to outfalls directly discharging to surface waters and are ] required where the source [ or cooling ] water is chlorinated [ ~~or where chlorine is added~~ ].

(4) [ ~~Chromium monitoring is only required where additive containing chromium is used.~~ A specific analysis is not specified for these materials. An appropriate analysis shall be selected from the following list of EPA methods to achieve a quantification level that is less than the target level for the material under consideration:

| | EPA Method | Target level (µg/1) |
|---|---|---|
| Copper | 220.1, 220.2, 200.7, 200.8, 200.9, 1638, 1640 | 9.2 |
| Zinc | 289.1, 289.2, 200.7, 200.8, 1638, 1639 | 65.0 |
| Silver | 272.1, 272.2, 200.7, 200.8, 200.9, 1638 | 1.2 |

*Quality control/assurance information shall be submitted to document that the required quantification level has been attained.* ]

(5) *Silver monitoring is only required where Cu/Ag anode is used.*

(6) *Phosphorous monitoring is only required where additive containing phosphorous is used.*

*B. Special conditions.*

*1. There shall be no discharge of floating solids or visible foam in other than trace amounts.*

*2. No discharges other than cooling water, as defined, are permitted under this general permit.*

*3. The use of any chemical additives [ not identified in the registration statement ], except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ before any changes are made to the chemical and/or nonchemical treatment technology employed in the cooling water system. Requests for approval of the change shall be made in writing and shall include the following information:*

*a. Describe the chemical and/or nonchemical treatment to be employed and its purpose; if chemical additives are used, provide the information prescribed in b, c, d and e below;*

*b. Provide name and manufacturer of each additive used;*

*c. Provide list of active ingredients and percentage of composition;*

*d. Give the proposed schedule and quantity of chemical usage, and estimate the concentration in the discharge; and*

*e. Attach available aquatic toxicity information for each additive proposed for use.*

*4. Where cooling water is discharged through a municipal storm sewer system to surface waters, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following information: the name of the facility, a contact person and phone number, [ nature of the discharge, number of the outfalls, ] and the location of the discharge.*

*[ ~~5. This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard, limitation or prohibition for a pollutant which is promulgated or approved under § 307(a)(2) of the Clean Water Act, if the effluent standard, limitation or prohibition so promulgated or approved:~~*

*~~a. Is more stringent than any effluent limitation on the pollutant already in the permit; or~~*

*~~b. Controls any pollutant not limited in the permit.~~*

*~~6.~~ 5. ] The permittee shall at all times properly operate and maintain all cooling water systems. Inspection shall be conducted for each cooling water unit by the plant personnel at least once per year with reports maintained on site.*

*[ 6. The permittee shall notify the department as soon as they know or have reason to believe:*

*a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:*

*(1) One hundred micrograms per liter (100 µg/l);*

*(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;*

*(3) Five times the maximum concentration value reported for that pollutant in the permit application; or*

(4) The level established by the board in accordance with 9 VAC 25-31-220 F.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter (500 µg/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board in accordance with 9 VAC 25-31-220 F. ]

~~[ PART II.~~
~~MONITORING AND REPORTING.~~

~~A. Sampling and analysis methods.~~

~~1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.~~

~~2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants promulgated at 40 CFR Part 136 (1995).~~

~~3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.~~

~~4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.~~

~~B. Recording of results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:~~

~~1. The date, exact place and time of sampling or measurements;~~

~~2. The person(s) who performed the sampling or measurements;~~

~~3. The dates analyses were performed;~~

~~4. The person(s) who performed each analysis;~~

~~5. The analytical techniques or methods used; and~~

~~6. The results of such analyses and measurements.~~

~~C. Records retention. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for three years from the date of the sample, measurement or report or until at least one year after coverage under this general permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.~~

~~D. Additional monitoring by permittee. If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.~~

~~E. Water quality monitoring. The board may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the board's regulations.~~

~~The permittee shall obtain and report such information if requested by the board. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the board.~~

~~F. Reporting requirements.~~

~~1. The permittee shall submit original monitoring reports of each quarter's performance to the department's regional office not later than the 10th day of April, July, October and January.~~

~~2. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department with the monitoring report at least the following information:~~

~~a. A description and cause of noncompliance;~~

~~b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and~~

~~c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.~~

~~Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The board may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.~~

~~3. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information specified in Part II F 2 a through c regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.~~

~~Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses; (ii) upsets; (iii) spillage of materials resulting directly or indirectly from processing operations; (iv) breakdown of processing or accessory equipment; (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities; or (vi) flooding or other acts of nature.~~

~~The report shall be made to the Department of Environmental Quality regional office at (XXX) XXX-XXXX. For reports outside normal working hours, leave a message and this shall fulfill the reporting requirements. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.~~

~~G. Signatory requirements. Any registration statement, report, or certification required by this permit shall be signed as follows:~~

~~1. Registration statement.~~

~~a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~

~~b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)~~

~~c. For a partnership or solo proprietorship, by a general partner or proprietor respectively.~~

~~2. Reports. All reports required by permits and other information requested by the board shall be signed by:~~

~~a. One of the persons described in subdivision 1 of this subsection; or~~

~~b. A duly authorized representative of that person. A person is a duly authorized representative only if:~~

~~(1) The authorization is made in writing by a person described in subdivision 1 of this subsection; and~~

~~(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)~~

~~(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the department prior to or together with any separate information, or registration statement to be signed by an authorized representative.~~

~~3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."~~

~~PART III.~~
~~MANAGEMENT REQUIREMENTS.~~

~~A. Change in discharge of pollutants.~~

~~1. Any permittee proposing a new discharge shall submit a registration statement at least 30 days prior to commencing erection, construction, or expansion or employment of new processes at any facility. There shall be no construction or operation of said facilities prior to the issuance of a permit.~~

~~2. The permittee shall submit a new registration statement at least 30 days prior to any planned changes, including proposed facility alterations or additions, production increases, or process modifications when:~~

~~a. The planned change to a permitted facility may meet one of the criteria for determining whether a facility is a new source; or~~

~~b. The planned change could significantly change the nature or increase the quantity of pollutants~~

~~discharged. This notification applies to pollutants which are neither limited in the permit nor subject to the notification level requirements in Part III A 3; or~~

~~c. The planned change may result in noncompliance with permit requirements.~~

~~3. The permittee shall promptly provide written notice of the following:~~

~~a. Any reason to believe that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification level":~~

~~(1) One hundred micrograms per liter (100 µg/l);~~

~~(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4 dinitrophenol and for 2-methyl 4,6 dinitrophenol; and one milligram per liter (1 mg/l) for antimony;~~

~~(3) The level established in accordance with regulation under § 307(a) of the Clean Water Act and accepted by the board.~~

~~b. Any activity has occurred or will occur which would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following "notification levels":~~

~~(1) Five hundred micrograms per liter (500 µg/l);~~

~~(2) One milligram per liter (1 mg/l) for antimony;~~

~~(3) The level established by the board.~~

~~Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works or pollutant management activities; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be discharged from such treatment works or pollutants managed at a pollutant management activity; and (iii) any additional information that may be required by the board.~~

~~B. Treatment works operation and quality control.~~

~~1. Design and operation of facilities and/or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department and in conformity with the conceptual design, or the plans, specifications, and/or other supporting data accepted by the board. The acceptance of the treatment works conceptual design or the plans and specifications does not relieve the permittee of the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design and/or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.~~

~~2. All waste collection, control, treatment, and disposal facilities shall be operated in a manner consistent with the following:~~

~~a. At all times, all facilities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters;~~

~~b. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit;~~

~~c. Maintenance of treatment facilities shall be carried out in such a manner that the monitoring and limitation requirements are not violated; and~~

~~d. Collected solids shall be stored and disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.~~

~~C. Adverse impact. The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) or conditions.~~

~~D. Duty to halt, reduce activity or to mitigate.~~

~~1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.~~

~~2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.~~

~~E. Structural stability. The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.~~

~~F. Bypassing. Any bypass ("Bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited unless:~~

~~1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects the board may approve an anticipated bypass if:~~

~~a. The bypass is unavoidable to prevent a loss of life, personal injury, or severe property damage ("Severe~~

~~property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production); and~~

~~b. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down-time. However, if a bypass occurs during normal periods of equipment down-time, or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.~~

~~2. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in Part III F 1 above and in light of the information reasonably available to the permittee at the time of the bypass.~~

~~G. Conditions necessary to demonstrate an upset. A nittee may claim an upset as an affirmative defense to an on brought for noncompliance for only technology based effluent limitations. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:~~

~~1. That an upset occurred and that the cause can be identified;~~

~~2. The facility permitted herein was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;~~

~~3. The permittee submitted a notification of noncompliance as required by Part II F; and~~

~~4. The permittee took all reasonable steps to minimize or correct any adverse impact to state waters resulting from noncompliance with the permit.~~

~~H. Compliance with state and federal law. Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under § 307(a) of the Clean Water Act.~~

~~Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under ority preserved by § 510 of the Clean Water Act.~~

~~I. Property rights. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.~~

~~J. Severability. The provisions of this permit are severable.~~

~~K. Duty to register. If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 120 days prior to the expiration date of this permit.~~

~~L. Right of entry. The permittee shall allow, or secure necessary authority to allow, authorized state and federal representatives, upon the presentation of credentials:~~

~~1. To enter upon the permittee's premises on which the establishment, treatment works, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;~~

~~2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;~~

~~3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;~~

~~4. To sample at reasonable times any waste stream, discharge, process stream, raw material or byproduct; and~~

~~5. To inspect at reasonable times any collection, treatment, or discharge facilities required under this permit.~~

~~For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection time unreasonable during an emergency.~~

~~M. Transferability of permits. This permit may be transferred to another person by a permittee if:~~

~~1. The current permittee notifies the department 30 days in advance of the proposed transfer of the title to the facility or property;~~

~~2. The notice to the department includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and~~

~~3. The department does not within the 30-day time period notify the existing permittee and the proposed permittee of the board's intent to modify or revoke and reissue the permit.~~

~~Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.~~

~~N. Public access to information. Any secret formulae, secret processes, or secret methods other than effluent data submitted to the department may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Code of Virginia. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia) and § 62.1-44.21 of the Code of Virginia.~~

~~Claims of confidentiality for the following information will be denied:~~

~~1. The name and address of any permit applicant or permittee; and~~

~~2. Registration statements, permits, and effluent data.~~

~~Information required by the registration statement may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.~~

~~O. Permit modification. The permit may be modified when any of the following developments occur:~~

~~1. When a change is made in the promulgated standards or regulations on which the permit was based;~~

~~2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Clean Water Act (USC 33 1251 et seq.); or~~

~~3. When the level of discharge of a pollutant not limited in the permit exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.~~

~~P. Permit termination. After public notice and opportunity for a public hearing, the general permit may be terminated for cause.~~

~~Q. When an individual permit may be required. The board may require any permittee authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:~~

~~1. The discharger(s) is a significant contributor of pollution;~~

~~2. Conditions at the operating facility change altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for a general permit;~~

~~3. The discharge violates the terms or conditions of this permit;~~

~~4. A change has occurred in the availability demonstrated technology or practices for the control abatement of pollutants applicable to the point source;~~

~~5. Effluent limitation guidelines are promulgated for the point sources covered by this permit; or~~

~~6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.~~

~~This permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a public hearing.~~

~~R. When an individual permit may be requested. Any permittee operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to a permittee already covered by an individual permit, such permittee may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.~~

~~S. Civil and criminal liability. Except as provided in permit conditions on "bypassing" (Part III F), and "upset" (Part III G) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.~~

~~T. Oil and hazardous substance liability. Nothing in th permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.~~

~~U. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee to:~~

~~1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or~~

~~2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.~~

*PART II.*
*CONDITIONS APPLICABLE TO ALL VPDES PERMITS.*

*A. Monitoring.*

*1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.*

*2. Monitoring shall be conducted according procedures approved under 40 CFR Part 136*

*alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.*

*3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.*

*B. Records.*

*1. Records of monitoring information shall include:*

*a. The date, exact place and time of sampling or measurements;*

*b. The individual(s) who performed the sampling or measurements;*

*c. The date(s) and time(s) analyses were performed;*

*d. The individual(s) who performed the analyses;*

*e. The analytical techniques or methods used; and*

*f. The results of such analyses.*

*2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the board.*

*C. Reporting monitoring results.*

*1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.*

*2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.*

*3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.*

*4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.*

*D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.*

*E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.*

*F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:*

*1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or*

*2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.*

*G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:*

*1. A description of the nature and location of the discharge;*

*2. The cause of the discharge;*

*3. The date on which the discharge occurred;*

*4. The length of time that the discharge continued;*

*5. The volume of the discharge;*

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subsection:

a. Any unanticipated bypass; and

b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the department's regional office by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statements. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new registration statement at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

*P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.*

*Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.*

*R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.*

*S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.*

*T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.*

*U. Bypass.*

*1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U 3.*

*2. Notice.*

*a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.*

*b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.*

*3. Prohibition of bypass.*

*a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:*

*(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;*

*(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and*

*(3) The permittee submitted notices as required under Part II U 2.*

*b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part II U 3 a.*

*V. Upset.*

*1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.*

*2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:*

*a. An upset occurred and that the permittee can identify the cause(s) of the upset;*

*b. The permitted facility was at the time being properly operated;*

*c. The permittee submitted notice of the upset as required in Part II I; and*

*d. The permittee complied with any remedial measures required under Part II S.*

*3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.*

*W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:*

*1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or*

*where records must be kept under the conditions of this permit;*

*2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;*

*3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and*

*4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.*

*For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.*

*X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.*

*Y. Transfer of permits.*

*1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.*

*2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:*

*a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;*

*b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and*

*c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.*

*Z. Severability. The provisions of this permit are severable. If any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.*

***9 VAC 25-196-80. Evaluation of chapter and petitions for reconsideration or revision.***

*A. Within three years after March 1, 1998, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements, and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.*

*B. The board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this chapter.* ]

VA.R. Doc. No. R97-532; Filed December 24, 1997, 11:09 a.m.

* * * * * * * * *

REGISTRAR'S NOTICE: The State Water Control Board has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9 VAC 25-260-5 et seq. Water Quality Standards (amending 9 VAC 25-260-30).**

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Effective Date: February 18, 1998.

Summary:

*This regulatory action amends the antidegradation section of the Water Quality Standards to incorporate legislative changes which became effective on July 1, 1997. Specifically, the amendments provide that (i) written notification of an exceptional waters nomination applies to impacted riparian property owners; (ii) the board make a good faith effort to notify impacted riparian property owners; and (iii) notice shall be based on*

*information provided by the Commissioners of the Revenue or tax assessor's office.*

Agency Contact: Copies of the regulations may be obtained from Jean W. Gregory, Department of Environmental Quality, 629 E. Main Street, Richmond, VA 23219, telephone (804) 698-4113.

**9 VAC 25-260-30. Antidegradation policy.**

A. All surface waters of the Commonwealth shall be provided one of the following three levels, or tiers, of antidegradation protection. This antidegradation policy shall be applied whenever any board-regulated activity is proposed that has the potential to affect existing surface water quality.

1. As a minimum, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

2. Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located provided that the board has the power to authorize any project or development. In allowing such degradation or lower water quality, the board shall ensure water quality adequate to protect existing uses fully. Further, the board shall ensure that there shall be achieved the highest statutory and regulatory requirements applicable to all new or increased point source discharges of effluent and all cost-effective and reasonable best management practices for nonpoint source control which are under the jurisdiction of the board.

3. Surface waters, or portions of these, which provide exceptional environmental settings and exceptional aquatic communities or exceptional recreational opportunities may be designated and protected as described in subdivisions 3 a, b and c of this subsection.

a. Designation procedures.

(1) Designations shall be adopted in accordance with the provisions of the Administrative Process Act and the board's public participation guidelines.

(2) Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the board's antidegradation policy, as required by 40 CFR 131.12, the board shall notify each locality in which the waterway or segment lies and shall *make a good faith effort to* provide notice to impacted *riparian* property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of the designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. *Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdiction upon request by the board.* After receipt of the notice of the nomination localities shall be provided 60 days to comment on the consistency of the nomination with the locality's comprehensive plan. The comment period established by subdivision 3 a (2) of this subsection shall in no way impact a locality's ability to comment during any additional comment periods established by the board.

b. Implementation procedures.

(1) The quality of waters designated in subdivision 3 c of this subsection shall be maintained and protected to prevent permanent or long-term degradation or impairment.

(2) No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in subdivision 3 c of this subsection shall be allowed.

(3) Nonpermitted activities causing temporary sources of pollution, which are under the jurisdiction of the board, may be allowed in waters designated in subdivision 3 c of this subsection even if degradation may be expected to temporarily occur as long as after a minimal period of time the waters are returned or restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

c. Surface waters designated under this subdivision are as follows:

(1) (Reserved.)

(2) (Reserved.)

(3) (Reserved.)

(4) North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

B. Any determinations concerning thermal discharge limitations made under § 316(a) of the Clean Water Act will be considered to be in compliance with the antidegradation policy.

VA.R. Doc. No. R98-165; Filed December 24, 1997, 11:04 a.m.

# TITLE 19. PUBLIC SAFETY

## DEPARTMENT OF STATE POLICE

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 9-6.14:4.1 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval or police functions.

Title of Regulation: **19 VAC 30-180-10 et seq. Regulations Governing the Establishment and Maintenance of the Witness Protection Program.**

Statutory Authority: § 52-35 of the Code of Virginia.

Effective Date: December 22, 1997.

Summary:

*Chapter 833 of the 1994 Acts of Assembly established Chapter 8 (§ 52-35 et seq.) of Title 52 of the Code of Virginia which provided that the Superintendent of State Police may establish and maintain within the Department of State Police a witness protection program to temporarily relocate or otherwise protect witnesses and their families who may be in danger because of their cooperation with the investigation and prosecution of serious violent crimes or felony violations of § 18.2-248 of the Code of Virginia. The Superintendent may make the services of the program available to law-enforcement and criminal justice agencies of all counties, cities, and towns, and of the Commonwealth, pursuant to regulations promulgated by the Superintendent under the Administrative Process Act. At the time § 52-35 was established there were no funds provided to establish the program and also no regulations to govern the program were established.*

*The Department of State Police submitted a grant request application to the Department of Criminal Justice Services for funding to establish a Witness Protection Program within the Department of State Police, Bureau of Criminal Investigation. The grant was awarded in September 1997, and the grant funding became available October 1, 1997.*

Agency Contact: Copies of the regulation may be obtained from Captain Frank Williams, Department of State Police, Bureau of Criminal Investigation, P.O. Box 27472, Richmond, VA 23261, telephone (804) 323-2325.

*CHAPTER 180.*
*REGULATIONS GOVERNING THE ESTABLISHMENT AND MAINTENANCE OF THE WITNESS PROTECTION PROGRAM.*

***19 VAC 30-180-10. Program established; availability of services and advisory board.***

*A. The Department of State Police will establish and maintain a Witness Protection Program within the Bureau of Criminal Investigation, Criminal Intelligence Division. The program will be administered by the Commander of the Criminal Intelligence Division in compliance with § 52-35 of the Code of Virginia.*

*B. The services of the Witness Protection Program are available to all law-enforcement and criminal justice agencies of all counties, cities, and towns of the Commonwealth.*

*C. The responsibility for reviewing applications for Witness Protection Program services shall be vested in a Witness Protection Program Advisory Board to ensure proper application of program policy and procedures. The advisory board will review all applications for service under this program and will submit their recommendations to the Superintendent of State Police who will make the final determination in this matter. The advisory board will consist of one member of the Virginia Sheriffs' Association, one member of the Virginia Association of Chiefs of Police, one member of the Virginia Commonwealth's Attorneys' Services Council, the Executive Director of the Virginia State Crime Commission and one member of the Department of State Police who will be appointed by the Superintendent of State Police. Membership on the advisory board will change in accordance with a time frame established by the Superintendent.*

*D. Advisory board members will be approved by the Superintendent of State Police. Vacancies on the advisory board will be filled by the Superintendent with recommendations being presented by the memberships organization.*

***19 VAC 30-180-20. Eligibility for program; applications and emergencies.***

*A. The Witness Protection Program will assist only those witnesses and their families who may be in danger because of their cooperation with the investigation and prosecution of cooperating in serious violent crimes or felony violations of § 18.2-248 of the Code of Virginia.*

*B. Applications for witness protection services must be made in writing by the requesting agency head to the Superintendent on a form prepared by the Superintendent. The application will set forth the following criteria:*

*1. Full identification of the person or persons that require witness protective services. This will include family, medical, financial and criminal history information.*

*2. A brief description of the investigation, including the offense and section of the Code of Virginia being used for prosecution, what the witness will testify to, and why the information cannot be obtained through other means.*

*3. Description/discussion of threats made against witness protection candidate.*

*4. Full identification of all persons involved in the threat against the witness protection candidate.*

*5. Estimated length of time the witness protection candidate will require services.*

6. Full description of type of witness protection service determined.

7. Itemization of anticipated costs related to the protective services.

C. In addition to providing the above information, the requesting agency head must complete a Memorandum of Understanding with the Department of State Police.

D. In emergency situations the Superintendent may waive the requirement for the written application submission set forth in this section. In these instances the original application can be made verbally and, if approved, followed up by the written application within 48 hours of the approval. Failure to submit a written application within the required time frame may result in the suspension or termination of all protective services.

**19 VAC 30-180-30. Levels of protective service.**

The Witness Protection Program can fund two different levels of protective services. The level of the services afforded a witness shall be established on a case-by-case basis depending on the specific circumstances of the case.

1. Program Level 1. Witness has qualified for the program but it is the consensus of the sponsoring agency that the witness can be protected by temporary short-term relocation or the installation of electronic security measures at the residence of the participant.

a. Level 1 protection will be for no longer than a period of 60 days and will be immediately terminated after adjudication of all involved cases, unless circumstances require a continuation of the protective services as recommended by the advisory board and approved by the Superintendent of State Police. The requesting agency will be responsible for all program arrangements except the installation of the electronic security equipment which will be handled by the Criminal Intelligence Division's Technical Support Unit.

b. Level 1 protection is limited to $2,000 for each 30-day period and all expenditures will be in compliance with the provisions of 19 VAC 30-180-40.

c. All program funds for Level 1 protection will be issued on a signed receipt to the requesting agency for the witness.

d. The requesting agency will be responsible for disbursement of program funds and for obtaining a receipt or to have the witness obtain a receipt for all expenditures of program funds.

e. All unexpended funds will be returned to the program by the requesting agency within 72 hours of the conclusion of protective services.

f. A detailed accounting of expended funds will be submitted to the Witness Protection Program Administrator every 30 days by the requesting agency.

g. Any misuse of Witness Protection Program funds may result in the termination of program services and reimbursement, by the requesting agency, of all misused funds to the Witness Protection Program.

