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# TABLE OF CONTENTS

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## CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

Cumulative Table.....2959

## NOTICES OF INTENDED REGULATORY ACTION

### TITLE 2. AGRICULTURE

Department of Agriculture and Consumer Services .....2968

### TITLE 3. ALCOHOLIC BEVERAGES

Alcoholic Beverage Control Board .....2968

### TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

Board of Corrections .....2969

### TITLE 8. EDUCATION

State Board of Education .....2970

### TITLE 9. ENVIRONMENT

State Water Control Board .....2970

### TITLE 12. HEALTH

State Board of Health.....2970

Department of Medical Assistance Services.....2971

### TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

Virginia Board for Asbestos and Lead.....2971

Auctioneers Board .....2971

Board for Branch Pilots .....2971

Board for Contractors.....2972

### TITLE 22. SOCIAL SERVICES

State Board of Social Services .....2972

### TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

Commonwealth Transportation Board.....2972

## PROPOSED REGULATIONS

### TITLE 9. ENVIRONMENT

#### STATE AIR POLLUTION CONTROL BOARD

Regulations for the Control and Abatement of Air Pollution (Documents Incorporated by Reference -- Rev. B00). .....2973

General Definitions (amending 9 VAC 5-10-20)..... 2973

General Provisions (amending 9 VAC 5-20-21)..... 2973

Existing Stationary Sources (amending 9 VAC 5-40-460, 9 VAC 5-40-2930, 9 VAC 5-40-5210, 9 VAC 5-40-5230, 9 VAC 5-40-8130, and 9 VAC 5-40-8150)..... 2973

Permits for Stationary Sources (amending 9 VAC 5-80-10, 9 VAC 5-80-370, 9 VAC 5-80-390, 9 VAC 5-80-1710, and 9 VAC 5-80-2010)..... 2973

#### VIRGINIA WASTE MANAGEMENT BOARD

Virginia Hazardous Waste Management Regulations. (amending 9 VAC 20-60-261) ..... 3016

### TITLE 12. HEALTH

#### STATE BOARD OF HEALTH

Sewage Collection and Treatment (SCAT) Regulations. (12 VAC 5-581-10 et seq.) ..... 3018

### TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

#### STATE CORPORATION COMMISSION

Information Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility (amending 20 VAC 5-302-10, 20 VAC 5-302-20, and 20 VAC 5-302-30; adding 20 VAC 5-302-25 and 20 VAC 5-302-40). ..... 3022

### TITLE 22. SOCIAL SERVICES

#### STATE BOARD OF SOCIAL SERVICES

Monthly Reporting in the Food Stamp Program (REPEALING). (22 VAC 40-560-10)..... 3027

## FINAL REGULATIONS

### TITLE 9. ENVIRONMENT

#### DEPARTMENT OF ENVIRONMENTAL QUALITY

Regulations for the Certification of Recycling Machinery and Equipment for Local Tax Exemption Purposes (amending 9 VAC 15-30-20, 9 VAC 15-30-40 through 9 VAC 15-30-110, 9 VAC 15-30-130, 9 VAC 15-30-160, and 9 VAC 15-30-170; repealing 9 VAC 15-30-150). ..... 3029

#### VIRGINIA WASTE MANAGEMENT BOARD

Regulations for the Development of Solid Waste Management Plans (amending 9 VAC 20-130-10 through 9 VAC 20-130-70, 9 VAC 20-130-90, 9 VAC 20-130-110 through 9 VAC 20-130-150, 9 VAC 20-130-180, 9 VAC 20-130-190, 9 VAC 20-130-220, and 9 VAC 20-130-230; adding 9 VAC 20-130-165 and 9 VAC 20-130-175; repealing 9 VAC 20-130-80, 9 VAC 20-

---

# Table of Contents

---

130-160, 9 VAC 20-130-170, and 9 VAC 20-130-240).... [3032](#)

## STATE WATER CONTROL BOARD

Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less than or Equal to 1,000 Gallons per Day (amending 9 VAC 25-110-70)..... [3044](#)

Virginia Pollution Abatement (VPA) General Permit Regulation for Confined Animal Feeding Operations (amending 9 VAC 25-192-50 and 9 VAC 25-192-60)..... [3045](#)

Virginia Water Protection Permit Program Regulation (amending 9 VAC 25-210-10 and 9 VAC 25-210-50 through 9 VAC 25-210-260; adding 9 VAC 25-210-45, 9 VAC 25-210-115, and 9 VAC 25-210-185; repealing 9 VAC 25-210-20 through 9 VAC 25-210-40)..... [3049](#)