2. Program Level 2. Witness has qualified for the program and it is determined that a temporary relocation is warranted.

a. Level 2 protection will be for no longer than a period of 60 days and will be immediately terminated after adjudication of all involved cases, unless circumstances require a continuation of protective services as recommend by the advisory board and approved by the Superintendent.

b. Arrangements for living conditions will be made by the requesting agency at a location determined to be secure and will remain in effect in keeping with the guidelines of 19 VAC 30-180-20 and 19 VAC 30-180-40.

**19 VAC 30-180-40. Authorized expenses; availability of service and crimes covered.**

A. The Witness Protection Program funds may be used for the following witness expenses only:

1. Reasonable lodging expenses.

2. Reimbursement of reasonable, related, uninsured/unreimbursed medical expenses.

3. Vehicle/transportation expenses.

4. Installation of systems and devices necessary to fulfill protective services.

5. Meals or food for the program participants only.

6. Personal expenses as they relate to the personal hygiene of the participant.

7. Reasonable incidental expenses.

8. Authorized relocation expenses.

B. The service of the Witness Protection Program will be available as long as it is adequately funded. If the program continues to be funded, the data from the initial cases will be analyzed to determine if time constraints can be expanded to increase the effectiveness of the Witness Protection Program.

C. The Witness Protection Program can be utilized for assistance involving serious violent crimes defined by Articles 1, 2, 3, 4, 5, 6, and 7 of Chapter 4 of Title 18.2 of the Code of Virginia and felony violations listed in § 18.2-248 of the Code of Virginia.

VA.R. Doc. No. R98-155; Filed December 22, 1997, 12:47 p.m.

CONFIDENTIAL

Memorandum of Understanding

Case Number _____
(VSP/WPP use only)

**Request Information**

| | | | | | |
|---|---|---|---|---|---|
| Date of Request | / / | Date Assistance Needed: | / / | | |
| Approximate Duration of Assistance Needed: | | Nature of Request | | Monetary | Tech |

**Investigating Agency**

| | |
|---|---|
| Name of Investigating Agency: | Investigating Agency Address |
| Name of Case Agent (Contact Person) | |
| Agency Investigative Case Number | Telephone Number |
| | FAX Number |

**Supporting Commonwealths Attorney**

| | |
|---|---|
| Name of Commonwealths Attorney: | Commonwealths Attorney Address |
| Telephone Number | |
| FAX Number | |
| Commonwealths Attorney Has Agreed To Prosecute The Above Referenced Cases Involving This Witness | |

**Identification Of Witness**

| | | | |
|---|---|---|---|
| Name of Witness | Age | Date of Birth | SSN# |
| Sex of Witness | Race of Witness | Address of Witness | |
| Male Female | | | |
| Occupation of Witness | | | |

**Witness Employer Information**

| | |
|---|---|
| Name of Employer | Employer Address |
| Telephone Number | |
| FAX Number | |

CONFIDENTIAL

**Witness Vehicle Information**

| Vehicle #1 Make | Model Year | License # | License Year | License State |
|---|---|---|---|---|
| | | | | |
| VIN # | Registered Owner | Address of Registered Owner | | |
| | | | | |

| Vehicle #2 Make | Model Year | License # | License Year | License State |
|---|---|---|---|---|
| | | | | |
| VIN # | Registered Owner | Address of Registered Owner | | |
| | | | | |

**Individuals Protection Has Previously Been Requested In This Case**

| Name of Individual | Amount of Funding Awarded | Date |
|---|---|---|
| | $ | / / |
| | $ | / / |
| | $ | / / |
| | $ | / / |
| | $ | / / |

**Other Individuals Connected With This Case That Will Require Assistance**

| Name of Individual | Amount of Funding Anticipated | Date |
|---|---|---|
| | $ | / / |
| | $ | / / |
| | $ | / / |
| | $ | / / |
| | $ | / / |

**Assess The Immediacy Of The Threat To Witness At This Time**

| | | |
|---|---|---|
| Violence has occurred. | Witness has received verbal threat | Witness has received verbal threat |
| There is potential threat upon disclosure of witness' cooperation | | There is minimal threat. |
| Other: (Explain) | | |

**Significance of Case**

| What is the significance of this case and what are the case objectives? |
|---|
| |
| (If additional room is needed use a blank sheet of paper and attach to this report) |

**Submitting Authority**

| Position | Signature | Agency | Date |
|---|---|---|---|
| Investigating Officer | | | / / |
| Agency Head | | | / / |
| Commonwealths Attorney | | | / / |

## MEMORANDUM OF UNDERSTANDING

### INTRODUCTION

**The Virginia State Police (VSP)** and the _____ are agencies
(Agency)
devoted to combating crime. To further the goals of the respective agencies and to meet their mandate in the war against crime, the VSP and _____ entered
(Agency)
into the following memorandum of understanding.

### AGREEMENT

1. A Witness Protection Program in keeping with Section 52-35 of the Code of Virginia will be administered by the Virginia State Police from the Bureau of Criminal Investigation, Criminal Intelligence Division, 808 Moorefield Park Drive, Suite 300, Richmond, Virginia 23236.

2. Law enforcement agencies can apply for temporary assistance to assist with alleviating potential witness intimidation after the Commonwealth Attorney for the jurisdiction where the crime will be prosecuted has decided to proceed with a prosecution. Application will be made on the forms provided with the law enforcement agency head and the Commonwealth Attorney signing the form.

3. The Superintendent of the Virginia State Police (VSP), after a recommendation from an Advisory Board may provide monetary and or technical assistance to state law enforcement agencies after considering all matters of concern.

4. Monetary assistance will be limited up to $2,000.00 every 60 days with a renewal request being required at least 15 days before the expiration of the assistance. Extensions are not automatic and must be requested through the Advisory Board for consideration and ultimate approval by the Superintendent of State Police.

5. Individuals presently serving a sentence imposed by a court and individuals currently on parole are not eligible for assistance under this program.



6. Agencies receiving monetary assistance will be responsible for maintaining an accounting of the funds and will file a report with receipts detailing expenditures within 30 days after expiration of the assistance period.

7. This program is designed for individuals who do not posses the necessary resources to take reasonable protection precautions. Therefore, all applicants resources will be considered prior to approval. Individuals with sufficient financial resources will not be eligible for this program.

8. The requesting agency will be responsible for all expenditures exceeding the approved amount.

9. This agreement may be terminated by either party upon written notice served by registered or certified mail.

10. The requesting agency agrees to allow an inspection of the Witness Protection Program at any time by a representative the Virginia State Police.

Agreement entered into this _____ day of _____

_____ _____

Agency Head

Colonel M. Wayne Huggins
Superintendent
Virginia State Police

# TITLE 4. CONSERVATION AND NATURAL RESOURCES

## MARINE RESOURCES COMMISSION

Title of Regulation: **4 VAC 20-910-10 et seq. Pertaining to Scup (Porgy) (amending 4 VAC 20-910-45).**

Statutory Authority: §§ 28.1-201 and 28.2-210 of the Code of Virginia.

Effective Dates: January 1, 1998, to January 31, 1998.

Summary:

*This emergency regulation establishes minimum size limits, gear restrictions, and quotas for the harvest of scup (porgy).*

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

**4 VAC 20-910-45. Possession limits and harvest quotas.**

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than ~~30,000~~ *20,000* pounds of scup; except when it is projected and announced that 85% of the coastwide quota for this period has been landed, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 1,000 pounds of scup.

B. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than ~~12,000~~ *8,000* pounds of scup except when it is announced that the coastwide quota for this period has been reached.

C. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to ~~4,158~~ *2,512* pounds.

D. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

E. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R98-153; Filed December 19, 1997, 10:35 a.m.

* * * * * * * *

Title of Regulation: **4 VAC 20-1000-10 et seq. Pertaining to Dredging in Submerged Aquatic Vegetation.**

Statutory Authority: §§ 28.1-201 and 28.2-210 of the Code of Virginia.

Effective Dates: December 16, 1997, to January 15, 1998.

Summary:

*This emergency regulation establishes prohibitions on the use of clam dredge or crab dredge gear within areas of the Commonwealth which contain submerged aquatic vegetation.*

Agency Contact: Copies of the regulation can be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

*CHAPTER 1000.*
*PERTAINING TO DREDGING IN SUBMERGED AQUATIC VEGETATION.*

***4 VAC 20-1000-10. Purpose.***

*The purpose of this chapter is to provide for the short-term and long-term conservation of submerged aquatic vegetation in the Commonwealth.*

***4 VAC 20-1000-20. Definitions.***

*The following words and term when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.*

*"Areas of submerged aquatic vegetation" means those areas which contain any of the aquatic plant species listed below:*

*Zostera marina (eelgrass)*

*Ruppia maritima (widgeon grass)*

***4 VAC 20-1000-30. Dredges prohibited.***

*It shall be unlawful for any person to either operate or have overboard a clam dredge or crab dredge within any area which contains submerged aquatic vegetation.*

***4 VAC 20-1000-40. Penalty.***

*As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.*

*/s/ William A. Pruitt*
*Commissioner*

VA.R. Doc. No. R98-154; Filed December 19, 1997, 10:36 a.m.

The Legislative Record

Volume 7 No. 7 December 1997

# HJR 519

## Commission of the Future of Transportation in Virginia

*November 17, 1997, Richmond*

After calling the meeting to order, Chairman Robinson yielded the floor to the Secretary of Transportation, who further elaborated his views, expressed at earlier meetings, on the ability of the Commonwealth to meet its transportation needs without a tax increase.

### Secretary of Transportation

Speaking of the catalog of transportation needs developed by the commission's Subcommittee on Needs, the secretary began by stressing that he was reacting to a list "not of his making." After reiterating his opposition to new or increased taxes, he pointed to increases in the value of highway maintenance and construction contracts under the present administration, giving credit to increases in federal aid and to a robust state economy. He expressed confidence in additional considerable increases in federal aid under the new federal highway program expected to be enacted by Congress in the early part of 1998. Citing also transportation financing that is likely to result from issuance of private debt to cover projects under the Public-Private Transportation Act, the secretary reminded the members that he never expected Virginia's future transportation revenues to be limited to only those anticipated by the Subcommittee on Needs (and identified in the commission's interim report).

Disagreeing with the commission's decision to endorse an "aggressive" growth scenario for the state's mass transit program, the secretary again stated his opposition to revising the "modal split" of Virginia's transportation revenues or "opening up" the highway construction allocation formulas. Either of these actions, he cautioned, could jeopardize Virginia's "vigorous highway program." Additional net trimming of transportation needs would, he felt, result (i) from "no build" decisions on some projects that either failed to meet environmental criteria or lacked public support and (ii) from breaking up very large projects into phases that could be built and funded incrementally. He also suggested that advances in transportation technology will make possible increases in system capacity without construction of additional facilities.

The commission unanimously gave formal approval to its interim report to the Governor and General Assembly (already printed and distributed as House Document No. 12 of 1998). Staff was instructed to draft a final report of the commission to the Governor and General Assembly, and, if possible, provide a copy of that draft to the members prior to the group's next meeting.

*December 10, 1997, Richmond*

The meeting's major focus was consideration of a draft report on the commission's work to the Governor and the 1998 Session of the General Assembly. After a wide-ranging general discussion of the issues raised during the commission's two years of work, the panel agreed to recommend the passage of five pieces of legislation:

- A bill clarifying the terms "construction" and "maintenance" as they are used in the Code of Virginia in reference to projects carried on, by, or through the Department of Transportation.

- A bill specifying and defining the purposes of the two major components of the Commonwealth Transportation Fund: the Transportation Trust Fund and the Highway Maintenance and Operating Fund.

- A bill requiring implementation of a comprehensive statewide transportation planning process for all modes of transportation and vesting responsibility for this process in the Secretary of Transportation.

- A bill increasing the percentage of the Transportation Trust Fund assigned to the support of public transit (and correspondingly decreasing the percentage of the fund assigned to the support of highways) and allowing localities to use their local share of highway funds to support public transit operating costs.

- A resolution extending the commission's mandate for an additional year.

The panel also agreed to recommend an amendment to the budget bill to provide for a study of the needs of Virginians who cannot drive.

There being no objection from the voting members of the commission, the draft final report to the Governor and General Assembly was deemed approved.

If an extension of the commission's mandate is approved by the 1998 General Assembly, the panel's work in the coming year will most likely focus on prioritizing and providing adequate funding for transportation needs identified in the commission's interim report (House Document No. 12, 1998).

The Honorable William P. Robinson, Jr., *Chairman*
Legislative Services contact: Alan B. Wambold

# HJR 622

## Joint Subcommittee to Study Noncredit Education for Workforce Training in Virginia

*November 10, 1997, Herndon*

### CIT Recommendations

Offering a "Blueprint for Technology-Based Economic Growth in Virginia," the director of the Center for Innovative Technology (CIT) cited the work of a 1997 technology summit sponsored by CIT, the Virginia Chamber of Commerce, and the Virginia Technology Council that combined six regions, seven technology sectors, and 600 business leaders. Described as the "driving force" of Virginia's economy, the technology sector in the Commonwealth—encompassing aerospace, biotechnology, electronics, high-performance manufacturing, information technology and telecommunications, and energy and environmental industries—is reflected in 2,450 companies, employing 290,000 workers and generating $13.8 billion in wages in 1996. Growing at a rate tripling that of the overall economy, the technology sector in Virginia is expected to expand to an estimated 4,000 companies, 330,000 workers, and $22 billion in wages in 2002. Sixty-three percent of the growth in Virginia's gross state product in the last five years can be linked to high-technology industries and technology workers. The information technology industry now reports 190,000 job vacancies, a number that is expected to double over the next five years. Northern Virginia alone reports 19,000 technology job vacancies, representing over $850 million in lost wages.

Citing a significant mismatch between workplace requirements and skills of the available workforce, the CIT director noted that superior systems of higher education and public schools are "vital" to the future of the technology industry in Virginia. Among the recommendations offered to meet the demand for technology workers:

- That 15 High Skills Workforce Development Centers, called for by the Virginia Technology Summit's Blueprint for Technology-Based Economic Growth in Virginia, be established in the next 10 years to coordinate specific high-skill training needs of particular regions and industries, that oversight for these centers be vested in 11-member regional advisory boards appointed by the Governor, and that a statewide Workforce Training Advisory Board, consisting of the chairs of the regional boards, be established to coordinate the activities of the centers. Included among the centers' work would be arranging for local skills assessments and job counseling for workers seeking retraining; coordinating an annual survey of regional high-skills

training needs; soliciting proposals from community colleges, four-year institutions, and proprietary schools to meet identified needs and determining and "certifying" which respondents offered adequate training; awarding "certificates of completion" to participants in these programs; and apprising local business of these services. Individual centers could be designated as a "Center for Excellence" for particular specialized training; Net.Work.Virginia, the ATM broadband communications system serving the Commonwealth, would assist in transmitting these classes to other sites.

■ That each community college serving as a regional High Skills Workforce Development Center be appropriated $325,000 each year to support center operations, supplemented by $150,000 in cash or in-kind contributions from local governments or businesses in the region served, and that an additional $500,000 be appropriated in the second year of the biennium to the center designated as the first Center for Excellence.

■ That the Virginia Community College System (VCCS) be designated as the state agency with primary responsibility for the Commonwealth's high skills workforce training and development, act as the administrative arm of the High Skills Workforce Development Centers, and provide staff support to Regional Advisory Boards.

■ That the Commonwealth appropriate $5.4 million in the next biennium ($1.8 million in the first year and $3.6 million in the second year) to fund overhead costs for certified training programs offered by a community college.

■ That any entity, public or private, within the Commonwealth be eligible to provide worker assessment and training.

■ That a tuition guarantee loan program for workforce training be established.

Also noted was the goal of tripling the number of graduates in engineering and computer science and training all students in technology over the next five years.

## VCCS Proposals

VCCS proposals for workforce training initiatives included the following recommendations:

■ That the VCCS establish a statewide advisory council comprised of business and industry representatives from all regions of the Commonwealth to advise the State Board for Community Colleges regarding short-term, five-year, and ten-year plans for statewide workforce development. The plans would identify current and future workforce needs as well as potential "markets" for increasing the number of workers available to business and industry.

■ That Virginia's community colleges be equipped to deliver quality core workforce services and programs throughout the Commonwealth through workforce development centers and the implementation of rapid response teams and local advisory councils at each community college. The local advisory councils would certify to a statewide council those programs and courses for which state funding has been provided or requested pursuant to guidelines established by the State Board for Community Colleges/Statewide Advisory Council.

■ That the Commonwealth provide funding for lead Institutes of Excellence where needed at Virginia's community colleges to provide selected specialized services to meet particular regional needs or to meet statewide training or curriculum development needs through distance learning, and that these institutes address major business sectors, such as information technologies, semi-conductors, and high performance manufacturing.

■ That the Virginia Community College System be recognized in statute and funding policy as the state agency with the lead role within the workforce development continuum for training and retraining the workforce.

■ That the Commonwealth provide funding for workforce development administrators at each community college campus, based upon enrollment as well as business and industry needs.

■ That the Commonwealth provide community colleges funds equivalent to 30 percent of the prior year's non-general fund revenue collections for non-credit workforce instruction.

■ That the current funding practice for the Commonwealth's community colleges be amended to include non-credit FTEs in the calculation of community college space and instructional equipment needs.

## Virginia Economic Development Partnership

The deputy director of the Virginia Economic Development Partnership recommended that a retraining program meeting the needs of Virginia's basic employers be created within and administered by the Department of Business Assistance to offer training modules supported by a team of representatives of Virginia business, VCCS, and the Workforce Services Program within the department and that this program be supported by $10 million in general funds.

This initiative would focus on needs common to multiple industries or companies. An equivalent funding match would be required by each company participating in the training; trainee wages would not be included in the match. The training would likely take place at community college campuses, although company training facilities might be used as well. Acceptance into the training program would be contingent upon a company training needs assessment and job analysis, as appropriate, conducted through the community college system. Funding for this initiative would support instructional costs, community college fees, training materials, and consultants.

The $10 million appropriation would support skills upgrade training for about 12,000 to 15,000 Virginians a year.

Discussion focused on leveraging the Commonwealth's existing resources to provide a comprehensive approach to workforce training, the expansion of Net.Work.Virginia, and the assessment of future needs as well as upgrading the skills of current workers.

The joint subcommittee expects to consider these proposals and their potential coordination to develop final recommendations for the 1998 Session of the General Assembly.

The Honorable Alan A. Diamonstein, *Chairman*
Legislative Services contact: Kathleen G. Harris

# HJR 532

## Commission on State and Local Government Responsibility and Taxing Authority

*November 20, 1997, Herndon*

The commission met to hear about the earned income tax credit (EITC) and the expected impact of federal tax law changes on the Commonwealth. Several speakers in favor of the EITC addressed the commission, and Virginia's Tax Commissioner explained the federal tax law changes.

### Earned Income Tax Credit

Earned income tax credit legislation has been introduced each year since 1991. Advocates of the credit argue that with the changes occurring as a result of welfare reform, those individuals coming into the workforce for the first time or after an extended absence will need the credit as an extra incentive for a successful transition into the working world.

The federal EITC is a tax credit for low-income workers and is targeted at those workers who live with and support their children. Individuals must work in order to get the credit, which has been in the federal tax code since 1975, with expansions in 1986, 1990 and 1993. The intent of the expansions was to make work pay enough to lift a family, with a full-time worker, out of poverty. The federal EITC is administered through the federal tax system, with the amount of the credit based on family earnings and the number of qualifying children. It is a refundable credit, with families who qualify actually receiving a check from the federal government.

A state EITC would pick up where the federal credit stops, applying the same eligibility rules used by the federal government and piggybacking on the federal EITC by using a percentage of that credit. The credit would rise to a maximum amount and gradually phase out. Such a credit would not be inexpensive, especially if it is refundable, which supporters insist is a necessary component to help those who need it the most. It seems likely that EITC legislation, along with other tax relief legislation, will be on the General Assembly's plate during the upcoming session.

### Federal Tax Law Changes

Virginia is a conformity state when it comes to income taxes, which means that in determining taxable income for state income tax purposes, the taxpayer begins the calculation with his federal adjusted gross income. Therefore, most changes in the federal tax law will affect Virginia revenues.

According to the tax commissioner, the Taxpayer Relief Act of 1997, which was signed by the President on August 5, 1997, is very detailed and contains 282 provisions. The major components of the act include a child tax credit, post-secondary education tax incentives, broad-based relief from capital gains taxes, expansion of individual retirement accounts, significant reductions in death taxes, repeal of certain corporate tax benefits, and changes in the rates and bases of various federal excise taxes.

At the federal level, the act is supposed to provide net tax reductions of $85 billion over the next five years and $250 billion over the next 10 years. At the state level, the Tax Department's preliminary estimates show a positive impact on state revenues as a result of these changes. In fiscal year 1998, the projection is an increase in tax receipts of $136.5 million; in fiscal year 1999, $68.6 million; and in fiscal year 2000, $41.3 million.

The greatest impact seems to be a result of the reduction in the capital gains rate from 28 percent to 20 percent (10 percent for gains otherwise at 15 percent). For property held more than five years, with the holding period beginning after December 31, 2000, the maximum capital gains rates will fall to 18 percent and 8 percent. It is thought that this will encourage the buying and selling of stock more often, which in turn produces more revenues.

*December 16, 1997, Richmond*

### Public Hearings

The commission heard from the public during its final meeting for 1997. Twenty-seven individuals spoke to the commission on a variety of topics, including the earned income tax credit, Governor-elect Gilmore's car tax proposal, valuation and assessment of real property, taxation of farm land, and regional cooperation and revenue sharing.

The most popular topics were the Governor-elect's car tax proposal and the EITC. Individual taxpayers and local government representatives all spoke in favor of the proposal. Most of the individuals talked about the burden of the tax and how unfair it is. Local government representatives emphasized the importance of a dollar-for-dollar reimbursement from the state to the localities for the car tax revenues they would no longer collect from their taxpayers. They also requested that there be a revenue growth mechanism in the formula and that there be a dedicated source of funds.

The earned income tax credit was praised as a means to help the working poor and to assist individuals in successfully moving from the welfare roles. The refundable credit was also described as an essential complement to the proposed car tax cut and an investment in low-income workers and their families. All of the EITC speakers urged the commission to support the credit.

## Future Meeting

The commission will meet on January 13, 1998, to finalize its recommendations. The resolution (HJR 532, 1997) which continued the commission stated that this is the last year for it to complete its work.

Ms. Eva Tieg, *Chair*
Legislative Services contact: Joan E. Putney

# Commission on Early Childhood and Child Day Care Programs

*November 17, 1997, Richmond*

The commission convened this fall in order to look at protection of children and quality care issues in day care settings in the Commonwealth.

## Proving Identity

First, the commission considered a bill referred to it by the House Committee on Education at the conclusion of the 1997 General Assembly Session. The legislation extends existing Virginia law on requiring proof of a child's identity upon enrollment in school to attendance at licensed and unlicensed child day centers. The legislative counsel for the National Center for Missing and Exploited Children (NCMEC) spoke on behalf of the legislation.

According to the National Incidence Studies on Missing, Abducted, Runaway and Thrownaway Children published by the Department of Justice in 1990, there are as many as 354,000 children abducted by family members every year. The study went on to say that, because of the increased divorce, mobility and custody fights, the incidence of family abduction "is probably the most rapidly growing" of all forms of child victimization they studied. Further, several studies show that children between the ages of three and five are the most frequently abducted. Most children in that age group are not enrolled in public schools, but are more likely to be found in day care centers. The NCMEC representative argued that if the Commonwealth has recognized the importance of locating missing children through the use of school records, the next logical step would be to require the same proof of identity for young children in day care settings.

The commission generally supported the concept of the legislation and recommended that the bill be expanded to include day care homes. The chair directed staff to incorporate this recommendation and address some technical changes to the legislation.

## Early Childhood Development

Second, the commission heard from the state coordinator of the "I Am Your Child" campaign, which is a public/private partnership to make early childhood development a top priority of the nation. Recent brain research on infants and toddlers has proven that early experiences have a decisive impact on the architecture of the brain and on the nature and extent of adult capacities. The goals of the "I Am Your Child" campaign are to:

- raise public awareness;
- provide families with young children with information, resources and services;
- unite and expand the national, state and local efforts to improve services for young children; and
- increase public willingness to make quality services and resources available to families with young children.

To achieve these goals, the state initiatives recommended are home visiting to promote healthy pregnancies and transition to parenthood; child care development to enhance availability, as well as safety and health of infants and toddlers; and child development training for parents and child care providers, which promotes brain development research. Virginia has the following initiatives to promote the "I Am Your Child" goals:

- Hampton Healthy Families Partnership,
- Car seat distribution,
- Healthy Start Initiative,
- Brain Development Training Grant application,
- Home visitation programs,
- Regional Perinatal Coordinating Councils,
- Part H High Risk Tracking System,

■ HELPLINE with the Department of Social Services, and
■ SCHIP planning with DMAS to expand Medicaid health care to uninsured and underinsured children.

The Virginia Department of Health has a number of prevention programs to promote the health and safety of infants and toddlers, and health nurses serve as consultants to child care providers.

## DSS Activities

Third, the commission heard from the Department of Social Services (DSS) concerning the department's activities to improve the quality of child care, including Head Start Expansion programs, scholarship assistance, consumer education, resource and referral and the grants to localities under the Local DSS Quality Initiative Program. DSS also told the commission that the child day care automation system is scheduled for implementation in the fall of 1998.

The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Amy Marschean

# SJR 261

## Joint Subcommittee Studying Greater Richmond Area Regionalism

*December 19, 1997, Richmond*

The joint subcommittee held its second meeting of the year and received the consultant's final report regarding the regionalization of certain services. The report covered the areas of transportation (including public transit), water and wastewater treatment, and human services (including social services/housing and health/mental health).

## Report's Findings

The most significant findings were summarized as follows:

### *Transportation*

■ Regionalization could enhance Richmond's ability to maintain its road infrastructure.

■ Several low-capacity functions (e.g., traffic signal maintenance) could benefit from regionalization.

■ Joint procurement in transportation could reduce costs without structural change.

■ A comprehensive public transit system could reduce the need for more road capacity and promote the region's economic goals.

■ The Metropolitan Planning Organization's (MPO) short-term public transit vision could be achieved with an annual investment of $5.2 million, plus $2.1 million in capital costs.

■ Expansion of the transit system would contribute to welfare reform success in the region.

### *Water and Wastewater*

■ Wastewater regionalization could be a viable approach to Richmond's separation problem.

■ Consolidation would reduce some administrative support costs.

■ Several low-capacity functions (e.g., lab services and line televising) could benefit from regionalization.

### *Human Services*

■ Consolidation of social services would result in some cost savings, but local service delivery would be affected.

■ A regionalized and privatized approach to welfare reform would provide a prototype approach in the area.

■ A regional intergovernmental Comprehensive Services Act (CSA) agreement to establish a joint contract management system could reduce costs and improve services.

■ A consolidated Mental Health/Mental Retardation/Substance Abuse Services Authority could serve as a model for regionalizing services.

■ A consolidated public health operation could reduce administrative costs, but current efforts like sharing medical personnel are more feasible.

## Joint Subcommittee Actions

The joint subcommittee focused on the public transit recommendation dealing with the MPO's short-term public transit vision. A budget amendment for the $7.3 million total will be drafted prior to the subcommittee's next meeting. Also, the representatives from the City of Richmond and the Counties of Chesterfield and Henrico will meet and review the other recommendations before the next meeting in order to advise the remaining members of the subcommittee.

January 16, 1998, was set tentatively as the next meeting date, in Richmond, at which time the subcommittee will decide on any recommendations it will make to the 1998 General Assembly.

The Honorable Henry L. Marsh III, *Chairman*
Legislative Services contact: Joan E. Putney

# HJR 581

## Joint Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities

*November 24, 1997, Richmond*

The joint subcommittee convened its annual meeting to receive an update on the implementation of Part H services for infants and toddlers with disabilities. Among the topics addressed at the meeting were the report of the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Department of Medical Assistance Services (DMAS) concerning maximizing federal funding for Part H services, the adequacy of Part H providers in contracts entered into between DMAS and managed care organizations (MCOs), and the use of private insurance to cover Part H services.

### Agencies' Report

At the request of the General Assembly, DMHMRSAS and DMAS prepared a joint report on maximizing federal Medicaid funds for early intervention services. The report states that many funding sources are available and utilized for infants and toddlers with disabilities, thus complicating the task of identifying the total sum of public dollars spent on any one child. The report highlights the need for a centralized data system across all participating state agencies that can be used to identify which funding sources are being used to cover Part H services.

Meanwhile, DMHMRSAS and DMAS are working collaboratively to collect, analyze and report data on infants and toddlers with disabilities who were Medicaid recipients and who were enrolled in Part H for fiscal year 1996-97. In addition, the report recommends the development of a work group to examine strategies for enhancing and integrating existing approaches for Medicaid coverage for Part H services.

### Recommendations

The subcommittee made the following recommendations:

■ DMHMRSAS and DMAS should provide, no later than November 15, 1998, a report on the total state and federal funding sources being used to provide early intervention services for infants and toddlers with disabilities.

■ DMHMRSAS and DMAS should establish a work group consisting of two members of the joint subcommittee; representatives of the Local Interagency Coordinating Council, the Virginia Interagency Coordinating Council, Community Services Boards, the Department of Education, and the Department of Social Services; and family members. As part of its study, the work group should provide, no later than December 15, 1998, a report on how to better coordinate and implement Part H services. The report should address the extent to which the program can be modified to resolve administrative problems while delivering cost-effective and appropriate services to all who are in need of early intervention services for infants and toddlers with disabilities.

■ Any contract between DMAS and MCOs for early intervention services for infants and toddlers with disabilities should include sufficient Part H providers within the MCO network to ensure the early intervention population is served.

### Federal Regulations

Federal Part H regulations require that states facilitate the coordination of payment for early intervention services from federal, state, local and private resources (including public and private insurance coverage). Proposed federal regulations for the re-authorization of the Individuals with Disabilities Education Act (IDEA), issued on October 22, 1997, specify that families cannot be required to use their private health insurance to pay for Part H services if any financial cost would be incurred.

These regulations define *financial cost* as out-of-pocket expenses such as co-pays and deductibles, a decrease in lifetime cap or other benefits, an increase in premiums, and/or discontinuation of the policy. States could require families to use their private health insurance coverage to pay for Part H early intervention services if no financial cost would be incurred. The majority of insurance policies, however, would include a financial cost to a family. The proposed federal regulations do state that Part H funds may be used to pay the costs of co-pays and deductibles in situations where families refuse to use their insurance due to incurred financial costs. Therefore, the joint subcommittee recommended the following:

■ Encourage the Governor to seek broader access to private insurance coverage for early intervention services by filing a letter expressing the Commonwealth's concerns about the proposed federal regulations for the re-authorization of IDEA which specify that families cannot be required to use their private health insurance to pay for Part H services if any financial cost would be incurred.

■ Authorize the joint subcommittee Chair to express to the Secretary of the United States Department of Education the subcommittee's concerns about the proposed federal regulations.

■ Introduce legislation requiring the coverage of early intervention services for infants and toddlers with disabilities by private insurers and HMOs. The bill will state that the financial costs of co-pays and deductibles shall be paid with state, local and federal Part H dollars.

The Honorable Mary T. Christian, *Chair*
Legislative Services contact: Amy Marschean

# SJR 350

## Commission on the Commonwealth's Planning and Budgeting Process

*December 19, 1997, Richmond*

The final 1997 meeting of the Commission on the Commonwealth's Planning and Budgeting Process focused on North Carolina's legislative general fund financial model. The computer model is used during the legislative budget review process to project impacts on general fund expenditures and revenues over a 10-year period. By helping to establish a frame of reference, the model provides a view of alternative budget proposals.

### North Carolina's Legislative Model

The model was developed in 1992 for the North Carolina General Assembly by the Barents Group, an affiliate of KPMG Peat Marwick. Run on a personal computer, the model is based on the concept that the level of services will continue at the level of the current budget year, and expenditures associated with those service levels are adjusted for inflation and other drivers. The base year is updated annually to provide a rolling 10-year projection.

A senior fiscal analyst with North Carolina's Fiscal Research Division stressed that the model is a simulator, not a predictor, of revenue and expenditure changes. Given the future economic and demographic outlook, the model provides an effective way of simulating changes if the budget is allowed to grow in the future as it has in the past. The value of the long-range projections is the ability to spot trends, and the model is not intended to predict future revenue and expenditures with precision. As such, it is analogous to a performance statement used in private businesses.

A characteristic of the model is its incorporation of expenditure drivers for major categories. For example, the projections in the human services category incorporate projected changes in unemployment and demographics. The model incorporates, rather than duplicates, expenditure projections developed by executive branch agencies.

Using stated assumptions about the growth rates in such elements as state population, school attendance, state employee salaries, and health care costs, the model compiles the projected levels of all general fund expenditures and revenues in future fiscal years. The model's current services simulation may then be used as a tool to reflect the changes that may result from program and policy changes as well as amendments in the assumed growth rates.

A representative of the Barents Group noted that the principle benefit of the model is that it provides a systematic, structured method for integrating the best available information on program growth. Much of the data required to be plugged into the model is already produced by agencies, and the executive budget office works jointly with the legislative fiscal office to develop additional information. Fiscal notes showing the projected cost of legislative changes over a five-year period are now incorporated into the model during the legislative process.

The model was praised as a valuable tool in policy decision-making. A plan to increase teacher pay to the national average was cited as a recent example. After the general fund financial model projected the costs of this policy change, a plan to phase in the teacher pay increases over a number of years, coupled with cuts in other programs of $150 million annually, was developed.

The Barents Group has remained a partner in the modeling process, which has evolved over the past six years to add detail while simplifying its usability. The representatives from the state and the consultant advised that development of a model should combine the efforts of both outside assistance and in-house personnel. Other lessons learned from the North Carolina experience include getting input from subject area specialists, emphasizing trends rather than exact numbers, keeping the presentation of model results simple, reexamining model design annually, and tracking model results.

Changes in programs over time have made tracking the accuracy of projections difficult, especially in areas of health care and K-12 education funding. Even in these areas, however, deviations have not been so great as to question the validity of the model. Development of the model over the past six years was estimated to have cost the state between $250,000 and $300,000, plus the in-house costs of operating the model.

### Results of Survey on Impact Statements

Staff presented the results of the survey of legislators and legislative staff regarding satisfaction with the legislative impact statement process. By a modest margin, most respondents disagreed with the proposition that the impact statement preparation and distribution processes are satisfactory. Areas of the greatest dissatisfaction involved the timeliness and availability of statements. Most of the criticisms noted in respondents' comments focused on timeliness, lack of objectivity, the quality of analysis, and the inaccessibility of statements.

### Draft Recommendations

The impact statement survey did not reveal a consensus for specific changes in the current process. The commission is considering a recommendation that the current impact statement process, which is currently administered pursuant to executive order, be codified.

Other recommendations of the commission under consideration include (i) continuing its work for a second year to examine the feasibility of implementing a legislative expenditure model, (ii) providing the General Assembly with access to agency six-year expenditure needs currently prepared under § 2.1-394 B, and (iii) fixing several technical provisions in planning and budgeting statutes. An outline of an interim report and draft legislation to implement these recommendations will be forwarded to members of the commission and the advisory committee for comments.

The Honorable Joseph V. Gartlan, Jr., *Chairman*
Legislative Services contact: Franklin D. Munyan

# Joint Commission on Technology and Science

*September 24, 1997, Richmond*

## Internet Voting

At the second full commission meeting of the 1997 interim, the IBM Corporation demonstrated the "Voting Booth of the Future," a multimedia kiosk developed by IBM at the request of the Connecticut Secretary of State for use at the 1995 Worldwide Special Olympics. The system uses still photos, graphics, and sound to show how citizens vote today and how voting over the Internet could look in the future.

Under the current voting process, voter participation is declining, especially among 18-to-25-year-olds (the age group with the most access to computers and the Internet); many people do not like to go to a polling place because it is inconvenient or inaccessible; and the current process, over 200 years old, is expensive. For these reasons, the IBM representative urged Virginia (and other states) to consider voting via the Internet, which millions of people can access from their homes, offices, schools, and libraries. Short of or in addition to the actual act of voting, the Internet could also be used to provide information on registration drives, distribute registration cards, register voters, communicate between election precincts, provide information about the candidates, take public opinion polls, report campaign finances, distribute sample ballots, redistrict, and request absentee ballots.

Technology currently exists that enables citizens to request absentee ballots via the Internet; however, no state yet permits it. Virginia could be the first state to develop a pilot project that would permit absentee voters to make an advance request for an absentee ballot. This would be the smallest implementation step that any state could take towards voting via the Internet. Other implementation steps include passage of electronic signature legislation (which Virginia did in 1997), passage of other enabling legislation and/or constitutional amendments, determining the look and presentation of the Internet ballot, and expanding the pilot project to permit the actual act of voting an absentee ballot via the Internet.

Staff discussed the legal and practical requirements of voting via the Internet. For example, Article II, section 3 of Virginia's Constitution discusses the method of voting in fairly broad language; however, the section provides that "the ballot box or voting machine shall be kept in public view and shall not be opened, nor the ballots canvassed nor the votes counted, in secret." Current statutory provisions in Title 24.2 require the presence of multiple officers of election and observers during the casting of votes and counting of ballots, which is meant to assure the public that the electoral process is fair and free from fraud and collusion. The question arises whether or not a personal computer, located in a voter's home and used to cast a vote via the Internet, violates the letter, the spirit, or both of these constitutional and statutory provisions. On the other hand, Article II, section 3 also authorizes votes to be cast by absentee ballot "as provided by law," which bestows on the General Assembly fairly broad discretion regarding absentee voting.

Other practical and legal considerations include ensuring that the voter is eligible, is registered, votes only once, cannot prove how he voted (to prevent vote-buying), and maintains the right to cast a write-in vote; the ballot is cast in secret and is kept secret; and voting via the Internet is as convenient, accessible, simple, accurate, and reliable as the current voting process. Additional concerns include the need for alternative voting mechanisms in cases of equipment failure or system crashes, the ability to verify the electronic voting process or audit trail, the ability to secure equipment and material in cases of recounts or contested elections, and the true monetary savings to the Commonwealth if voting via the Internet is in addition to the current voting process.

*October 22, 1997*

## Communications Networks

The third full commission meeting of the 1997 interim was a videoconferenced meeting that linked five sites throughout the Commonwealth. Five commission members were present at the meeting's primary site at the Alexandria campus of Northern Virginia Community College, with others participating from Old Dominion University in Norfolk, Longwood College in Farmville, and the Halifax County/South Boston Continuing Education Center of Longwood College in South Boston. The North Run location of J. Sargeant Reynolds Community College in Richmond also served as a meeting site. All sites were open to the public, and about 65 people attended.

The president of TVW, a nonprofit, public affairs network for Washington State that provides unedited coverage of state government deliberations and public policy events comparable to C-SPAN's, was the main speaker. TVW's mission is to provide Washington's citizens with increased access to unbiased information about such deliberations and events through unedited television coverage. TVW is received in 2.5 million homes daily.

TVW's mission also includes a commitment to increase citizen access to state government deliberations and public policy events through relevant technologies other than television. In January 1996, with the governor's state of the state address, TVW became the first organization in the world to "broadcast" live audio of a public official over the Internet. On the World Wide Web, TVW now provides RealVideo and RealAudio archives and real-time transmission of over 3,500 hours of programming. Citizens with access to the Internet, a sound system, and free software (RealVideo or RealAudio) can listen to or watch oral argument of the Washington State Supreme Court; legislative committee and floor action; meetings of boards, commissions, and councils; press conferences; candidate debates; and other such deliberations and events. TVW estimates that it averages 500 "hits" a day on its website.

Representatives from Net.Work.Virginia explained how the network provided the videoconference connection for the meeting. Net.Work.Virginia, the Commonwealth's first high-speed, broadband communications network delivering ATM (asynchronous transfer mode) service statewide, is the result of a project led by Virginia Tech, in association with Old Dominion University and the Virginia Community College System to develop universal access to advanced digital communications services for all of Virginia. The network can carry thousands of simultaneous, two-way flows of voice, data, and video, and is based on Sprint's existing broadband fiber optic network in Virginia, with Bell Atlantic installing a new relay service technology that allows users to put voice, data, and video onto one communications line. Over 190 sites are connected to the network. Participants include four-year colleges and universities, the Virginia Community College System, private schools, several K-12 school systems, state agencies, and private industry. More information about Net.Work.Virginia can be found on the World Wide Web at http://www.networkvirginia.net.

*November 19, 1997, Richmond*

## Telecommunications

In part, the fourth commission meeting of the 1997 interim brought the commission's work around full circle to work which began in 1996 with the HJR 195 study committee, the predecessor to the commission.

The universal service fund provisions of the Federal Telecommunications Act of 1996 were a major focus of HJR 195's work. With the subcommittee's recommendation, the 1997 General Assembly passed HJR 635, encouraging the State Corporation Commission (SCC) to continue its efforts to open up competition in the local exchange market among telephone, cable, and other communications companies, and HJR 444, requesting the Library of Virginia to develop a strategic information technology plan for the Commonwealth's public library system.

### SCC

The SCC's report recommends that the SCC: (i) continue its long distance and local competition initiatives (begun as early as 1983); (ii) continue to monitor universal service proceedings at the Federal Communications Commission (FCC), including pending federal court cases, and take action as appropriate; (iii) allow the universal service fund to operate for at least two years before assessing the need for additional state funding; and (iv) advise the Virginia General Assembly should the need for legislation arise in the future (none is requested for the 1998 Session). The report, published as House Document No. 15 (1998), includes the SCC's order of June 30, 1997, adopting the discounts for intrastate telecommunications services established by the FCC. Adoption of these rates is a prerequisite to a state's eligibility for discounts funded by the universal service fund. The SCC was one of the public utility commissions in the nation to do so.

### Library of Virginia

Preliminary findings in the Library of Virginia's interim report indicate that the ability of Virginia's public libraries to provide access to the information highway for Virginia's citizens remains extremely limited. In 1996, the library reported to the HJR 195 subcommittee that there were only 351 computers in Virginia's public libraries used for Internet access. A 1997 update to the survey indicated that while the number of localities offering the service has increased, the number of public-access computers decreased to 348. The decline was attributed to a number of computers in the Norfolk library system—initially put in service through a generous private donation—being withdrawn from service for mechanical reasons.

Based on preliminary scenarios, the library estimated that a $37 million commitment of state and local funds within the next biennium would be required to provide Virginia's citizens "universal access" to the information highway through the public library system. To implement universal access, the report recommends that (i) all Virginia public libraries and their bibliographic databases should be linked electronically; (ii) the information highway should be accessible to all citizens of the Commonwealth through high-speed connections to the Internet at their local public libraries; (iii) public libraries should provide access to full text electronic resources that meet citizen's information needs; and (iv) public library staff should assist citizens to use the Internet to access resources that will answer their questions and expand their knowledge. The Library of Virginia made no request in its 1998-2000 executive budget submission to fund the implementation recommendations.

### *Public Schools*

The Department of Education reported that Virginia's schools and libraries legitimately stand to receive $40 million from the $2.25 billion universal service fund, the federally funded program that will provide discounts between 20 and 90 percent for eligible telecommunications services to schools and libraries. Discounts are based on the percentage of students within a school who reside in a household within 185 percent of the poverty level (and thus are eligible for free or reduced school lunches) and whether the school is located in an urban or rural area. Based on the department's preliminary data and calculations, the average discount for Virginia schools would be 60 percent; no school would receive less than a 40 percent discount nor more than an 80 percent discount.

In addition to a state's public utility commission adopting the discounts for intrastate telecommunications services established by the FCC, schools which apply for discounted services must have an approved technology plan on file with the state's department of education to be eligible. Every Virginia school division has such a plan on file with the department. The FCC has developed and released several forms related to the program; however, application forms were not expected to be available until December. Under that scenario, the "filing window" would open sometime in January and must close, under a reconsideration order entered by the FCC, 75 days later. Services will be covered retroactively to January 1, 1998, or the date the contract was signed, whichever is later.

## Technology Workers

Upon the recommendation of the HJR 195 subcommittee, the 1997 General Assembly also passed SJR 218, requesting the State Council of Higher Education for Virginia (SCHEV) to examine the demand for computer scientists, engineers, and other technologically skilled workers in Virginia industry, and SJR 226, requesting the Center for Innovative Technology (CIT) to report on the status of certain emerging scientific and technological assets.

SCHEV reported that a number of recent studies have been conducted by various organizations attempting to quantify the much-publicized shortage of technology workers in Virginia. These studies indicate that to keep pace with the growing demand, the Commonwealth needs to supply approximately 110,000 *new* technology workers over the next five years (22,000 per year). Not all of these jobs will require formal degrees; on the other hand, the 22,000 figure does not take into account jobs which require some level of technological competency but are not completely technological in nature (e.g., bank tellers, insurance agents, retail merchants). This shortcoming highlights one of the major challenges in closing the gap between demand and supply and developing a clear picture of the skills and competencies required in a rapidly changing work environment. SCHEV's full report will be published later this winter as a 1998 Senate Document.

## Technology Assets

CIT reported that as a whole, Virginia's science and technology assets are key to supporting existing and emerging technology-based industries as they compete in a global economy. Various high-technology facilities in Virginia were the particular focus of CIT's study, published as Senate Document No. 8 (1998). To fully capitalize on all the potential research, development, and commercialization opportunities, the report recommends:

- creating a technology growth fund to meet federal matching requirements on certain projects;
- establishing new technology innovation centers to leverage additional funding from industry and the federal government;
- developing a statewide strategy to attract and keep federal dollars for research and development assets;
- implementing a statewide, fully integrated technology transfer network; and
- documenting the value of university-affiliated research parks and determining the appropriate level of state support.

## Pilot Project

The commission endorsed a pilot project for 1998 which joins the commission with Virginia Public Television, Net.Work.Virginia, and the Division of Legislative Automated Systems. The project's first objective is to allow commission members to participate in videoconferenced meetings from within or near their home districts at public sites connected to Net.Work.Virginia, thus saving legislators' time and taxpayers' money. The second objective is to provide a mechanism to increase public awareness of and participation in the commission's work, a goal which is achieved by broadcasting the commission's meetings over Net.Work.Virginia to public sites on the network (about 190 to date) and over Virginia Public Television's instructional programming to schools. A third objective is to broadcast meetings in real time over the Internet on the commission's website and to preserve the unedited meetings as RealVideo archives for later retrieval by citizens with access to the Internet, a sound system, and free software. A $100,000 appropriation has been requested to fund the pilot.

## Future Meetings

Commission meetings have been scheduled for Monday, January 5, 1998, at 10:00 a.m. in House Room D of the General Assembly Building and again on Wednesday, January 14, 1998, at 10:00 a.m. in the 5th Floor West Conference Room of the General Assembly Building. More information about the commission, including meeting agendas, is available from http://legis.state.va.us/jcots/jcots.htm. All commission and advisory committee meetings are open to the public.

The Honorable Kenneth R. Plum, *Chairman*
Staff contact: Diane E. Horvath

# Filing Deadlines

By action of the 1995, 1996, and 1997 Sessions of the General Assembly, three categories of bills have been added to the list of legislation that must be filed by the first day of the General Assembly Session (unless requested by the Governor or "filed in accordance with the rules of the General Assembly").

### Local Fiscal Impact (§ 30-19.03:1; Chapter 743, 1995 Acts of Assembly)

Any bill that mandates an additional expenditure by any county, city, or town must be filed on or before the first day of the session. A mandate has the effect of (i) requiring the performance of a new or expanded service or maintaining an existing service at a specific level, (ii) assuming administrative costs in support of state-related programs, or (iii) furnishing capital facilities for state-related activities.

### Prison Impact (§§ 30-19.1:4 and 30-19.1:6; Chapter 462, 1995 Acts of Assembly and Chapter 972, 1996 Acts of Assembly)

All adult/juvenile corrections bills must have a statement of fiscal impact prepared and must be filed on or before the first day of the session. A fiscal impact statement is required for any bill that would result in a net increase in periods of imprisonment in state correctional facilities or periods of commitment to the custody of the Department of Juvenile Justice, including those bills that (i) add new crimes or increase the periods of imprisonment or commitment for existing crimes, (ii) impose minimum or mandatory terms of confinement, or (iii) modify the law governing release in such a way that the time served will increase.

### Virginia Retirement System (§ 30-19.1:7; Chapter 610, 1997 Acts of Assembly)

Any bill that amends, repeals, or modifies any provision of the Virginia Retirement System, the State Police Officers' Retirement System, or the Judicial Retirement System must be filed on or before the first day of the session. The Board of Trustees of the Virginia Retirement System shall submit to the Clerks' offices, the Commission of Local Government, the House Committee on Appropriations, and the Senate Committee on Finance a statement of (i) the financial impact of the proposed bill on the general fund and on the local governments that have opted to be part of VRS and (ii) the policy implications of the bill on the various systems administered by the Board of Trustees.

Other categories of legislation that must be filed by the first day include local charter and optional forms bills, personal relief (claims) bills, sales tax exemption bills, and property tax exemption bills. There is an exemption for bills requested by the Governor.

*The Legislative Record* summarizes the activities of Virginia legislative study commissions and joint subcommittees.  Published in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia. *The Legislative Record* is also published in *The Virginia Register of Regulations*, available from the Virginia Code Commission, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219. Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations*. The Legislative Record is available on-line at http://dls.state.va.us/legrec.htm

**E.M. Miller, Jr.:** ***Director***
**R.J. Austin:** ***Manager, Special Projects***
**K.C. Patterson:** ***Editor***
**James A. Hall:** ***Designer***

FOR SUBSCRIPTION INFORMATION, CONTACT:
**Special Projects**
**Division of Legislative Services**
**910 Capitol Street, 2nd Floor**
**Richmond, Virginia 23219**
**(804) 786-3591**

PRINTED ON RECYCLED PAPER

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### GUIDELINES
### AGRICULTURAL STEWARDSHIP ACT
**April 1, 1997**

#### Nature of These Guidelines

The Agricultural Stewardship Act[1] ("ASA" or "Act") requires that the Commissioner of Agriculture and Consumer Services ("Commissioner") develop guidelines to assist in the implementation of the ASA. These guidelines are not regulations, so no one is required to abide by them. In fact, there are no regulations anywhere concerning the ASA. The only document that anyone must abide by is the ASA itself.

These guidelines are simply advice on how to implement the ASA. The Commissioner expects that these guidelines will be reviewed periodically to determine whether changes are needed.

#### Who to Contact for Information

The Commissioner welcomes your questions and requests for information about the ASA. If you would like to send a letter, please send it to:

Commissioner of Agriculture and Consumer Services
Agricultural Stewardship Program
Virginia Department of Agriculture and Consumer Services
P.O. Box 1163
Richmond, Virginia 23218

If you prefer to talk with someone about the ASA program, please telephone (804) 786-3539.

#### Abbreviations and Definitions

Where personal pronouns are used, "he" and "she" are used interchangeably. The following terms and abbreviations, when used in these guidelines, shall have the following meanings:

| | |
|---|---|
| Act or ASA | Agricultural Stewardship Act |
| BMP | Best management practice |
| Board | Soil and Water Conservation Board |
| Commissioner | Commissioner of Agriculture and Consumer Services |
| Complainant | Person who submits complaint to Commissioner pursuant to ASA |
| DCLS | Division of Consolidated Laboratory Services |
| DCR | Department of Conservation and Recreation |
| DEQ | Department of Environmental Quality |
| District | Soil and Water Conservation District |
| Extension | Virginia Cooperative Extension |
| Farmer | Agricultural producer, whether owner or operator of farming operation in question. |
| FOTG | USDA, NRCS' Field Office Technical Guide |
| FSA | USDA, Farm Service Agency |
| Initial investigation | First investigation of a complaint to determine whether or not the agricultural activity in question is creating or will create pollution. |
| Jurisdiction | Authority to do something under the ASA or other law |
| NRCS | USDA, Natural Resource Conservation Service |
| SWCB | State Water Control Board (a.k.a. Virginia Water Control Board) |
| USDA | United States Department of Agriculture |
| VDACS | Virginia Department of Agriculture and Consumer Services |
| VPA | Virginia Pollution Abatement permit from SWCB |
| VPDES | Virginia Pollution Discharge Elimination System permit from SWCB |
| VWCB | Virginia Water Control Board (a.k.a. State Water Control Board) |

#### Background on the ASA

Over the past seven to 10 years, a number of federal and state laws and regulations have been proposed that would have created strict rules to prevent pollution by governing the way we farm. Only a few of these proposed laws and regulations were adopted, but public opinion polls show that the public continues to value a clean environment. In the 1990 census, Virginia had for the first time more people living in urban and suburban areas than in rural areas. Of the nonpoint sources of pollution, due to the vast number of acres in agriculture, agriculture is a major contributor of nutrients and sediments to rivers, streams and lakes. Given the public's continued support for a clean environment, Virginia's increasing urbanization, and the recognition that most farmers are good stewards of the land, Virginia's agricultural leadership decided to take a proactive approach to water pollution coming from agricultural lands.

[1] Article 3.1 (§ 10.1-559.1 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

Virginia's agricultural leadership sought a way of dealing with agricultural water pollution that was different from the approaches used with other industries, such as manufacturers. Most manufacturing plants must obtain permits and follow strict rules of operation. The agricultural community wanted a different approach that did not rely on permits and strict operating rules, but took into account the wide variety of farming practices used in Virginia.

The ASA resulted from the joint work of representatives of Virginia's agricultural community, environmental community, Association of Soil and Water Conservation Districts, and state agencies. They sought to develop procedures by which individual agricultural producers can be alerted to areas of their operations that may be causing water pollution. Rather than developing regulations with strict rules governing every type of farming practice, the ASA looks at each farm individually.

**Brief Summary of Act**

The procedures created by the ASA begin with a complaint made to the Commissioner. The Commissioner must accept complaints alleging that a specific agricultural activity is causing or will cause water pollution. Not all complaints must be investigated, however. After the Commissioner receives a complaint and the complaint is one that must be investigated, he will ask the local Soil and Water Conservation District ("District" or "local district") whether it wishes to investigate the complaint. If the District does not wish to investigate the complaint, the Commissioner will. (A copy of the ASA is in Appendix A.)

The purpose of the investigation is to determine whether the agricultural activity (that was the subject of the complaint) is causing or will cause water pollution. If not, the Commissioner will dismiss the complaint and inform the person who made the complaint ("complainant").

If the agricultural activity is causing or will cause water pollution, the ASA gives the farmer an opportunity to correct the problem. The farmer will be asked to develop a plan containing "stewardship measures" (often referred to as "best management practices") to prevent the water pollution. The farmer then develops the plan, and once the plan is complete, the District reviews it and makes recommendations to the Commissioner. If the Commissioner approves the plan, he will then ask the farmer to implement the plan within specified periods of time.

If the farmer does not develop a plan, or if the farmer develops a plan, but fails to implement it, then (and only then) will enforcement action under the ASA be taken against the farmer.

In some cases, the ASA investigation will not produce sufficient evidence to support the conclusion that the agricultural activity in question is causing or will cause pollution. In those cases, the investigator will see if the farmer is receptive to suggestions on how the farmer might improve his practices to prevent complaints in the future. This educational role of the investigator is just as important as anything else the investigator does pursuant to the ASA.

**SECTION A. What the Act Covers**

1. Activities Covered by the ASA

The ASA applies to agricultural activities that are causing or will cause water pollution by sedimentation, nutrients or toxins. The only exception is when the agricultural activity in question is already permitted by the State Water Control Board (through the Department of Environmental Quality). The permits are usually: a Virginia Pollution Abatement ("VPA") permit (general or individual) for the storage and land application of animal waste; a Virginia Pollution Discharge Elimination System ("VPDES") permit for certain aquaculture facilities or for mixed production and processing operations; or a VPA permit for the land application of sewage sludge.

**ACT APPLIES TO WATER POLLUTION FROM AG ACTIVITIES**

The ASA does not apply to forestry activities, nor does it apply to odor concerns. Nor does the ASA apply to landfills or waste problems that do not involve agricultural products and that have no clear water quality impacts. Finally, the ASA does not apply to air pollution, nor does it apply to water pollution caused by non-agricultural activities.

**ACT DOES NOT APPLY TO:**
*PERMITTED ACTIVITIES
*FORESTRY
*ODORS /AIR POLLUTION
*LANDFILLS

If a complaint alleges that a farming operation is causing unpleasant odors, for example, neither the Commissioner nor the local District has the authority to investigate the complaint or to take any other action under the ASA. In that case, the Commissioner would inform the complainant that the ASA does not give authority to deal with anything other than water pollution.

The Commissioner's staff will use Form 1 to determine whether or not the complaint can be investigated under the ASA.

2. Definitions of Sedimentation, Nutrients and Toxins

Sedimentation is **soil** material, either mineral or organic matter, that has been transported from its original site by air, water, or ice through the force of gravity and has been deposited in another location. The primary focus under the ASA will be on **erosion** of soil and its deposition in adjacent surface water.

Nutrients are dry or liquid materials that provide elements, such as nitrogen, phosphorus, and potassium, that can nourish plants. **Commercial fertilizers and animal manures** are the two primary sources used to supply nutrients to plants in agricultural operations, and will be the focal point of the ASA.

For the purposes of these guidelines, a toxin is any substance or mixture of substances intended to be used to prevent, destroy, repel or mitigate agricultural pests, or to be used as a plant regulator, defoliant or desiccant, commonly called **pesticides**. In addition, **oil, gasoline, diesel fuel and other petroleum products** are potentially toxic materials that are usually employed in farming operations.

**Major Pollutants Covered by the ASA:**

*SEDIMENTS
*MANURE
*COMMERCIAL FERTILIZER
*PESTICIDES
*OIL, GASOLINE, DIESEL
THAT CAUSE WATER POLLUTION

Each of these potential pollutants -- soil, nutrients, pesticides, oil, gasoline and other petroleum products -- are good and useful things when they are kept in their proper places. It is only when any of these things reaches a stream, river, well, lake or other water body that they become a problem.

3. What the Act Means by "Pollution"

The ASA defines pollution as "any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins." (Section 10.1-559.1 of the ASA.) This means that when sediments, nutrients or toxins enter the water from an agricultural activity, they constitute pollution under the ASA.

However, even if pollution is occurring, the ASA gives the Commissioner the power to dismiss a case if the Commissioner determines that:

". . . the pollution is the direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses . . ." (From § 10.1-559.3 C of the ASA.)

**COMMISSIONER MAY DECIDE NO PLAN NEEDED IF POLLUTION COMES FROM:**

*HURRICANES
*DROUGHTS
*FLOODS

OR OTHER UNUSUAL WEATHER EVENTS OR CIRCUMSTANCES

**COMMISSIONER MAY DECIDE NO PLAN NEEDED IF POLLUTION IS NOT A THREAT TO:**

*HUMAN HEALTH
*ANIMAL HEALTH
*AQUATIC LIFE
*WATER QUALITY
*RECREATIONAL USES

As with all nonpoint source pollution, proof that a specific agricultural activity is causing or will cause pollution can be difficult, since nonpoint source pollution is, by definition, diffuse. In addition, two of the three categories of pollutants at issue here -- sediments and nutrients -- find their way into water naturally as well as from man's activities. Thus, for example, it can be difficult to prove that the nutrients came from a farming operation and not from natural or other sources.

**LINKING SPECIFIC POLLUTION TO A SPECIFIC AG ACTIVITY CAN BE DIFFICULT**

4. What the Investigation Has to Prove

The ASA requires that before a plan can be required, the agricultural activity must be one that "is creating or will create pollution." The following is the Commissioner's standard for determining whether the activity "is creating or will create pollution."

*To conclude that an agricultural activity is creating or will create pollution, there must be a reasonably certain link of cause and effect between the agricultural activity and the pollution that is being created or that will be created.*

(The term "is causing" will be used interchangeably with the term "is creating." Similarly, the term "will create" will be used interchangeably with "will cause.") The central question is *how certain* the investigator must be that the activity is causing or will cause pollution.

Examples:

**You Can See It** -- Suppose an investigator is visiting a farm during a rainstorm. A gully has eroded through the field, so the investigator can actually see the rain washing sediment into the stream. If an investigator can see pollution occurring, he can conclude that the agricultural activity is causing pollution.

Result:

A plan can be required for this field.

**You Would See It** -- If the same investigator were visiting the same farm on a dry day, he would not see the pollution actually occurring. But, given the law of gravity, he can be certain that sediment will be washed from the gully into the stream during future rainstorms. He can be certain that this will cause pollution.

Result:

A plan can be required for this field.

**Logic Tells You** -- Suppose a complaint alleges that fertilizer is washing from a field into the adjacent stream. The farmer uses fertilizer and does not follow a nutrient management plan. The farmer's fertilizer application rate exceeds the amount required by the crop. The field, which slopes slightly toward the stream, is plowed to within five feet of the stream's edge. Between the field's edge and the stream is a stream

bank, which has only thin vegetation. Because of the amount of fertilizer applied, the slope of the field, the law of gravity, the thin vegetation on the bank, the investigator can be certain that fertilizer will wash from this field into the stream and thus will cause pollution.

Result:

A plan can be required for this field.

**You Can't Be Certain** -- Suppose that in relation to the same complaint, the farmer applies fertilizer, but he follows a nutrient management plan. The amount of fertilizer applied does not exceed the crop's needs and is applied when the crop will use it. In addition, the field is plowed to within 20 feet of the stream's edge, but the buffer and stream bank are thickly vegetated with grass. Because of the farmer's nutrient management practices, and the characteristics of the buffer and bank, the investigator cannot be sure that nutrients will wash from this field into the stream.

Result:

A plan cannot be required.

**Key Questions for Determining Whether Pollution is Occurring or Will Occur:**

*Is there any barrier to prevent the sediment, nutrients, or pesticides from reaching the water?

*Is the farmer using any practices designed to prevent the pollutant from reaching the water?

If no plan can be required under the ASA, is this the end of the investigator's relationship with this farmer? Not necessarily. The investigator is free to see if the farmer is receptive to some suggestions on how the farmer might improve his practices to prevent complaints in the future. This educational role of the investigator will be just as important as anything else the investigator does pursuant to the ASA. As a result, water quality can still be improved, and the farmer can enhance his protection against future complaints.

This underscores the importance of the investigator's maintaining a positive, non-judgmental attitude towards the farmer during the investigation. Even though the investigation may be somewhat upsetting for the farmer, it can be the beginning of a positive new relationship between the farmer and the District or VDACS.

**SECTION B. How Investigations are Conducted**

1. Decision to Investigate

The ASA is "complaint-driven." There can be no investigation of any farm activity unless the Commissioner receives a complaint. If the person making the complaint gives his name, the ASA requires that the Commissioner or the local District determine the validity of the complaint. The ASA gives the Commissioner the choice of whether or not to investigate a complaint that was made anonymously.

**No Complaint = no investigation**

Non-anonymous complaints = must investigate

Anonymous complaints = may investigate

2. Priority of Complaints

The Commissioner will give top priority to complaints -- non-anonymous or anonymous -- that may prove to be serious and immediate threats to human health, animal health, aquatic life or water quality. The ASA requires that non-anonymous complaints be investigated, and they will receive second priority. Anonymous complaints will receive the lowest priority and may not be investigated at all.

**Priority of Complaints:**

1. Complaints (non-anonymous or anonymous) that may involve serious threats;
2. Non-anonymous complaints;
3. Anonymous complaints.

3. Who Investigates

The decision as to who performs the investigation of a complaint really lies with the local District. Upon receiving a complaint, the Commissioner must notify the local District and give the District the option to investigate the complaint. Form 2 shows the standard manner of notification to a District and requests their assistance.

The District then has **five days** to tell the Commissioner whether or not the District will investigate the complaint. The District may base this decision on anything the District chooses, and the District does not have to tell the Commission the reason for its decision. Form 3 is designed to provide the Districts with sample language that they may use in responding to the Commissioner's requests that they investigate.

**District chooses whether or not to investigate**

Some Districts have chosen not to perform any investigations. Once a District has informed the Commissioner that it does not intend to perform investigations, the District does not have to respond to the Commissioner's notification that there is a complaint. As a courtesy, the Commissioner will always inform these Districts of complaints in their Districts so that these Districts will be aware of the situation.

If a farmer has a preference as to who performs the investigation, the farmer should let the Commissioner know, and the Commissioner will try to accommodate his request.

4. Time Limitations on Investigations

After receiving the complaint, the Commissioner or the District has **21 days** to investigate. If the District conducts the investigation, the District then needs to send their findings to the Commissioner so that he can

determine whether a plan is necessary. The Commissioner is responsible for reporting his decision to the farmer.

5. Notice to Farmer of Investigation

The farmer is entitled to notice that a complaint has been received regarding his operation that must be investigated. The notice may come from the Commissioner or from the District. In all cases in which the Commissioner will investigate, his staff in the Virginia Department of Agriculture and Consumer Services ("VDACS") will make the initial phone call to the farmer, following it with a written notice.

Some Districts may feel comfortable in performing investigations, but would prefer to have the initial notice of the investigation come from VDACS. VDACS will make the initial call to the farmer, if the District has adopted a written policy (e.g., a resolution or in meeting minutes) stating that the District wishes to have VDACS make the initial call. If a District has adopted such a policy, the District should send the Commissioner a copy of it. In the initial call, VDACS will explain that a complaint has been received, that an investigation is necessary, and that someone from the District will call to arrange a time to meet. After the District representative calls to arrange a time, the District should follow the phone call with a short letter or memorandum documenting the arrangements. (See Form 5.)

Some Districts may prefer to make all pre-investigation contacts with the farmer themselves. Unless VDACS receives a policy from a particular District to the contrary, VDACS will assume that the District will make all of the pre-investigation contacts. The phone call should be documented and followed by a written notice. (See Forms 4 & 5.)

**Notice to Farmer of Investigation:**

* Phone call
* Followed by letter or memo

Regardless of who makes the initial call, the person who sends the written notice of the investigation to the farmer should also send written information regarding the ASA. (VDACS provides this information to the Districts.) This gives the farmer an opportunity to get a better understanding of the ASA, its procedures, and what the farmer can expect regarding resolution of the complaint.

6. Notice of Findings from Investigation

The Commissioner will notify the farmer of his decision as to whether a plan is necessary. When a District performs an investigation, they need to provide their findings to the Commissioner so that he can make this decision. (See Form 9.) The Commissioner's notice to the farmer will either dismiss the complaint or inform the farmer that he needs to submit a plan to the Commissioner describing what will be done to correct the pollution problem. This plan is due **60 days** after the farmer receives the written notice informing him that a plan is necessary. (See Form 6.) Information regarding planning and implementation will be sent with this notification to assist the farmer.

In addition, the farmer must begin implementing his plan within **six months** of receiving notice that a plan is necessary. Then, the farmer must complete implementation of his plan within **18 months** of receiving the notice. The farmer can receive an extension in some cases, as described in section 8 below.

**After Notice that a Plan is Necessary:**

*Within in 60 days, develop plan;
*Then have plan reviewed and approved;
*Within 6 months, begin implementing;
*Within 18 months, finish implementing.

Upon approving the farmer's plan, the Commissioner will inform the farmer, the District and the complainant. (See Forms 7 and 8.)

7. Extensions of Deadlines

Sometimes a farmer may need more time to complete implementation of his plan because of circumstances beyond his control. The ASA provides that the Commissioner may grant an extension of up to **six months** (180 days) if a hardship exists and if the farmer has made a request for an extension at least **60 days** prior to the date he was supposed to have completed implementing his plan. The Commissioner will determine that a situation constitutes a hardship if it was caused by circumstances beyond the farmer's control, and if the farmer has been making a good faith effort to implement his plan. Hardship can include financial problems.

**Extensions:**

* Circumstances beyond farmer's control;
* Farmer has made good faith effort to implement plan;
* Request for extension made 60+ days before plan due to be completed.

8. Notification of Landowner, if Different from Operator

The Commissioner will determine on a case-by-case basis whether to notify the landowner when the complaint involves an agricultural activity on land that the farmer rents from someone else. If the investigation shows that no pollution problem exists, or if the problem is easily corrected by the operator's change in field management, the Commissioner may determine that notification of the landowner is unnecessary. If the problem involves an old feature (e.g., an old gully) that was created before the present operator began renting the land, or if correcting the problem requires construction, the Commissioner may determine that the landowner needs to be notified.

9. Right of Entry Explained

The ASA gives the Commissioner or the District the right to enter the farmer's land to determine whether or not the complaint is valid. This entry onto the farmer's private property must be handled in accordance with the farmer's rights. (See Section F for more information on the farmer's rights.)

a. Constitutional Right

The United States Constitution provides that the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches... shall not be violated..."

This is part of the Fourth Amendment (4th Amendment) to the U. S. Constitution, which protects the people against unreasonable searches of their property by the government. The investigation of the complaint is a "search" under the 4th Amendment. Therefore, the right of entry and investigation, like any other governmental entry and investigation, always remains subject to the 4th Amendment, as explained below.

b. Scope of the Right of Entry

The physical scope of the right of entry is determined by the scope of the complaint. If the complaint alleges water pollution created by erosion coming from a specific field on the farm, then the ASA investigator does not have the right to enter other fields. If the complaint is made more broadly to say that erosion is coming from the farm as a whole into X stream, then the investigator's right of entry covers all of the farm that drains into X stream. If the complaint is made even more broadly to say that erosion is coming from the farm as a whole without naming the water body, then the investigator's right of entry covers the whole farm.

**The investigation is no broader than the complaint.**

Under the 4th Amendment, the ASA's right of entry is subject to further limitations. With the farmer's consent, however, the ASA investigator can enter, examine or do other things:

| | Consent Necessary?** |
|---|---|
| Enter fields not covered by the complaint | Yes |
| Enter sheds, barns, houses, and other enclosed structures | Yes |
| Open glove compartments, trunks, tanks, and other containers | Yes |
| Bring a non-District or non-VDACS person along | Yes |
| View the farming operation from off-site | No |
| Enter streams adjacent to farm | No |

(**To be valid, consent must be given voluntarily by someone who has the intelligence and ability to understand the situation and the possible consequences. For example, the consent of the farmer's five year old child probably wouldn't work because the child wouldn't understand the consequences.)

c. When Right of Entry Begins

Under the ASA, there is no right to enter a specific farm until the Commissioner has received a complaint regarding that particular farm and the farmer has been given notice of the intended entry. The ASA does not require that this notice be in writing, so a phone call or statement to the farmer is sufficient. To prevent misunderstandings, however, VDACS and District investigators should keep records of such phone calls, at a minimum, and follow with a written notice to the farmer to confirm the investigator's oral statements. (See Forms 4 & 5.)

d. Role of the Investigator

The ASA investigator is not police officer, but a witness who has the right to enter land to conduct an investigation and collect information.

e. When Right of Entry is Denied

If the farmer denies the investigator entry onto the land or if the farmer later withdraws his consent regarding the investigator's entry, the investigator must leave the farmer's property immediately. The investigator should report this to the VDACS ASA staff as soon as possible. It may be possible for the Commissioner to obtain a court order allowing entry, and the farmer may be subject to a civil penalty under the ASA.

If a farmer threatens the investigator, then the investigator should leave immediately. The investigator should make no counter-threats nor do anything that could escalate the situation, but maintain a professional manner. The investigator should report the threat to the VDACS ASA staff immediately so that VDACS can take over the case.

f. Unclear Situations

If a District employee has a question regarding an unclear situation, he may call the VDACS ASA staff at 804/786-3539, who will try to find the answer.

In the long run, understanding and respecting the farmer's rights is important because violation of Constitutional rights tends to give the government agency and program a bad reputation, eroding public support. In the short run, violation of a person's rights can jeopardize the case. Evidence obtained in violation of the 4th Amendment is likely to be inadmissible in court.

10. Purpose and Scope of Initial Investigation

The purpose of the initial investigation is to answer a single question: Is there substantial evidence that the agricultural activity in question is causing or will cause water pollution from sedimentation, nutrients or toxins, as alleged in the complaint? When performing an investigation, information to answer this question can be recorded on Form 9.

**Answer the Question:**

**Yes or No**

Is there substantial evidence that the agricultural activity is causing or will cause water pollution?

Activities that are causing or will cause pollution that were *not* the subject of the complaint should be pointed out to the farmer as areas that the farmer needs to address, but with the understanding that these areas are not covered by the ASA complaint. The ASA's jurisdiction is "complaint-driven" and limited to the terms of the complaint. Thus, trying to enforce the ASA's requirements with respect to activities that were not mentioned in the complaint would be impossible.

Examples:

The complaint alleges that severe erosion in a farm field bordering a stream is causing pollution. The investigation confirms that this erosion is causing pollution of the stream through sedimentation. During the investigation, the investigator also notices that the farmer's manure-management practices in the nearby loafing lot are also causing pollution. The nutrients from the loafing lot are draining into the stream, but not through the eroded area that was the subject of the complaint.

Result:

The investigator should advise the farmer that the manure also appears to be causing pollution and that the farmer would be wise to correct the situation. An ASA plan can be required, however, only for the erosion problem specified in the complaint.

A similar complaint alleges that erosion in a field bordering a stream is causing pollution. The investigation confirms that this erosion is causing pollution of the stream through sedimentation. During the investigation, the investigator also notices that the farmer's manure-management practices in the nearby loafing lot are also causing pollution through nutrients. The nutrients are draining into the stream -- this time, through the eroded area that was the subject of the complaint.

Result:

An ASA plan that covers both the manure-management practices and the eroded area can be required, because the nutrients are being delivered to the stream through the eroded area, which was the subject of the complaint.

Sometimes, the question of whether or not a particular activity is covered by the complaint and, thus, should be included in the ASA plan will be difficult to answer. If a District employee or anyone else has a question regarding such a situation, he may call the VDACS ASA staff at 804/786-3539, who will assist in determining the answer.

11. Evidence

The ASA requires that there be "substantial evidence" that the agricultural activity is causing or will cause water pollution. This means that the evidence must be clear and must show cause and effect: that the agricultural activity caused or will cause pollution. In addition, there must be some evidence to support *each step* in the logical conclusion that activity X caused pollution Y.

a. "Real" Evidence

"Real" evidence is physical evidence (as opposed to testimony). Water samples, maps and photographs are examples of real evidence. Developing a standard procedure within the office as to the labeling and storage of physical evidence should be done. Keeping physical evidence in locked closets or cabinets is necessary. This will assist VDACS if any enforcement action becomes necessary.

With maps, it will help to know who made the map (e.g., USGS or FSA), whether there have been any changes on the farm since the map was made, and if the map is labeled.

With all physical evidence, investigators need to maintain an unbroken chain of custody (possession). The purpose of the chain of custody is to be able to account for the whereabouts of the evidence at any time between the taking of the evidence and the evidence's arrival at VDACS in connection with an enforcement action. The investigator does not have to prove that no one ever tampered with the sample -- only that the handling of the sample adhered to a system of identification (e.g., labeling) and custody.

b. Transporting Evidence

To maintain the chain of custody, evidence needs be transported by the investigator, by someone the investigator knows and trusts (and who would be willing to testify, if necessary), or by any standard means that will provide a receipt (e.g., registered mail, return receipt requested; a private courier service; or a private mail service). For samples to be tested, laboratories are generally aware of chain-of-custody questions and have procedures to prevent chain-of-custody problems. Thus, ASA investigators need to be concerned about custody issues only before the evidence reaches VDACS.

c. Written Evidence

Official publications, such as the Field Office Technical Guide ("FOTG"), are often easily admitted into

evidence in court. The rules regarding other types of writings (e.g., the plans) are too complex to go into detail, except to say that original documents are preferred over duplicates (e.g., photocopies). Duplicates are usually admissible, but only if they are exact copies of the original and if the original is unavailable.

d. Oral Testimony

ASA investigators may have to appear as witnesses at hearings pursuant to the ASA. A witness' testimony is just as good evidence as any other kind. It will help the investigator if the investigator keeps notes regarding an investigation.

e. Approved Laboratory

For scientific analysis of any water samples or other evidence, the investigator should send the sample or other evidence to the state's laboratory, the Division of Consolidated Laboratory Services ("DCLS"). Private laboratories are available, but should not be used in the ASA program for cost reasons. DCLS' services are in great demand among state agencies, and DCLS will often be unable to meet the ASA deadlines (e.g., 21 days for investigation), unless they are notified that the sample is being used in connection with investigation of a pollution complaint. A form (Form 11) stating that the sample is for investigation of a pollution complaint must be attached to the sample when it arrives at DCLS.

12. Sample Collection Techniques

To maintain uniformity in the state's system of collecting water samples, VDACS will use the procedures developed by the Virginia Water Control Board (VWCB), as set forth in the applicable sections of VWCB's "Water Quality Assessment Operating Procedures Manual." VDACS will send a copies of this Manual to each of the Districts that performs investigations.

Due to the complexity and cost of water sampling and analysis, water samples should be taken only when they are absolutely necessary to prove a case. When an investigator can see that pollutants are entering or will enter the water body in question, he will not need to take samples because the case can be proven through photographs, maps, eye-witness testimony, and the law of gravity. The experience of other states that have programs similar to the ASA suggests that sampling is only necessary in a few cases. If sampling is necessary, VDACS' staff will be available to assist Districts until resources are available to supply sampling equipment and training to the Districts. VDACS will also pay for the sample and analysis, if the District notifies VDACS that a water sample may be needed and VDACS agrees.

**SECTION C. Confidentiality of Information**

While an investigation is under way, disclosing information regarding the investigation can, in many cases, compromise or ruin any enforcement actions that may need to be taken later. The farmer may be understandably anxious to review whatever notes and records the investigator has made before the investigation is concluded, but the farmer should not be allowed to do so until the investigation is concluded. If at the conclusion of the investigation the farmer wants to know whether or not he will need to develop a plan, the investigator may give the farmer his opinion, but should also tell the farmer that this is subject to the Commissioner's ultimate decision. At the conclusion of the investigation, the farmer also has the right to review the investigator's materials.

Neither is it appropriate to disclose information about an on-going investigation to anyone who does not work for the District or VDACS. The farmer's interest in keeping matters regarding an investigation of his practices confidential should be respected. In addition, allowing outside parties (e.g., the press) to, in effect, participate in the investigation by disclosing information about it is likely to compromise the case, in one way or another. Thus, it is essential that all information regarding on-going investigations be kept confidential.

This confidentiality extends to all aspects of the case, including disclosure of the name of the farmer or the name or location of the farm. For example, if someone (other than the complainant) asks whether Mr. Jones' farming operation is being investigated, the investigator (or anyone else from the District, whether employee or director) should simply respond that the District is unable to say either "yes" or "no" because the District has a strict policy that prohibits discussion of anything related to such matters.

**Only the farmer has the right to receive information from the District regarding his case.**

The same principles apply to disclosing information regarding the complainant. Until the investigation is over, neither VDACS nor the District should disclose any information regarding the complainant.

**Information regarding the complainant is confidential, too.**

The District board of directors should go into executive session to discuss any on-going investigations and, if any have been filed, appeals or other litigated matters. In addition, the board's minutes that will made available to the public should not disclose information regarding on-going investigations, appeals or other litigated matters. (The Department of Conservation and Recreation has supplied Districts with information on how to go into and out of executive session and related matters.)

A District may receive a request under the Virginia Freedom of Information Act [Chapter 21 (Section 2.1-340 *et seq.*) of Title 2.1 of the Code of Virginia]("FOIA") to disclose records regarding an on-going investigation. Each request for records must be made in writing; if a District receives an oral request for records, the District must then advise the person making the request that the request must be made in writing. The District should not respond to any oral requests,

only written requests. If the District does receive a written request for records, FOIA gives the District five work days to respond to the request. (This five-day deadline may be extended under limited circumstances.) If the District receives a written request for records regarding an on-going investigation, the District's response must:

(i) deny disclosure of all records or portions of records that contain information regarding the on-going investigation; (ii) state that records related to on-going investigations are not subject to disclosure; and (iii) cite as authority for denying the records Sections 2.1-342 (A) and 10.1-559.9 of the Code of Virginia.

Once an investigation has been concluded, the records regarding it may legally be disclosed, in many instances. To minimize the possibility of FOIA requests made to Districts, the Districts should turn over all of their written material (including notes) and evidence to VDACS. Failure to abide by the requirements of FOIA can subject a District director or employee to personal liability. To minimize their exposure to liability, Districts should not keep copies of matters related to the investigation. VDACS will supply copies to the District later if the District wants them.

**To minimize potential FOIA problems, Districts should send all records and evidence related to an investigation to VDACS.**

The District may decide that it is better policy not to disclose the names of farmers involved in ASA matters or locational informational regarding their farms, even after the investigations have been concluded. If a District has a question regarding its legal obligations in connection with disclosure of records, the District should pose these to their lawyer or to the local Commonwealth's Attorney who represents the District.

While making records, investigators should remember that the records will be shared with the farmer, in many cases, and, occasionally, the public. These records may even be published in the newspaper or on radio or television. Thus, the investigator should record only *accurate, factual* information, such as what was seen and even what was said -- *never* the investigator's opinion of the farmer (or anyone else) as a person. Untrue statements or statements of opinion regarding a person's character, health or looks may constitute slander and, if published, libel.

**SECTION D. Subsequent Investigations to Check Implementation**

After the initial investigation has been completed, no further investigation is necessary if the Commissioner has determined that no plan is necessary. Subsequent investigations are necessary only when an ASA plan is required. The purpose of the subsequent investigations is to determine whether the farmer is implementing his ASA plan in accordance with his implementation schedule.

Subsequent investigations have enforcement implications, which are the Commissioner's responsibility; so, Districts should not undertake subsequent investigations without VDACS' express agreement. (This need for agreement from the Commissioner does not apply to a District's "spot-check" investigation to determine compliance with a cost-share agreement, even for a practice installed to meet ASA requirements.) Conversely, some Districts will not want to undertake any subsequent investigations, and that desire will be respected.

**SECTION E: Appeals and Other Hearings**

The ASA gives "persons aggrieved" the right to appeal any decision of the Commissioner to the Virginia Soil and Water Conservation Board ("Board"). "Persons aggrieved" means the farmer and may also include anyone else who has a "substantial, immediate pecuniary interest" (e.g., economic harm).

**Decisions of the Commissioner:**

*The a complaint does or does not come under the ASA's jurisdiction;
*That an investigation of a complaint is or is not necessary;
*That a plan is or is not necessary;
*That the plan is or is not approved;
*That the farmer is or is not entitled to an extension;
*That the farmer is or is not implementing his plan according to schedule;
*That the farmer has or has not completed implementation according to schedule;
*That a civil penalty can be assessed;
*That a corrective order should or should not be issued;
*That an emergency situation exists requiring special action.

The farmer or other appellant also has the right to request a discussion with the Commissioner before he makes any of these decisions (except the decisions regarding jurisdiction and whether the complaint should be investigated, which will be made before the farmer is aware of the complaint).

If he or she is dissatisfied with the Board's decision in an appeal, a party to the proceeding may then appeal to circuit court. Appeals may be made, in some instances, from circuit court decisions to higher courts.

**Appeals:**

*First, to the Soil and Water Conservation Board;
*Next, to circuit court;
*Then, to appellate court(s).

The ASA provides that the farmer or other appellant may have a "hearing" before the Commissioner in connection with the issuance of any order pursuant to the ASA. (See e.g., Section 10.1-559.4 (B) of the ASA, which gives the farmer or other appellant the right to a hearing prior to the issuance of a corrective order.) During these hearings, the propriety of the issuance of the order will be determined. These hearings may be more formal than a simple discussion with the Commissioner, if the farmer desires a more formal proceeding.

During hearings and appeals, District investigators and VDACS staff may be called as witnesses. District investigators and VDACS staff have no obligation in these proceedings to make any determinations, but only to provide evidence. Staff from the Department of Conservation and Recreation ("DCR") provides staff services to the Board.

Appeals conducted by the Board under the ASA would be conducted in accordance with Article 3 of Virginia's Administrative Process Act.[2] Appeals to circuit court and thereafter to appellate courts would follow the courts' own procedural rules.

**SECTION F: Farmer's Rights**

The farmer always has all of the rights given to him by the U.S. and Virginia Constitutions, and the ASA cannot take those rights away. Of his Constitutional rights, the farmer's right to be protected from unreasonable searches and seizures and the farmer's right to due process would be the greatest concerns in relation to the ASA. The farmer also has the right to consult with his own attorney, if he wishes, in connection with any aspect of, or proceeding under the ASA.

**Farmer's Rights:**

*Constitutional rights, especially
-Protection against unreasonable searches,
-Due process,
*Notices of investigation, plan approval or disapproval and orders;
*Right to discussions with Commissioner before decisions;
*Right to hearings regarding orders;
*Right to appeal decisions of the Commissioner;
*Right to appeal decision of Soil and Water Conservation Board;
*Right to seek appeal of circuit court decision.

A list that shows the farmer's rights at each stage of the initial investigation is attached.

**SECTION G: Sources of Assistance for Farmers**

There are several sources of assistance available to farmers to address pollution problems and to develop stewardship measures and plans. Areas of assistance and possible sources are listed below:

1. Technical Assistance

Planning and, if necessary, engineering assistance is often available through:

- Local Soil and Water Conservation District
- Department of Conservation and Recreation
- Natural Resources Conservation Service
- Virginia Cooperative Extension
- Virginia Department of Agriculture and Consumer Services
- Private businesses
- Consultants
- Agribusiness organizations

2. Cost-Sharing

Cost-Share assistance that may be available to implement plans is offered by:

- Local Soil and Water Conservation Districts
- Farm Service Agency (USDA)

3. Financial Planning

Financial planning is always a consideration when making decisions that affect a farming operation. There are several organizations that can be of assistance to the farmer in his financial planning:

- Virginia Cooperative Extension (e.g., Farm Management Agents)
- Private financial institutions (e.g., commercial banks, agricultural financing organizations)
- Small business development centers (statewide, state-funded network of centers, usually at state colleges and universities)

4. Physical Planning for Compliance with ASA

The ASA requires that the plan be returned to the Commissioner's Office and the District within 60 days after receiving notice that a plan is necessary. The local District must then review the plan and if the plan meets requirements, then Commissioner must approve the plan within 30 days and send notice of approval to the farmer. The farmer must begin implementing the plan within six months and complete plan implementation within 18 months after the plan approval date.

A. Public Sources of assistance in planning

- Local Soil and Water Conservation District
- Department of Conservation and Recreation
- Natural Resource Conservation Service
- Virginia Cooperative Extension
- Virginia Department of Agriculture and Consumer Services

B. Private Sources

- Private businesses (e.g., engineering and consulting firms)
- Agribusiness organizations

C. Required Contents of Plans

The following are the minimum requirements of plan under the ASA:

The plan must include:

- Stewardship measures needed to prevent the pollution, and
- Implementation schedule.

[2] See Article 3 (§ 9-6.14:11 et seq.) of Chapter 1.1.1 of Title 9 of the Code of Virginia.

The plan should also include:

- Tract map,
- Affected water feature designated,
- Soils map,
- Statement of pollution problem, and
- Signature page for
  - Farmer,
  - Local District, and
  - Commissioner.

These plans may be submitted in the simplest form (e.g., in handwriting with photocopies of maps). More sophisticated forms of plans, such as plans developed using the various conservation computer programs, are acceptable, too. Planners simply need to remember that the ASA sets a 60-day deadline for developing the plan, so planners may want to develop simple plans to prevent or eliminate the pollution to meet the 60-day deadline. If necessary, simple plans can be converted into more sophisticated formats later, after this deadline has been met. Planners should be also sensitive to the fact that the farmer then has a second deadline to meet: the farmer must begin implementing the plan within six months of receiving the official notice that the plan has been approved.

Amendments to existing conservation plans are acceptable, too, as long as the amendments prevent or eliminate the pollution.

Form 10 provides an example format of the "bare necessities" of an ASA plan.

To make the planning process most effective, farmers should be given options for solving their pollution problem whenever possible. In terms of appropriate options, the ASA defines stewardship measures as "the best available nonpoint source control methods, technologies, processes, siting criteria, operating methods or other alternatives." There are often a variety of best management practices that can be employed to solve a single pollution problem. Thus, the planner will often have a wide variety of types of options -- from structural practices to changing sites for an activity to changes in operating methods -- that can be offered to the farmer as solutions to the pollution problem. These options need not be the most expensive or employ the most sophisticated technology; they only need to prevent the pollution in question to be the "best".

5. Support & preventative measures -- Roles of agricultural and commodity organizations

The agricultural and commodity organizations can be leaders in supporting their producers and in educating them on Best Management Practices to avoid conflicts and potential pollution problems. As Virginia continues to urbanize, it will become more important for producers to become more aware of environmental concerns and address these issues before problems arise. Some groups have already begun taking action on educating their producers, as described below:

- National Pork Producers Council and the Virginia Pork Industry Association - Environmental Assurance Program
- Virginia Poultry Federation - nutrient management planning commitment
- Virginia Farm Bureau Federation -- Natural and Environmental Resources Regional Workshops

In addition, Virginia Cooperative Extension has developed an on-farm self-assessment program that can help producers identify potential sources of water pollution. This program, which will be available to farmers throughout the state during the coming year is called:

- Farm*A*Syst

Local Extension agents can help farmers learn more about Farm*A*Syst. Using Farm*A*Syst can be an important step that farmers can take to prevent certain ground water pollution problems.

**SECTION H. Violations and Penalties**

Under the ASA, no violation occurs until the Commissioner issues a corrective order and the farmer fails to comply with it or if the farmer denies an investigator the right of entry. The Commissioner must issue a corrective order if the farmer is found to need a plan and fails to submit it or if the farmer fails to implement his plan according to his schedule.

**Violations:**

*Farmer denies or revokes investigator's right of entry;
*Farmer fails to comply with a corrective order
-To submit plan, or
-To implement plan.

This means that if a farmer allows the investigator to enter the land and complete the investigation and then develops a plan and implements it according to schedule, the farmer is not in violation of the ASA -- despite the fact that the farmer's operation was causing or would have caused pollution. If the farmer complies with the process establishes by the ASA, he is a "good steward" despite the previous problems because he corrected them.

If a farmer fails to comply, he may be subject to civil penalties and orders issued by either the Commissioner or a court. The ASA does not create any crime -- only civil violations.

**Penalties:**

*Civil penalty of up to $5,000 per violation, per day of violation;
*Orders from Commissioner or court.

ASA creates no crime.

**SECTION I. Intergovernmental Cooperation**

The ASA requires that agricultural activities that are causing or will cause water pollution be corrected. It is very important that all agencies work together in a cooperative effort using a common-sense approach to assist farmers in effectively correcting these problems. Listed below are agencies and their roles in relation to the ASA.

1. The Department of Environmental Quality and the Virginia Water Control Board ("DEQ" and "VWCB")

Virginia's State Water Control Law gives the VWCB broad jurisdiction over almost all types of water pollution, whether point source or nonpoint source, whether agricultural or non-agricultural in origin, and involving any type of pollutant. (See Section 62.1-44.5 of the Code of Virginia.) The ASA gives the Commissioner jurisdiction over a smaller portion of this same area of concern: water pollution caused by three types of pollutants coming from agricultural activities not currently subject to a permit issued by VWCB through DEQ. The Commissioner's and the VWCB's jurisdiction overlap, but the Commissioner's jurisdiction is a subset of the VWCB's. (This concept is illustrated by the figure in Appendix C.)

**DEQ and Commissioner share jurisdiction over agricultural nonpoint source pollution**

The VWCB has asserted its jurisdiction over certain types of agricultural operations by requiring them to obtain permits. For those agricultural activities that are subject to a permit issued by the VWCB (through DEQ), the ASA is not applicable. The ASA expressly provides that those operations are exempt from the ASA. When a complaint arises regarding an operation that is subject to a VWCB permit (most often a VPA or VPDES permit), the complaint must be dismissed, and the farmer should be informed that he should check to make certain that the farmer is in compliance with his VWCB permit. The farmer should be given the address and phone number of his regional DEQ office so that DEQ can answer any questions that the farmer may have.

In addition to sharing joint jurisdiction over a set of water pollution concerns, DEQ participates in the ad hoc committee that is assisting the Commissioner in the development of these guidelines ("ad hoc committee"). DEQ is also providing VDACS staff with training in investigating, water sampling and collecting evidence. If any District officers or employees are interested in discussing investigation techniques with DEQ staff, District officers and employees may contact their regional DEQ office.

2. The Department of Conservation and Recreation ("DCR").

DCR is Virginia's primary natural resource conservation agency and provides farmers with technical assistance in developing nutrient management plans. In this program, DCR maintains a staff of specialists in field offices throughout the state to provide nutrient management planning (NMP) assistance. Closely connected with the NMP technical assistance program is DCR's certification program for nutrient management planners from both private and public organizations.

In addition to its programs related to NMP, DCR provides the Districts with coordination services at the state level. DCR is the major conduit of funds for Districts. An integral part of this program is the state cost-share program that DCR administers and the Districts implement.

DCR collects land-use and related data from across the state to identify small watersheds where the potential for nonpoint source pollution is high. DCR also provides various predictive modeling services that help estimate the progress made in reducing nonpoint source pollution.

Of particular interest to the ASA program is DCR's close relationship with the Virginia Soil and Water Conservation Board ("Board"). DCR provides the staff services to the Board that will help the Board meet its ASA obligations.

In relation to the ASA, DCR is likely to continue providing its NMP assistance to farmers with corresponding ASA planning needs, as well as cost-share assistance (when appropriate). Finally, DCR has participated in the creation of the ASA and in the ad hoc committee.

3. Natural Resources Conservation Service ("NRCS")

The United States Department of Agriculture, NRCS (formerly known as the Soil Conservation Service) was formed in response to the "Dust Bowl" that devastated agricultural production in the 1930s and contributed to the Depression. Over the years, the NRCS has developed numerous conservation techniques and practices to conserve, improve and sustain natural resources on private lands. The NRCS pioneered the planning approach to conservation management.

Today, in addition to setting the standards for a wide variety of conservation practices, the NRCS provides technical assistance to landowners and managers in many localities throughout the state. These technical assistants often work closely with the local Districts. The NRCS also assists other federal agencies in administering the federal cost-share program for agricultural conservation practices.

In relation to the ASA, the NRCS will continue to provide its technical and cost-share assistance (when and where appropriate) to farmers faced with ASA needs. Finally, NRCS participates in the ad hoc committee.

4. Virginia Cooperative Extension ("Extension")

Extension has played an important role over the years by providing landowners and managers with education

regarding a wide variety of concerns. These educational services range from production matters to farm financial planning to natural resource technical and planning assistance.

In relation to the ASA, Extension will continue to provide technical and planning assistance to farmers to prevent complaints under the ASA and to assist in the preparation of ASA plans, at least in those areas where Extension has resources to provide such assistance. Extension's Farm Management Agents, who provide financial planning assistance, may be called upon to provide financial planning assistance in relation to the development of an ASA plan. In response to farmers' questions, Extension is also likely to provide some education to farmers regarding the ASA itself. Extension has a representative on the ad hoc committee.

5. Soil and Water Conservation Districts ("Districts")

As described in other sections of these guidelines, the Districts may play a role in investigating complaints, if they choose to do so. The decision of whether or not to perform investigations lies with each District individually. Pursuant to the ASA, all Districts will play a role in the ASA by reviewing ASA plans before they are sent to the Commissioner.

As actual political subdivisions of the Commonwealth, the Districts are the local sources of technical and planning assistance for agricultural conservation practices, in many instances. Like the NRCS, the District system was developed in response to the Dust Bowl of the 1930s. Over the decades, the work of Districts, together with other conservation agencies, has helped produce an advanced agricultural system.

The Districts are the local administrators of the cost-share program. Beyond the investigative and review roles that the ASA speaks to directly, the Districts are likely to provide continued planning and technical assistance to farmers with ASA needs. Where and when appropriate, the Districts are likely to provide cost-share assistance, too. Finally, the Districts have played a vital role on the ad hoc committee.

6. Chesapeake Bay Local Assistance Department ("CBLAD")

The Chesapeake Bay Preservation Act ("Bay Act") was enacted in 1988, and CBLAD was established shortly thereafter to administer the Bay Act's programs.

Section 10.1-559.10 of the ASA makes it clear that any local government may adopt an ordinance establishing a process for filing complaints, investigating them, and creating agricultural stewardship plans where necessary to correct pollution problems, provided that such ordinances meet certain conditions set forth in this section. Subsection B also states that adoption of such ordinances shall not interfere, conflict with, supplant, or otherwise affect *any* other ordinance previously adopted (prior to July 1, 1996). This includes ordinances adopted pursuant to the Bay Act. If any localities adopt ASA ordinances, these ASA ordinances are intended to supplement and work alongside those other ordinances.

Likewise, § 10.1-559.11 seeks to address potential conflicts with the Bay Act regulations. This section states that nothing in the ASA shall be interpreted to duplicate the agricultural requirements in the regulations adopted pursuant to the Bay Act. In fact, the ASA is intended to supplement and work alongside the Bay Act and its regulations. ASA investigators and planners should note that, while the ASA guidelines seek to provide consistent implementation process across local jurisdictional boundaries, local enforcement of violations of Bay Act ordinances may vary somewhat from one locality to another.

Under the Bay Act regulations and local Bay Act ordinances, agricultural landowners are required to (i) establish (where one does not exist) and maintain a 100-foot-wide vegetated buffer separating the land upon which agricultural activities are being conducted and adjacent environmentally sensitive features, and (ii) obtain a soil and water quality conservation plan (SWQCP) addressing erosion, nutrients and pesticides. This plan must be approved by the local District Board. A SWQCP, or parts thereof, is only required to be implemented if a reduction in the width of the 100-foot-buffer is sought.

If an ASA investigator is informed by the farmer that the farmer has a Bay Act SWQCP, the investigator should review the plan to see what best management practices (BMPs) have been recommended for water quality protection and what is actually being implemented by the farmer.

In some cases, the ASA investigator may find that the BMP recommended in the SWQCP already addresses the water quality problem complained of, but was not required to be implemented under the Bay Act. Rather than duplicating efforts, the ASA investigator may simply refer to the information in the SWQCP and recommend that the farmer implement any or all relevant parts of the plan that address the identified ASA water quality problem.

Local governments in Tidewater Virginia may consider the ASA as a way by which the ASA's enforcement mechanisms may be used to further the goals of the Bay Act.

If an ASA complaint involves a Bay Act vegetated buffer (e.g., a channel has formed in the field and continues through the buffer emptying directly into the stream), the stewardship measures included in the ASA plan must not conflict with either the allowable buffer reductions under the Bay Act regulations or with the buffer performance criteria established via the Bay Act. If the ASA investigator or planner has questions regarding the reduction rules or the performance criteria, the investigator or planner should contact the

local CBLAD-funded Agricultural Water Quality Specialist for assistance. The local District should be able to provide the name and telephone number of the Agricultural Water Quality Specialist.

7. Soil & Water Conservation Board ("Board")

As discussed in the previous section of these guidelines entitled "Appeals and Other Hearings," the Board provides the initial forum in which appeals from any of the Commissioner's decision may be heard. This serves to protect important Constitutional rights of farmers and others in obtaining due process. The ASA also empowers the Board to assess, after affording due process, civil penalties against any farmer who has not complied with an order issued pursuant to the ASA.

DCR provides staff services to the Board, and DCR staff has participated in the Ad Hoc committee. In addition, the Commissioner is a member of the Board and has participated in the ad hoc committee.

8. Virginia Department of Agriculture and Consumer Services ("VDACS")

VDACS provides staff assistance to the Commissioner, who is in a sense the "point person" for the ASA. Beyond providing assistance to the Commissioner in investigations and enforcement, VDACS' staff will assist in communicating the results of the investigations with complainants.

VDACS also serves as the primary coordinating agency for administering the ASA. In addition to helping draft these guidelines, VDACS runs the ad hoc committee meetings and will undertake reporting and assessment processes annually as the ASA is implemented. The purposes of the annual reporting and assessment process will be to identify trends and needs and to seek means of addressing any problems that develop in the system of administering the ASA.

In some cases, VDACS may provide technical and planning assistance to farmers in the wake of a complaint. VDACS' other main role will be to coordinate the administration of the ASA with the Districts and other partners. VDACS' main goal in administering the ASA is to institute a "farmer-friendly" set of mechanisms by which farmers can address water pollution problems on a case-by-case basis, without the necessity of further overall regulation.

## STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 19, 1997

IN RE PETITION OF

AMERICAN GENERAL FINANCE OF AMERICA, INC.

CASE NO. BFI970075

For modification of 10 VAC 5-60-40, 10 VAC 5-60-50 and 10 VAC 5-70-10 et seq.

ORDER DIRECTING NOTICE

ON A FORMER DAY American General Finance of America, Inc. ("AGFA") filed with the Clerk a Petition commencing this case. In its Petition, AGFA seeks modifications of the Commission's rules governing the sale of non-credit-related life insurance in consumer finance offices, 10 VAC 5-70-10 et seq., and of the Commission's rules relating to the conduct of open-end lending and mortgage lending businesses in consumer finance offices, 10 VAC 5-60-40 F and 10 VAC 5-60-50 G. The modifications sought would, among other things, permit (1) the in-office solicitation of a prospective borrower's purchase of non-credit-related life insurance before consummation of loan transactions governed by the Consumer Finance Act ("the Act") § 6.1-244 et seq. of the Code of Virginia, (2) the financing of premiums for such insurance, and (3) the solicitation, sale and financing of such insurance in connection with open-end lending and mortgage lending business conducted in consumer finance offices. The modifications sought also would prohibit the sale of non-credit-related life insurance to persons seeking loans in principal amount, exclusive of premiums for such insurance, less than $1,000. The Petition and proposed modified regulation can be examined at, or obtained from, the Clerk, State Corporation Commission, Document Control Center, Tyler Building, 1300 East Main Street, P.O. Box 2118, Richmond, Virginia 23216, telephone (804) 371-9033.

It appears to the Commission that consumer finance licensees and others should be afforded notice of the proposed modifications of the regulations, and an opportunity to be heard in this matter. Accordingly,

IT IS ORDERED THAT:

(1) This matter is assigned Case No. BFI970075, and associated papers shall be filed therein.

(2) The proposed modified regulation is attached hereto.

(3) On or before February 19, 1998, any interested person desiring to participate in this case shall file with the Clerk written comments in support of, or in opposition to, the proposed modifications of the Commission's regulations. Such filings shall contain a reference to Case No. BFI970075, and shall contain a request for a hearing before the Commission, if such a hearing is desired.

(4) The Bureau may file an Answer herein on or before March 6, 1998, and shall mail a copy of said Answer to all persons who filed written comments under Paragraph 3 of this order.

(5) This order, and the proposed modified regulation, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

(6) The Bureau of Financial Institutions shall mail notice of this proceeding, together with a copy of the proposed modified regulation, to all licensees under the Act and cause like notice to be given to all premium finance company licensees.

AN ATTESTED COPY of this Order shall be sent to the Commissioner of Financial Institutions.

CONTACT: A copy of the proposed regulation can be obtained from Jonathan Orne, Office of General Counsel, State Corporation Commission, 1300 E. Main Street, 10th Floor, Richmond, VA 23219, telephone (804) 371-9671.

VA.R. Doc. No. R98-166; Filed December 23, 1997, 11:43 a.m.

* * * * * * * * *

AT RICHMOND, DECEMBER 17, 1997

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC970166

Ex Parte: in re: Consideration of changes in universal service support for low-income customers as required by federal regulations

ORDER AMENDING VIRGINIA UNIVERSAL SERVICE PLAN

The Telecommunications Act of 1996, 47 U.S.C. § 251 et seq. (the "Act")1 has required the Commission to take various actions with regard to the provision of universal telecommunications service.2 These actions include designating telecommunications carriers eligible to receive universal service support, which the Commission has undertaken in Case No. PUC970135, and implementing discounts for telecommunications services for eligible schools and libraries throughout the Commonwealth, which was done in Case No. PUC970063.3

In this docket, the Commission is considering changes to the Virginia Universal Service Plan ("VUSP"), under which eligible lower-income Virginians may obtain certain telephone services at reduced charges, that might be necessary to conform the VUSP to federal requirements.

On November 7, 1997, the Commission entered an Order for Comments, directing interested parties to file comments on or before December 1, 1997.4 Timely comments were filed by a number of parties, addressing the questions raised by the Commission in the Order.

Currently, all incumbent local exchange carriers ("ILECs") in Virginia participate in the VUSP. This plan includes the two federal Lifeline Assistance programs, as well as the federal Link-Up program. One Lifeline program provides for a qualifying subscriber's telephone bill to be reduced by $3.50 per month. That customer's ILEC receives half of this amount from the federal Lifeline Assistance fund, and the other half is funded by intrastate sources. The other Lifeline program provides for greater customer savings by allowing a federal waiver of the entire Subscriber Line Charge ("SLC") ($3.50 per month) insofar as the waived amount is matched by intrastate supplied funds. Under this plan, the customer's bill may be reduced by at least twice the amount of the SLC.

New federal regulations have changed the current levels of federal support for Lifeline assistance programs, such that program participants may realize greater reductions in the rates for certain telephone services without additional costs being imposed on the local exchange carriers. The Commission has concluded that it is in the public interest for eligible local exchange carriers operating in Virginia to participate in these programs and take advantage of available federal funds to make local telephone service even more affordable for qualifying low-income customers.

To accomplish this goal, the Commission will order and direct each participating telephone company to maintain at least its current level of state support for these programs. That is, companies currently participating in the first Lifeline program are directed to continue to provide at least $1.75 per month in matching state funds, which will result in overall bill reductions for participants of $7.88 per month.5 Companies currently participating in the second Lifeline program are directed to provide at least $3.50 per month in matching state funds, which will result in overall bill reductions for participants of $10.50 per month.6 Companies may modify their participation in the VUSP so as to maintain at least a nominal monthly rate for service.7

The Commission finds further that all companies participating in the VUSP shall adopt the customer eligibility

1 The associated federal regulations, 47 C.F.R. § 54.400 - .417, further delineate the Commission's responsibilities. Section .405 of those regulations requires all eligible telecommunications carriers to make Lifeline service available to all qualifying low-income customers.

2 On September 29, 1997, the Federal Communications Commission ("FCC") released Public Notice DA-1892 in which it announced procedures for State commissions to notify the FCC and the Universal Service Administrative Company ("USAC") on certain universal service matters by December 31, 1997.

3 Final Order, Case No. PUC970063, June 30, 1997.

4 Later amended to December 12, 1997.

5 Currently, these companies provide $1.75 of intrastate funds, matched by federal sources, for a $3.50 base rate reduction. Under the new regulations, an additional $1.75 will now be supplied from federal sources, for a base reduction of $5.25 ($3.50 + $1.75). Federal sources will also match one-half of state supplied funds. One-half of $1.75 is $0.88. Summing all these funds ($5.25 + $1.75 + 0.88 = $7.88) yields the rate reduction.

6 For these companies, the base reduction of $5.25, with $3.50 of state supplied funds, matched by $1.75 of additional federal funds ($5.25 + $3.50 + $1.75 = $10.50) yields the rate reduction.

7 No carrier will be required to provide service below $1 per month, except those currently providing service at rates lower than $1. No carriers will be required to reduce any rate that is currently below $1 per month.

requirements established in Case No. PUC960036.8 Under the terms of this Order, therefore, all participating companies will provide state Lifeline service support under 47 C.F.R. § 54.409(a).

The further reductions for VUSP rates established by this Order shall be effective not later than March 3, 1998. Any carrier that is unable to comply with this implementation requirement should file a request for an extension of time showing good cause for such extension.

The Commission also finds that all incumbent local exchange companies currently participating in the Virginia Universal Service Plan must amend their tariffs to comply with applicable federal regulations.9 In particular, the Commission wants to ensure that all carriers comply with 47 C.F.R. § 54.401(b) and (c), which prohibit carriers from disconnecting Lifeline service for non-payment of toll charges, and from collecting customer service deposits in order to initiate Lifeline service to any customer who voluntarily elects toll blocking service. In addition, some companies may need to revise their VUSP tariffs to reflect the provision of toll blocking at no charge. Also, tariffs shall comply with requirements on Link-up assistance for subsequent installations set out in 47 C.F.R. § 54.411(c).

The Commission will require eligible carriers to comply with these and all other applicable federal requirements effective January 1, 1998, but in view of the short time frame available to make all such tariff changes, companies may have until March 3, 1998, to effect the necessary tariff and rate revisions.

Accordingly, IT IS ORDERED THAT:

(1) Each eligible telephone company shall implement rate changes to the Virginia Universal Service Plan, consistent with the requirements set out herein, not later than March 3, 1998.

(2) Each eligible telephone carrier shall comply with federal Lifeline service regulations regarding customer deposits, termination for non-payment of toll service, provision of toll blocking at no charge, Link Up assistance, and other relevant provisions effective January 1, 1998.

(3) Each eligible telephone company shall file all necessary tariff revisions with the Commission's Division of Communications on or before February 1, 1998, to be effective not later than March 3, 1998.

(4) This matter is continued for further orders of the Commission.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: All Certificated Local Exchange Telephone Companies as set out in Appendix A; all Certificated Interexchange Carriers as set out in Appendix B; Thomas B. Nicholson, Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Jean Ann Fox, Vice President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Dennis R. Bates, Esquire, Senior Assistant County Attorney, Fairfax County, 12000 Government Center Parkway, Suite 549, Fairfax, Virginia 22035-0064; Ralph L. Frye, Executive Director, Virginia Telecommunications Industry Association, 11 South 12th Street, Suite 310, Richmond, Virginia 23219; and the Commission's Divisions of Communications and Economics and Finance.

VA.R. Doc. No. R98-156; Filed December 19, 1997, 9:30 a.m.

8 Commonwealth of Virginia, At the relation of the State Corporation Commission Ex Parte, in re: In the matter of investigating telephone regulatory methods pursuant to Virginia Code § 56-235.5, etc., Final Order, October 18, 1994. Eligibility criteria established in this case include Medicaid and food stamp programs recipients.

9 Several companies have already filed tariff revisions to become effective on January 1, 1998.

**DEPARTMENT OF TAXATION**

**Virginia Tax Bulletin 97-6**
**Interest Rates – First Quarter 1998**

# Virginia Tax Bulletin

Virginia Department of Taxation

December 19, 1997 97-6

## INTEREST RATES
## FIRST QUARTER 1998

**Rates remain unchanged:** State and certain local interest rates are subject to change every quarter based on changes in federal rates established pursuant to I.R.C. § 6621. The federal rates for the first quarter of 1998 remain at 9% for tax underpayments (assessments), 8% for tax overpayments (refunds), and 11% for "large corporate underpayments" as defined in I.R.C. § 6621(c). Code of Virginia § 58.1-15 provides that the underpayment rate for Virginia taxes will be 2% higher than the corresponding federal rates. Accordingly, the Virginia rates for the first quarter of 1998 remain at 11% for tax underpayments, 8% for tax overpayments, and 13% for "large corporate underpayments."

**Rate for Addition to Tax for Underpayments of Estimated Tax**

**Taxpayers whose taxable year ends on December 31, 1997:** For the purpose of computing the addition to the tax for underpayment of Virginia estimated income taxes on Form 760C (for individuals, estates and trusts), Form 760F (for farmers and fishermen) or Form 500C (for corporations), the first quarter of 1998 11% underpayment rate will apply through the due date of the return, April 15, 1998.

**Local Tax**

**Assessments:** Localities assessing interest on delinquent taxes pursuant to Code of Virginia § 58.1-3916 may impose interest at a rate not to exceed 10% for the first year of delinquency, and at a rate not to exceed 10% or the federal underpayment rate in effect for the applicable quarter, whichever is greater, for the second and subsequent years of delinquency. For the first quarter of 1998, the federal underpayment rate is 9%.

**Refunds:** Localities which have provided for refunds of erroneously assessed taxes may provide by ordinance that such refunds are repaid with interest at a rate which does not exceed the rate imposed by the locality for delinquent taxes.

**BPOL Refunds:** Effective January 1, 1997, interest on any refund will be paid at the same rate as assessments under Code of Virginia § 58.1-3916.

**Recent Interest Rates**

| Accrual Period | | Overpayment | Underpayment | Large Corporate |
|---|---|---|---|---|
| Beginning | Through | (Refund) | (Assessment) | Underpayment |
| 1-Jan-87 | 30-Sep-87 | 8% | 9% | ---- |
| 1-Oct-87 | 31-Dec-87 | 9% | 10% | ---- |
| 1-Jan-88 | 31-Mar-88 | 10% | 11% | ---- |
| 1-Apr-88 | 30-Sep-88 | 9% | 10% | ---- |
| 1-Oct-88 | 31-Mar-89 | 10% | 11% | ---- |
| 1-Apr-89 | 30-Sep-89 | 11% | 12% | ---- |
| 1-Oct-89 | 31-Mar-91 | 10% | 11% | ---- |
| 1-Apr-91 | 30-Jun-91 | 9% | 10% | ---- |
| 1-Jul-91 | 31-Dec-91 | 9% | 12% | 14% |
| 1-Jan-92 | 31-Mar-92 | 8% | 11% | 13% |
| 1-Apr-92 | 30-Sep-92 | 7% | 10% | 12% |
| 1-Oct-92 | 30-Jun-94 | 6% | 9% | 11% |
| 1-Jul-94 | 30-Sep-94 | 7% | 10% | 12% |
| 1-Oct-94 | 31-Mar-95 | 8% | 11% | 13% |
| 1-Apr-95 | 30-Jun-95 | 9% | 12% | 14% |
| 1-Jul-95 | 31-Mar-96 | 8% | 11% | 13% |
| 1-Apr-96 | 30-Jun-96 | 7% | 10% | 12% |
| 1-Jul-96 | 31-Mar-98 | 8% | 11% | 13% |

**For additional information:** Contact the Customer Services Section, Virginia Department of Taxation, P. O. Box 1115, Richmond, Virginia 23218-1115, or call the following numbers for additional information about interest rates and penalties.

| | |
|---|---|
| Individual & Fiduciary Income Tax | (804) 367-8031 |
| Corporation Income Tax | (804) 367-8037 |
| Withholding Tax | (804) 367-8037 |
| Soft Drink Excise Tax | (804) 367-8098 |
| Aircraft Sales & Use Tax | (804) 367-8098 |
| Other Sales & Use Taxes | (804) 367-8037 |

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order

### AlliedSignal, Inc.

The State Water Control Board proposes to issue a Consent Special Order to AlliedSignal, Inc., Chesterfield Plant, to address exceedences of the VPDES permit limit for TOC. The proposed order requires AlliedSignal Inc. to submit an approvable plan and schedule which addresses measures that the company will take to further prevent these violations from occurring. Additionally, the order requires the payment of a civil charge of $26,000 in settlement of the VPDES permit limit violations.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments relating to the proposed Consent Special Order. Comments should be addressed to Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060-6295. A copy of the order may be obtained in person or by mail from the above office.

### Proposed Consent Special Order

### Camp Moss Hollow Sewage Treatment System

The State Water Control Board proposes to issue a Consent Special Order (order) to Family and Child Services of D.C. (permittee) regarding the Camp Moss Hollow Sewage Treatment System (system) located in Fauquier County, Virginia.

The system is subject to VPDES Permit No. VA0060976. The order provides, among other things, that the permittee submit a plan and a schedule for replacing the dosing pump system. The permittee has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through February 18, 1998. Please address comments to Vanessa Dao, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address, or call (703) 583-3863, in order to examine or obtain a copy of the order.

### Proposed Consent Special Order

### Culpeper Concrete Wastewater Treatment Facility

The State Water Control Board proposes to issue a Consent Special Order (order) to Atlantic States Materials of Virginia, Inc. (permittee) regarding the Culpeper Concrete Wastewater Treatment Facility (plant) located in Culpeper County, Virginia.

The plant is subject to VPDES Permit No. VA0086461. The order provides, among other things, that the permittee submit a schedule, including the completion dates for construction of an upgrade and expansion of the plant, and submit a Storm Water Pollution Prevention Plan. The permittee has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will accept written comments relating to the order through February 18, 1998. Please address comments to Vanessa Dao, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address, or call (703) 583-3863, to examine or obtain a copy of the order.

### Proposed Consent Special Orders

### Mr. and Mrs. L. H. Hammock, Hammocks Trailer Court
### The Lane Company, Inc., Altavista Plant

### Proposed Amendments to Consent Special Orders

### City of Bedford
### Ferrum Water and Sewerage Authority

The State Water Control Board and the Department of Environmental Quality propose to issue Consent Special Orders for:

1. Hammocks Trailer Court (VA0086614). This order gives Mr. and Mrs. Hammock five years to carry out corrective action on their former LHS-120 lagoon in Franklin County. They will choose among the options of upgrading the lagoon, replacing it with a package plant, connecting to public sewer, converting to septic tanks, or closing the trailer park. There is a $5,000 civil charge for past violations, suspended if all corrective actions are completed on schedule.

2. The Lane Company, Altavista Plant (VA0001520). This order allows time for Lane to do a thermal mixing zone study or to install a cooling tower. The study may lead to revised temperature limits in a modified permit. The order includes a $4,000 civil charge for two violations of the temperature maximum limit last summer.

The State Water Control Board and the Department of Environmental Quality propose to amend Consent Special Orders for:

1. Ferrum Water and Sewerage Authority (VA0029254). This amendment extends the deadline for completing inflow and infiltration corrective action by one year. The extension is justified by the detailed I&I plan generated by Ferrum's consultants as required by the original order.

2. City of Bedford Sewage Treatment Plant (VA0022390). This amendment responds to six bypasses at pump stations, one of which resulted in a fish kill, by requiring correction of excess I&I and reimbursement for the dead fish and the state's investigation costs. The City of Bedford is spending over $8.9 million to upgrade its sewerage system and treatment plant under requirements of its permit and a consent order with two amendments.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed action until February 18, 1998. Comments should be addressed to James F. Smith, West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, NW, Roanoke, VA 24019, or FAX 540-562-6725, and should refer to the facility by name.

The proposed orders may be examined at the Department of Environmental Quality, Office of Enforcement, 629 East Main Street, Richmond, VA, or at the Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA. Copies of the orders and amendments may be obtained in person or by mail from these offices.

### Proposed Consent Special Order

### County of Henrico

The State Water Control Board proposes to issue a Consent Special Order to the County of Henrico for the county's wastewater collection system which conducts wastewater to the wastewater treatment facilities located on WRVA Road, in Henrico County, Virginia. The proposed order supersedes the amended June 1, 1993, order and requires the county to complete a series of sewer rehabilitation projects to address inflow and infiltration in the collection system, with the last project to be completed by January 1, 2003.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments relating to the proposed Consent Special Order. Comments should be addressed to Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060-6295. A copy of the order may be obtained in person or by mail from the above office.

### Proposed Consent Special Order

### County of Spotsylvania
### Massaponax Wastewater Treatment Plant

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to the County of Spotsylvania (permittee) regarding the Massaponax Wastewater Treatment Plant (WWTP) located in Spotsylvania County, Virginia.

The Massaponax WWTP is subject to VPDES Permit No. VA0025658. The order provides, among other things, tha the permittee operate the WWTP in order that overflows o raw or partially treated sewage are eliminated; submit for incorporation into the WWTP's O&M Manual the approved July 1997 operational plan for managing the facility's equalization pond and solids levels in clarifiers; submit a revised plan for replacing or repairing existing equipment; and submit an Infiltration & Inflow Study that addresses corrective actions at the facility's collection system. The permittee has agreed to the issuance of the order and to payment of a civil charge.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through February 18, 1998. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address, or call (703) 583-3886, in order to examine or to obtain a copy of the order.

### Proposed Consent Special Order

### Town of Warsaw

The State Water Control Board proposes to issue a Consent Special Order to the Town of Warsaw for the town's wastewater treatment facilities located on Route 630 in Richmond County, Virginia. The proposed order requires th town to construct/upgrade the wastewater treatment facilities in accordance with approved plans and specifications in order to comply with the ammonia limit in the VPDES permit. The construction and upgrade must be completed by December 31, 1999, and the wastewater treatment facility must comply with the VPDES permit within 90 days of complete construction or by no later than March 31, 2000.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments relating to the proposed Consent Special Order. Comments should be addressed to Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060-6295. A copy of the order may be obtained in person or by mail from the above office.

## VIRGINIA CODE COMMISSION

### Notice to Subscribers

Beginning with Volume 14, Issue 1 of the Virginia Register (14:1 VA.R. September 29, 1997), the format of the Register changed slightly. Regulations and other information previously published in the State Corporation Commission, Marine Resources Commission, State Lottery Department, and Tax Bulletin sections have been merged into the Proposed Regulations, Final Regulations, Emergency

Regulations, or General Notices sections as appropriate. In addition, regulations appear in order by Virginia Administrative Code (VAC) title order to correspond with the VAC.

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

### Forms for Filing Material on Dates for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material and dates for publication in *The Virginia Register of Regulations*. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

**Internet:** Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page: http://legis.state.va.us/codecomm/regindex.htm

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS - RR08

# CALENDAR OF EVENTS

**Symbol Key**
† Indicates entries since last publication of the *Virginia Register*
Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

**NOTICE**

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TDD☎, or visit the General Assembly web site's Legislative Information System (http://leg1.state.va.us/lis.htm) and select "Meetings."

VIRGINIA CODE COMMISSION

# EXECUTIVE

## BOARD OF ACCOUNTANCY

**January 20, 1998 - 10 a.m.** -- Open Meeting
**January 21, 1998 - 8 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

An open meeting to discuss regulatory review, request for proposals for privatization, committee reports, disciplinary cases and other matters requiring board action. All meetings are subject to cancellation. The meeting time is subject to change. Call the board within 24 hours of the meeting for confirmation. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD ☎

## GOVERNOR'S ADVISORY BOARD ON AGING

**January 26, 1998 - 3 p.m.** -- Open Meeting
Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct board business.

**Contact:** Kimlah Hyatt, Staff to the Board, Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9318, FAX (804) 662-9354, toll-free 1-800-552-3402, or (804) 662-9333/TDD ☎

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Virginia State Apple Board

**† February 5, 1998 - 10 a.m.** -- Open Meeting
Harrisonburg Laboratory, 116 Reservoir Street, Harrisonburg, Virginia.

A meeting to review information regarding potential changes to the Code of Virginia and to review tax collections and the budget for the 1998-99 fiscal year. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs special accommodation in order to participate at the meeting should contact Nancy L. Israel at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Nancy L. Israel, Program Director, Virginia State Apple Board, Washington Bldg., 1100 Bank St., Suite 1008, Richmond, VA 23219, telephone (804) 371-6104 or FAX (804) 371-7786.

### Virginia Bright Flue-Cured Tobacco Board

**† February 24, 1998 - 10 a.m.** – Open Meeting
Sheldon's Restaurant, Business Route 15 and 360, Keysville, Virginia.

A meeting to consider funding proposals for research, promotion, and education projects pertaining to Virginia flue-cured tobacco, and to conduct other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs special accommodation in order to participate at the meeting should contact D. Stanley Duffer at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** D. Stanley Duffer, Secretary, Virginia Bright Flue-Cured Tobacco Board, P.O. Box 129, Halifax, VA 24558, telephone (804) 572-4568 or FAX (804) 572-8234.

### Virginia Horse Industry Board

**February 17, 1998 - 11 a.m.** -- Open Meeting
Virginia Historical Society, Boulevard and Kensington Avenue, Richmond, Virginia.

A meeting to discuss the status of proposed marketing plans, elect officers and decide on committees. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 1004, Richmond, VA 23219, telephone (804) 786-5842 or FAX (804) 371-7786.

### Virginia Marine Products Board

**† January 28, 1998 - 6 p.m.** -- Open Meeting
Sewell's Ordinary Restaurant, Route 17, Gloucester, Virginia.

A meeting to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Boulevard, Suite B, Newport News, VA 23608, telephone (757) 874-3474 or FAX (757) 886-0671.

### Virginia Plant Pollination Advisory Board

**February 6, 1998 - 10 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, 4th Floor Conference Room, Richmond, Virginia.

A regular meeting to receive reports from members on the past year's activity in their respective disciplines as it relates to apiculture, pollination, education and the production of food and fiber in the Commonwealth. The board will also consider matters for the future in the aforementioned categories. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person needing special assistance in order to participate at the meeting should contact Robert G. Wellemeyer at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Robert G. Wellemeyer, Secretary-Treasurer, Virginia Plant Pollination Advisory Board, 234 West Shirley Ave., Warrenton, VA 22186, telephone (540) 347-6380, FAX (540) 347-6384, or (804) 371-6344/TDD ☎

### Virginia Winegrowers Advisory Board

**† January 27, 1998 - 10 a.m.** -- Open Meeting
The Boar's Head Inn, 200 Ednam Drive, Charlottesville, Virginia.

A quarterly meeting of the board to conduct regular board business including committee and treasurer's reports. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Mary E. Davis-Barton at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Mary E. Davis-Barton, Secretary, Virginia Winegrowers Advisory Board, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1010, Richmond, VA 23219, telephone (804) 371-7685.

## STATE AIR POLLUTION CONTROL BOARD

**February 6, 1998** - Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution: 9 VAC 5-20-10 et seq. General Provisions; 9 VAC 5-50-10 et seq. New and Modified Stationary Sources; and 9 VAC 5-80-10 et seq. Permits for Stationary Sources.** The regulation applies to the construction or reconstruction of new stationary sources or expansions (modifications) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as may be needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a sourcewide perspective to determine applicability based solely upon the emissions changes directly resultant from the physical or operational change. The regulation provides for the use of a plantwide

applicability limit (PAL). Under this concept, a source owner could make physical or operational changes to emissions units covered by the PAL without being subject to the permit program as long as the overall emissions did not exceed the PAL. Concurrent construction, i.e., construction while waiting for the permit to be issued, is allowed. Under this arrangement the source owner would assume full liability should the permit not be issued. Provisions covering general permits are included. Procedures for making changes to permits are included. The regulation also allows consideration of additional factors for making Best Available Control Technology (BACT) determinations for sources subject to minor new source review. In addition, 9 VAC 5-80-10 (Permits - new and modified stationary sources) and 9 VAC 5-80-11 (Stationary source permit exemption levels) are to be repealed.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including: a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
355 Deadmore Street
Abingdon, Virginia
Ph: (540) 676-4800

West Central Regional Office
Department of Environmental Quality
3019 Peters Creek Road
Roanoke, Virginia
Ph: (540) 562-6700

Lynchburg Satellite Office
Department of Environmental Quality
7705 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Valley Regional Office
Department of Environmental Quality
4411 Early Road
Harrisonburg, Virginia 22801
Ph: (540) 574-7800

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Northern Regional Office
Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia
Ph: (703) 583-3800

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
5636 Southern Boulevard
Virginia Beach, Virginia
Ph: (757) 518-2000

Public comments may be submitted until 4:30 p.m. February 6, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Mary E. Major, Environmental Program Manager, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423 or toll-free 1-800-592-5482.

## ALCOHOLIC BEVERAGE CONTROL BOARD

**† January 26, 1998 - 9:30 a.m.** -- Open Meeting
**† February 9, 1998 - 9:30 a.m.** -- Open Meeting
**† February 23, 1998 - 9:30 a.m.** -- Open Meeting
**† March 9, 1998 - 9:30 a.m.** -- Open Meeting
**† March 23, 1998 - 9:30 a.m.** -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.

A meeting to receive and discuss reports and activities of staff members. Other matters have not been determined.

**Contact:** W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409 or FAX (804) 213-4442.

## COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND THEIR FAMILIES

### State Management Team

**† February 5, 1998 - 9 a.m.** -- Open Meeting
St. Joseph's Villa, 8000 Brook Road, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss recommendations for policy and procedure to the State Executive Council on the Comprehensive Services Act.

**Contact:** Elizabeth Hutton, Secretary, Department of Health, P. O. Box 2448, Richmond, VA 23218, telephone (804) 371-4099.

## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

**January 21, 1998 - 2 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to discuss general business.

**Contact:** Senita Booker, Program Support Technician Senior, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9523 or (804) 662-7197/TDD ☎

## AVIATION BOARD

**† February 25, 1998 - 9 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular bimonthly meeting of the board. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed. Individuals with disabilities should contact Cindy Waddell 10 days prior to the meeting if assistance is needed.

**Contact:** Cindy Waddell, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, VA 23250-2422, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

## BOARD FOR BARBERS

**February 2, 1998 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

## CHARITABLE GAMING COMMISSION

**† January 20, 1998 - 10 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, Conference Room E, Richmond, Virginia.

A meeting to discuss general business and personnel matters.

**Contact:** Donna Pruden, Administrative Staff Assistant, Charitable Gaming Commission, Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-3014 or FAX (804) 786-1079.

## COMPENSATION BOARD

**January 29, 1998 - 11 a.m.** – Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 10th Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A routine business meeting.

**Contact:** Bruce W. Haynes, Executive Secretary, P.O. Box 710, Richmond, VA 23218-0710, telephone (804) 786-0786, FAX (804) 371-0235, or (804) 786-0786/TDD ☎

## DEPARTMENT OF CONSERVATION AND RECREATION

### Falls of the James Scenic River Advisory Board

**February 5, 1998 - Noon** – Open Meeting
City Hall, 900 East Broad Street, Planning Commission Conference Room, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review river issues and programs.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899 or (804) 786-2121/TDD ☎

### Board on Conservation and Development of Public Beaches

† **January 27, 1998 - 10 a.m.** -- Open Meeting
Department of Conservation and Recreation, Zinke Building, 203 Governor Street, Suite 200, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to (i) discuss proposals from localities requesting matching grant funds, (ii) discuss procedures and deadlines used by localities to apply for FY 99 matching grant funds; (iii) review the proposed budget for the 1998-2000 biennium; and (iv) receive public comments about public beaches or the activities of the board.

**Contact:** Carlton Lee Hill, Staff Advisor, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3998 or FAX (804) 786-1798.

### Rappahannock Scenic River Advisory Board

**January 21, 1998 - 7 p.m.** -- Open Meeting
Virginia Deli, 101 William Street, Fredericksburg, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review river issues and programs.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899 or (804) 786-2121/TDD ☎

## DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

### Advisory Board

**February 4, 1998 - 10 a.m.** -- Open Meeting
Department for the Deaf and Hard-of-Hearing, Koger Center, 1602 Rolling Hills Drive, Suite 203, Richmond, Virginia.

A regular quarterly meeting of the advisory board. Public comment will be received with advance notice.

**Contact:** Beverly Dickinson, Executive Secretary, Department for the Deaf and Hard-of-Hearing, Ratcliffe Bldg., 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229, telephone (804) 662-9705/VTTY/TDD, FAX 1-800-552-7917 or toll-free 1-800-552-7917 (V/TTY).

## BOARD OF DENTISTRY

**January 22, 1998 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct formal hearings. This is a public meeting, however, no public comment will be taken.

**Contact:** Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

**January 23, 1998 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A business meeting to discuss committee reports, and to review consent orders, minutes, and general requests made to the board. The board is planning to adopt proposed amendments pursuant to Executive Order 15 (94) and to increase certain fees. Public comment will be received at the beginning of the meeting.

**Contact:** Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

## VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

### Virginia Tourism Corporation

† **January 27, 1998 - 10 a.m.** -- Open Meeting
Virginia Economic Development Partnership, 901 East Byrd Street, Riverfront Plaza, West Tower, 19th Floor, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Board of Directors to discuss strategic planning and budgets related to the Virginia Tourism Corporation. Public comment will be taken at the beginning of the meeting. Agenda available by contacting Judy H. Bulls.

**Contact:** Judy H. Bulls, Assistant to the President and CEO, Virginia Tourism Corporation, 901 E. Byrd St., Richmond, VA 23219, telephone (804) 371-8174, FAX (804) 786-1919, or (804) 371-0327/TDD ☎

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Virginia Ground Water Protection Steering Committee

**January 20, 1998 - 9 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, First Floor Training Room, Richmond, Virginia.

A regularly scheduled meeting. Anyone interested in ground water protection issues is encouraged to attend. To obtain a meeting agenda contact Mary Ann Massie at (804) 698-4042.

**Contact:** Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042 or FAX (804) 698-4032.

## FAMILY AND CHILDREN'S TRUST FUND BOARD

**February 20, 1998 - 10 a.m.** – Open Meeting
Department of Social Services, 730 East Broad Street, Richmond, Virginia.

A regular monthly meeting. Contact the trust fund for more information or for a copy of the agenda.

**Contact:** Margaret Ross Schultze, Executive Director, Family and Children's Trust Fund Board, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1823 or FAX (804) 692-1869.

## DEPARTMENT OF GENERAL SERVICES

### Design-Build/Construction Management Review Board

**January 26, 1998 - 11 a.m.** -- Open Meeting
Department of General Services, 805 East Broad Street, 3rd Floor Training Room, Richmond, Virginia.

A meeting to review any requests submitted by localities for the use of a design-build or construction management type of contract. Public comments will be taken. The chairman may cancel the meeting if there is no business for the board's consideration. Please contact the Division of Engineering and Buildings to confirm the meeting date and time.

**Contact:** Sandra H. Williams, Clerk to the Board, Division of Engineering and Buildings, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

## BOARD FOR GEOLOGY

**February 12, 1998 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks in advance of the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** William H. Ferguson, II, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

## STATE BOARD OF HEALTH

**† January 29, 1998 - 10 a.m.** -- Open Meeting
Virginia Hospital and Healthcare Association, 4200 Innslake Drive, Conference Room D, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

A work session of the board. An informal dinner will be held at 6:30 p.m.

**Contact:** Paul W. Matthias, Staff to the Board of Health, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 371-2909 or (804) 786-3564, or FAX (804) 786-4616.

**† January 30, 1998 - 9 a.m.** -- Open Meeting
Virginia Hospital and Healthcare Association, 4200 Innslake Drive, Conference Room D, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

A business meeting.

**Contact:** Paul W. Matthias, Staff to the Board of Health, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 371-2909 or (804) 786-3564, or FAX (804) 786-4616.

### Title II of the Ryan White Comprehensive AIDS Resource Emergency Act of 1990

**January 23, 1998 - 10 a.m.** – Public Hearing
Department of Health, 1500 East Main Street, Room 223, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Department of Health's 1998 Comprehensive Plan for HIV Care Grant moneys (approximately $10,000,000) under Title II of the Ryan White Comprehensive AIDS Resource Emergency Act of 1990 (as amended in 1996) is available for review and comments. The proposed plan is to (i) provide continuation of the AIDS Drug Assistance Program to cover antiretrovirals, protease inhibitors and other medications related to the treatment

of HIV/AIDS and the prevention of opportunistic infections for eligible individuals with HIV disease and (ii) fund and operate HIV Care Consortia within five regional areas of the state that are affected by HIV disease. The purpose of this comprehensive plan is to improve the quality and availability of care for individuals with HIV and their families. The goals of the Ryan White Care Act are to support local planning and service delivery, promote involvement of PLWHIV, and increase access to services for previously underserved groups. Persons may comment in writing to the Department of Health on the intended plan until Tuesday, May 5, 1998. Speakers for the public hearing will be received until 10:30 a.m. For further information and correspondence please contact Kathryn A. Hafford.

**Contact:** Kathryn A. Hafford, R.N., M.S., Assistant Director, Health Care Services, Department of Health, Division of STD/AIDS, 1500 E. Main St., Room 112, Richmond, VA 23219, telephone (804) 225-4844 or FAX (804) 225-3517.

## BOARD FOR HEARING AID SPECIALISTS

**January 27, 1998 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5 West, Richmond, Virginia.

A routine business meeting. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact David Dick at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

### Executive Committee

**January 23, 1998 - 10:30 a.m.** – Audioconference

A general business meeting via audioconference at the following locations: Wharton, Aldhizer and Weaver, Harrisonburg, Virginia; The Monitor Group Corp., Fairfax, Virginia; Penn Stuart, Abingdon, Virginia; McGuire, Woods, Battle and Boothe, Suite 9000, Norfolk, Virginia; Patten, Wornom and Watkins, Suite 360 Newport News, Virginia; and the council office, James Monroe Building, 9th Floor Conference Room.

**Contact:** Pamela H. Landrum, Administrative Staff Assistant, State Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2602 or FAX (804) 371-7911.

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**February 3, 1998 - 9 a.m.** – Open Meeting
**March 3, 1998 - 9 a.m.** – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

**Contact:** Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

**† February 23, 1998 - 10 a.m.** – Public Hearing
Department of Housing and Community Development, 501 North Second Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

**March 20, 1998** – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **13 VAC 5-61-10 et seq. Virginia Uniform Statewide Building Code/1996.** The purpose of the proposed action is to establish standards for automatic sprinkler (fire) systems in certain dormitories at colleges and universities.

Statutory Authority: §§ 36-98 and 36-99.3 of the Code of Virginia.

Public comments may be submitted until March 20, 1998.

**Contact:** Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7170 or FAX (804) 371-7092.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

**† January 27, 1998 - 11 a.m.** -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval amended and restated rules and regulations for single

family mortgage loans to persons and families of low and moderate income; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 344-5540.

## STATEWIDE INDEPENDENT LIVING COUNCIL

**January 22, 1998 - 10 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct regular business.

**Contact:** Jim Rothrock, Statewide Independent Living Council Staff, 1802 Marroit Rd., Richmond, VA 23229, telephone (804) 673-0119, FAX (804) 282-7118, or e-mail jarothrock@aol.com.

## COUNCIL ON INFORMATION MANAGEMENT

**February 6, 1998 - 10 a.m.** – Open Meeting
Council on Information Management, Washington Building, 1100 Bank Street, Suite 901, Richmond, Virginia.

A regular meeting.

**Contact:** Linda Hening, Administrative Assistant, Council on Information Management, Washington Bldg., 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or toll-free 1-800-828-1120.

## STATE BOARD OF JUVENILE JUSTICE

**February 11, 1998 - 9 a.m.** -- Open Meeting
700 Centre, 700 East Franklin Street, 4th Floor, Richmond, Virginia.

The Secure Program Committee and the Nonsecure Program Committee will meet at 9 a.m. The full board will meet at 10 a.m. to take action on certification of residential and nonresidential programs, to consider adopting length of stay guidelines as required by § 66-10(8) of the Code of Virginia and to take up other matters brought before it.

**Contact:** Donald R. Carignan, Policy Coordinator, Department of Juvenile Justice, 700 E. Franklin St., P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

## LIBRARY BOARD

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to discuss matters related to The Library of Virginia and its board.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Archival and Information Services Committee

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to discuss archival and information services at The Library of Virginia.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Automation and Networking Committee

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to discuss automation and networking matters.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Bylaws Committee

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to matters related to any proposed changes to the bylaws.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Executive Committee

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to discuss matters related to The Library of Virginia and its board.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Facilities Committee

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to discuss matters pertaining to the new Library of Virginia building and the status of the records center.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Legislative and Finance Committee

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to discuss legislative and financial matters.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Nominating Committee

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to consider possible candidates for nomination to next year's slate of officers.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Publications and Educational Services Committee

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to discuss matters related to the Publications and Educational Services Division and The Library of Virginia.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Public Library Development Committee

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to discuss matters pertaining to public library development and The Library of Virginia.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Records Management Committee

**February 23, 1998 - Time to be announced** -- Open Meeting
Location to be announced.

A meeting to discuss matters pertaining to records management.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

## COMMISSION ON LOCAL GOVERNMENT

**† January 27, 1998 - 10 a.m.** -- Open Meeting
Commission on Local Government, 8th Street Office Building, 805 East Broad Street, Room 702, Richmond, Virginia.

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, 8th Street Office Bldg., 805 E. Broad St., Room 702, Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD ☎

## LONGWOOD COLLEGE

### Board of Visitors

**January 29, 1998 - 3:45 p.m.** -- Open Meeting
901 East Byrd Street, 4th Floor Board Room, Richmond, Virginia.

A meeting of the Academic Affairs/Student Affairs Committees to conduct routine business.

**Contact:** Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2001 or FAX (804) 395-2821.

**January 29, 1998 - 1 p.m.** -- Open Meeting
901 East Byrd Street, 4th Floor Board Room, Richmond, Virginia.

A meeting of the Finance/Facilities and Services committee to conduct routine business.

**Contact:** Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

**January 30, 1998 - 9 a.m.** -- Open Meeting
901 East Byrd Street, 4th Floor Board Room, Richmond, Virginia.

A meeting to conduct routine business.

**Contact:** Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

## MARINE RESOURCES COMMISSION

**January 27, 1998 - 9 a.m.** -- Open Meeting
**February 24, 1998 - 9 a.m.** – Open Meeting
**March 24, 1998 - 9 a.m.** – Open Meeting
Marine Resources Commission, 2600 Washington Avenue, Newport News, Virginia. (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9 a.m., including permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard include: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

**Contact:** LaVerne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free 1-800-541-4646 or (757) 247-2292/TDD

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**† February 10, 1998 - 10 a.m.** – Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia.

A meeting to discuss matters of policy relating to the Medicaid program. Visit the department's website at http://www.state.va.us/~dmas/dmas.

**Contact:** Cynthia Klisz Morton, Board Liaison, Department of Medical Assistance, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099.

* * * * * * * *

**† March 20, 1998 -** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services.** The purpose of the proposed action is to provide reimbursement for high dose chemotherapy and bone marrow/stem cell transplants for individuals over the age of 21 who have been diagnosed with lymphoma or breast cancer. This package will also clarify the reimbursement policy for transplants.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 20, 1998, to Anita Cordill, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

* * * * * * * *

**† March 20, 1998 -** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services.** This action proposes to expand the array of services which can be provided by school-employed medical personnel and reimbursed by Medicaid.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 20, 1998, to Jeff Nelson, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

* * * * * * * *

**† March 20, 1998** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care.** These regulations propose to provide additional reimbursement to certain nursing facilities which provide special services to individuals who have traumatic brain injuries.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 20, 1998, to Regina Anderson-Cloud, LTC Policy, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

* * * * * * * *

**† March 20, 1998** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120-10 et seq. Waivered Services.** The proposed regulation specifies the requirements and standards for the provision of consumer-directed personal attendant services. The consumer-directed PAS program will provide home and community-based care personal attendant services to consumers who meet Medicaid eligibility and financial requirements. The service will allow qualifying consumers to remain in their homes, directing their own care, rather than receiving services under the home health agency model or being institutionalized. This proposal is mandated by Chapter 924, 1997 Appropriation Act. Public hearings have already been held on these regulations.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 20, 1998, to Karen Lawson, LTC Policy, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

## BOARD OF MEDICINE

**† January 30, 1998 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting pursuant to § 54.1-2912.1 of the Code of Virginia to prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

**† February 26, 1998 - 8:30 a.m.** -- Open Meeting
**† February 27, 1998 - 8:30 a.m.** -- Open Meeting
**† February 28, 1998 - 8:30 a.m.** -- Open Meeting
**† March 1, 1998 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A panel of the board will convene pursuant to §§ 54.1-2400 and 9-6.14:12 of the Code of Virginia to inquire into allegations that a practitioner may have violated laws and regulations governing the practice of medicine. The panel will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

### Legislative Committee

**† January 23, 1998 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to (i) discuss legislative issues related to board activities and regulation, (ii) review any pending regulations pursuant to regulatory review or legislative action, and (iii) consider any other information that may come before the committee. The committee will entertain public comments during the first 15 minutes on agenda items.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

### State Human Rights Committee

† **January 23, 1998 - 9 a.m.** -- Open Meeting
Southside Virginia Training Center, Albemarle Street, Building 1, Petersburg, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the committee to discuss business and conduct hearings relating to human rights issues. Agenda items are listed for the meeting.

**Contact:** Kli Kinzie, Executive Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988, FAX (804) 371-2308 or (804) 371-8977/TDD ☎

## VIRGINIA MILITARY INSTITUTE

### Board of Visitors

† **February 14, 1998 - 8:30 a.m.** -- Open Meeting
The Omni, 100 South 12th Street, Richmond, Virginia.

A regular meeting to hear committee reports, consider the budget and plan fund raising. The Board of Visitors does not provide an opportunity for public comment at this meeting. Public comment is received at the first meeting of the academic year, normally in August.

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary to the Board, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206 or (540) 464-7660/TDD ☎

## STATE MILK COMMISSION

† **February 18, 1998 - 10:30 a.m.** -- Open Meeting
Milk Commission, 200 North Ninth Street, Suite 915, Richmond, Virginia.

A regular meeting to (i) discuss industry issues, distributor licensing, Virginia base transfers, Virginia baseholding license amendments, regulations, and fiscal matters and (ii) review reports from the staff of the Milk Commission. The commission may consider other matters pertaining to its responsibilities. Any persons who require accommodations in order to participate in the meeting should contact Edward C. Wilson, Jr., at least five days prior to the meeting date so that suitable arrangements can be made.

**Contact:** Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. 9th St., Suite 915, Richmond, VA 23219-3414, telephone (804) 786-2013 or (804) 786-2013/TDD ☎

## DEPARTMENT OF MINES, MINERALS AND ENERGY

**February 12, 1998 - 10 a.m.** -- Public Hearing
Department of Mines, Minerals and Energy, Division of Mineral Mining, Fontaine Research Park, 900 Natural Resources Drive, Charlottesville, Virginia.

**March 6, 1998** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to amend regulations entitled: **4 VAC 25-40-10 et seq. Safety and Health Regulations for Mineral Mining.** The purpose of the proposed action is to amend the safety and health regulation for the protection of persons in and around mineral mines. The amendments implement requirements of the Mine Safety Act and incorporate recommendations from the Executive Order 15 (94) review and from the work committee which reviewed the proposed regulation.

Statutory Authority: §§ 45.1-161.3, 45.1-161.294 and 45.1-161.305 of the Code of Virginia.

**Contact:** Conrad Spangler, Division Director, Department of Mines, Minerals and Energy, Division of Mineral Mining, Fontaine Research Park, 900 Natural Resources Dr., P.O. Box 3727, Charlottesville, VA 22903, telephone (804) 961-5000, FAX (804) 979-8544 or toll-free 1-800-828-1120 (VA Relay Center).

## MOTOR VEHICLE DEALER BOARD

**January 20, 1998 - 10 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Advertising Committee

**January 19, 1998 - 3 p.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Dealer Practices Committee

**January 19, 1998 - 1:30 p.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Finance Committee

**January 20, 1998 - 9 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Franchise Review and Advisory Committee

**January 20, 1998 - 9 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, 7th Floor, Executive Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

### Transaction Recovery Fund Committee

**January 19, 1998 - 9 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

## VIRGINIA MUSEUM OF FINE ARTS

**January 21, 1998 - 12:30 p.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia.

A regularly scheduled meeting of the Board of Trustees to receive staff and committee reports and conduct budget review. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

**January 21, 1998 - 10 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia.

Meetings of the Communications and Marketing Committee, Buildings and Grounds Committee and Exhibitions Committee to review current issues relative to each committee. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

**January 21, 1998 - 2 p.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia.

Meetings of the Nominating Committee, Education and Programs Committee, and Legislative Committee to review current issues relative to each committee. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

**January 21, 1998 - 11 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia.

A meeting of the Finance Committee to review the budget. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

**February 3, 1998 - 8 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia.

A briefing for the Executive Committee of current museum activities and upcoming events. Public comment will not be received.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

## VIRGINIA MUSEUM OF NATURAL HISTORY

### Development Committee

**January 29, 1998 - 8 a.m.** -- Open Meeting
The Jefferson Hotel, Lemaire, Franklin and Adams Street, Richmond, Virginia.

A meeting to discuss development issues.

**Contact:** Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

### Outreach Committee

**January 29, 1998 - 8 a.m.** -- Open Meeting
The Jefferson Hotel, Lemaire, Franklin and Adam Street, Richmond, Virginia.

A meeting to discuss reports from the public programs and publications departments of the museum.

**Contact:** Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

### Research and Collections Committee

**January 29, 1998 - 7:30 a.m.** -- Open Meeting
The Jefferson Hotel, Lemaire, Franklin and Adams Street, Richmond, Virginia.

A meeting to discuss (i) appointment/reappointment of research associates, (ii) the collections policy, and (iii) the research policy.

**Contact:** Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

### Board of Trustees

**January 29, 1998 - 9 a.m.** -- Open Meeting
The Jefferson Hotel, Franklin and Adams Street, Richmond, Virginia.

A meeting to include reports from the development, executive, finance, legislative, marketing, nominating, outreach, personnel, planning and facilities, and research and collections committees. Public comment will be received following approval of the minutes of the November meeting.

**Contact:** Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

## BOARD OF NURSING

**† January 26, 1998 - 1 p.m.** -- Open Meeting
**† January 29, 1998 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A panel of the board will conduct formal hearings with licensees and certificate holders. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

**† January 27, 1998 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board to consider matters relating to education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. Public comment will be received during an open forum beginning at 11 a.m. Beginning at 2:30 p.m. the board will conduct formal hearings. Public comment will not be received for hearings.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

**† January 28, 1998 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will conduct formal hearings. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

### Education Special Conference Committee

**† January 26, 1998 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review proposals and reports from nursing and nurse aide education programs and prepare recommendations for the board. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

### Special Conference Committee

**† January 26, 1998 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences with licensees and certificate holders. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

## BOARD FOR OPTICIANS

**February 13, 1998 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

An open meeting to discuss regulatory review, disciplinary cases and other matters requiring board action. All meetings are subject to cancellation or change. Call the board office 24 hours in advance of the meeting to confirm date and time. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD☎

## BOARD OF OPTOMETRY

**January 30, 1998 - 8 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences. This is a public meeting; however, public comment will not be received.

**Contact:** Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

### Professional Designation Committee

† **January 20, 1998 - 3 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review present, pending and future professional designations for compliance with the current regulations. Public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

## BOARD OF PROFESSIONAL AND OCCUPATIONAL REGULATION

**March 9, 1998 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

**Contact:** Debra S. Vought, Agency Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

## BOARD OF PSYCHOLOGY

**January 27, 1998 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A regular meeting to discuss general board business, receive committee reports and consider proposed amendments to the Regulations Governing the Practice of Psychology, 18 VAC 125-20-10 et seq., pursuant to Executive Order 15 (94). Public comment will be received at the beginning of the meeting.

**Contact:** LaDonna Duncan, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

**January 27, 1998 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 1, Richmond, Virginia.

A meeting to conduct an informal administrative hearing pursuant to § 9-6.14:12 of the Code of Virginia. Public comment will not be heard.

**Contact:** Evelyn Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9967 or FAX (804) 662-9943.

### Discipline Committee

† **January 20, 1998 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A meeting to conduct an informal hearing regarding allegations of practitioner misconduct. Public comment will be received at the beginning of the meeting.

**Contact:** LaDonna Duncan, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

## VIRGINIA RACING COMMISSION

**January 21, 1998 - 9:30 a.m.** – Open Meeting
Tyler Building, 1300 East Main Street, Richmond, Virginia.

A monthly meeting to include a report from Colonial Downs and a review of proposed regulations pertaining to stewards and appeals to the commission.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Dr., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

## BOARD OF REHABILITATIVE SERVICES

**January 29, 1998 - 10 a.m.** – Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting of the board.

**Contact:** John R. Vaughn, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice or (804) 662-9040/TDD ☎

## VIRGINIA RESOURCES AUTHORITY

† **February 10, 1998 - 9:30 a.m.** -- Open Meeting
† **March 10, 1998 - 9:30 a.m.** – Open Meeting
The Mutual Building, 909 East Main Street, Suite 700, Richmond, Virginia.

The board will meet to approve minutes of the meeting of the prior month, to review the authority's operations for the prior month, and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Jr., Executive Director, Virginia Resources Authority, P.O. Box 1300, Richmond, VA 23218, telephone (804) 644-3100 or FAX (804) 644-3109.

## RICHMOND HOSPITAL AUTHORITY

### Board of Commissioners

**January 22, 1998 - 5 p.m.** -- Open Meeting
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor Classroom, Richmond, Virginia.

A monthly board meeting to discuss nursing home operations and related matters.

**Contact:** Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, 700 E. Main St., Suite 904, Richmond, VA 23219-0548, telephone (804) 782-1938.

## SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

**† January 28, 1998 - 10 a.m.** -- Open Meeting
Chesterfield County Administration Building, 9901 Lori Road, 5th Floor, Room 502, Chesterfield, Virginia.

A meeting to hear appeals of the Department of Health's denials of septic tank permits.

**Contact:** Gary L Hagy, Acting Board Secretary, Department of Health, 1500 E. Main St., Room 115, P.O. Box 2448, Richmond, VA 23218, telephone (804) 225-4022 or FAX (804) 225-4003.

## BOARD OF SOCIAL WORK

**January 22, 1998 - 9 a.m.** – Open Meeting
**January 22, 1998 - 11 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 4, Richmond, Virginia.

A meeting to conduct an informal administrative hearing pursuant to § 9-6.14:12 of the Code of Virginia. No public comment will be received.

**Contact:** Evelyn Brown, Executive Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9967 or FAX (804) 662-9943.

## TRANSPORTATION SAFETY BOARD

**† February 12, 1998 - 2 p.m.** -- Open Meeting
Hyatt Richmond Hotel, 6624 West Broad Street, Richmond, Virginia.

A quarterly meeting to discuss transportation and highway safety issues in Virginia.

**Contact:** Angelisa C. Jennings, Senior Management Analyst, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-2026.

## TREASURY BOARD

**January 22, 1998 - 9 a.m.** -- Open Meeting
**February 19, 1998 - 9 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia.

A regular business meeting.

**Contact:** Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

## BOARD FOR THE VISUALLY HANDICAPPED

**January 20, 1998 - 1 p.m.** -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia.
(Interpreter for the deaf provided upon request)

The board is responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budgets and requests for appropriations for the department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

**Contact:** Katherine C. Proffitt, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

## VIRGINIA VOLUNTARY FORMULARY BOARD

**† February 24, 1998 - 10 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add drugs and drug products to the formulary that became effective January 15, 1996, and its most recent supplement. Copies of the proposed revisions to the formulary are available for inspection at the Department of Health, Bureau of Pharmacy Services, Monroe Building, 101 North 14th Street, Room S-45, P.O. Box 2448, Richmond, VA 23218. Written comments sent to the above address and received prior to 5 p.m. on February 24, 1998, will be made a part of the hearing record.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

### BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

**February 27, 1998 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5 West, Richmond, Virginia.

A meeting to conduct routine board business. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8595, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

## INDEPENDENT

### STATE LOTTERY BOARD

**† January 28, 1998 - 9:30 a.m.** -- Open Meeting
State Lottery Department, 900 East Main Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board. Public comment will be received at the beginning of the meeting.

**Contact:** David L. Norton, Esq., Director, Legislative and Regulatory Affairs, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7109 or FAX (804) 692-7775.

## LEGISLATIVE

### Notice to Subscribers

Legislative meetings held during the Session of the General Assembly are exempted from publication in *The Virginia Register of Regulations*. You may call Legislative Information for information on standing committee meetings. The number is (804) 786-6530.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

**January 19**
Motor Vehicle Dealer Board
- Advertising Committee
- Dealer Practices Committee
-Transaction Recovery Fund

**January 20**
Accountancy, Board for
† Charitable Gaming Commission
Environmental Quality, Department of
- Virginia Ground Water Protection Steering Committee
Motor Vehicle Dealer Board
- Finance Committee
- Franchise Review and Advisory Committee
† Optometry, Board of
- Professional Designation Committee
† Psychology, Board of
- Discipline Committee
Visually Handicapped, Board for the

**January 21**
Accountancy, Board for
Audiology and Speech-Language Pathology, Board of
Conservation and Recreation, Department of
- Rappahannock Scenic River Advisory Board
Museum of Fine Arts, Virginia
- Buildings and Grounds Committee
- Communications and Marketing Committee
- Education and Programs Committee
- Exhibitions Committee
- Finance Committee
- Legislative Committee
- Nominating Committee
- Board of Trustees
Racing Commission, Virginia

**January 22**
Dentistry, Board of
Independent Living Council, Statewide
Social Work, Board of
Treasury Board

**January 23**
Dentistry, Board of
Health, Department of
- Title II of the Ryan White Comprehensive AIDS Resource Emergency Act of 1990
Higher Education for Virginia, State Council of
- Executive Committee
† Medicine, Board of
- Legislative Committee
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee

**January 26**
Aging, Governor's Advisory Board on
† Alcoholic Beverage Control Board
General Services, Department of
- Design-Build/Construction Management Review Board
† Nursing, Board of
- Education Special Conference Committee
- Special Conference Committee

**January 27**
† Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
† Conservation and Recreation, Department of
- Board on Conservation and Development of Public Beaches
† Economic Development Partnership, Virginia
- Virginia Tourism Corporation
Hearing Aid Specialists, Board for
† Housing Development Authority, Virginia
† Local Government, Commission on
Marine Resources Commission
† Nursing, Board of
Psychology, Board of

**January 28**
† Agriculture and Consumer Services, Department of
- Virginia Marine Products Board
† Lottery Board, State
† Nursing, Board of
† Sewage Handling and Disposal Appeal Review Board

**January 29**
Compensation Board
† Health, State Board of
Longwood College
- Committees
Natural History, Virginia Museum of
- Development Committee
- Outreach Committee
- Research and Collections Committee
† Nursing, Board of

**January 30**
† Health, State Board of
Longwood College
- Board of Visitors
Optometry, Board of
Rehabilitative Services, Board of

**February 2**
Barbers, Board for

**February 3**
Hopewell Industrial Safety Council
Museum of Fine Arts, Virginia
- Executive Committee

**February 4**
Deaf and Hard-of-Hearing, Department for the
- Advisory Board

**February 5**
† Agriculture and Consumer Services, Department of
- Virginia State Apple Board
† At-Risk Youth and Their Families, Comprehensive Services for
- State Management Team
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board

**February 6**
Agriculture and Consumer Services, Department of
- Virginia Plant Pollination Advisory Board
Information Management, Council on

**February 9**
† Alcoholic Beverage Control Board

**February 10**
† Medical Assistance Services, Department of
† Resources Authority, Virginia

**February 11**
Juvenile Justice, State Board of

**February 12**
Geology, Board for
† Transportation Safety Board

**February 13**
Opticians, Board for

**February 14**
† Military Institute, Virginia
- Board of Visitors

**February 17**
Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board

**February 18**
† Milk Commission, State

**February 19**
Treasury Board

**February 20**
Family and Children's Trust Fund Board

**February 23**
† Alcoholic Beverage Control Board
Library Board
- Archival and Information Services Committee
- Automation and Networking Committee
- Bylaws Committee
- Executive Committee
- Facilities Committee
- Legislative and Finance Committee
- Nominating Committee
- Publications and Educational Services Committee
- Public Library Development Committee
- Records Management Committee

**February 24**
† Agriculture and Consumer Services, Department of
- Virginia Bright Flue-Cured Tobacco Board
Marine Resources Commission

**February 25**
† Aviation Board

**February 26**
† Medicine, Board of

**February 27**
† Medicine, Board of
Waste Management Facility Operators, Board for

**February 28**
† Medicine, Board of

**March 1**
† Medicine, Board of

**March 3**
Hopewell Industrial Safety Council

**March 9**
† Alcoholic Beverage Control Board
Professional and Occupational Regulation, Board for

**March 10**
† Resources Authority, Virginia

**March 23**
† Alcoholic Beverage Control Board

**March 24**
Marine Resources Commission

## PUBLIC HEARINGS

**January 30**
† Medicine, Board of

**February 12**
Mines, Minerals and Energy, Department of

**February 23**
† Housing and Community Development, Board of

**February 24**
† Voluntary Formulary Board, Virginia