Virginia Water Protection General Permit for Linear Transportation Projects. (9 VAC 25-680-10 et seq.)..... [3070](#)

Virginia Water Protection General Permit for Impacts from Development Activities. (9 VAC 25-690-10 et seq.) ..... [3087](#)

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR CONTRACTORS

Board for Contractors Regulations (amending 18 VAC 50-22-10 through 18 VAC 50-22-60, 18 VAC 50-22-80, and 18 VAC 50-22-100 through 18 VAC 50-22-270)..... [3107](#)

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Public Participation Guidelines (amending 18 VAC 65-10-10, 18 VAC 65-10-20, 18 VAC 65-10-30, 18 VAC 65-10-40, 18 VAC 65-10-60, 18 VAC 65-10-70, 18 VAC 65-10-80, and 18 VAC 65-10-100)..... [3115](#)

### BOARD OF MEDICINE

Public Participation Guidelines (amending 18 VAC 85-10-10, 18 VAC 85-10-20, 18 VAC 85-10-30, 18 VAC 85-10-40, 18 VAC 85-10-60, 18 VAC 85-10-70, 18 VAC 85-10-80, and 18 VAC 85-10-100)..... [3116](#)

Regulations Governing the Practice of Physician Assistants (amending 18 VAC 85-50-10, 18 VAC 85-50-101, 18 VAC 85-50-130, 18 VAC 85-50-140, and 18 VAC 85-50-150.)..... [3116](#)

### BOARD OF PHARMACY

Public Participation Guidelines (amending 18 VAC 110-10-10, 18 VAC 110-10-20, 18 VAC 110-10-30, 18 VAC 110-10-40, 18 VAC 110-10-60, 18 VAC 110-10-70, 18 VAC 110-10-80, and 18 VAC 110-10-100)..... [3117](#)

### BOARD OF SOCIAL WORK

Public Participation Guidelines (amending 18 VAC 140-10-10, 18 VAC 140-10-20, 18 VAC 140-10-30, 18 VAC 140-10-40, 18 VAC 140-10-60, 18 VAC 140-10-70, 18 VAC 140-10-80, and 18 VAC 140-10-100)..... [3118](#)

## FORMS

### TITLE 4. CONSERVATION AND NATURAL RESOURCES

#### DEPARTMENT OF MINES, MINERALS AND ENERGY

Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines. (4 VAC 25-90-10 et seq.).....[3119](#)

Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells. (4 VAC 25-101-10 et seq.).....[3119](#)

## GOVERNOR

### GOVERNOR'S COMMENTS

### TITLE 8. EDUCATION

#### DEPARTMENT OF EDUCATION

Standards for State-Funded Remedial Programs. (8 VAC 20-630-10 et seq.) .....[3120](#)

### TITLE 18. PROFESSIONAL AND OCCUPATIONAL REGULATION

#### BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Rules and Regulations. (18 VAC 10-20-10 et seq.).....[3120](#)

#### VIRGINIA BOARD FOR ASBESTOS AND LEAD

Virginia Asbestos Licensing Regulations. (18 VAC 15-20-10 et seq.).....[3120](#)

#### AUCTIONEERS BOARD

Rules and Regulations of the Virginia Auctioneers Board. (18 VAC 25-21-10 et seq.) .....[3120](#)

#### BOARD FOR CONTRACTORS

Tradesman Rules and Regulations. (18 VAC 50-30-10 et seq.).....[3120](#)

## GENERAL NOTICES/ERRATA

#### DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Fee Schedule for Approved Laboratory Analyses of Blood for Alcohol and Drugs .....[3121](#)

#### DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Periodic Review of Regulations .....[3122](#)

**DEPARTMENT OF SOCIAL SERVICES**

Periodic Review of Regulations .....3123

**STATE WATER CONTROL BOARD**

Proposed Consent Special Order - The Four Winds Club, Inc.  
- Four Winds Campground Sewage Treatment Plant.....3123

**VIRGINIA CODE COMMISSION**

Notice to State Agencies .....3123

Forms for Filing Material for Publication in *The Virginia Register of Regulations* .....3124

ERRATA

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

12 VAC 30-40-10 et seq. Eligibility Conditions and Requirements .....3124

12 VAC 30-40-10 et seq. Eligibility Conditions and Requirements .....3124

12 VAC 30-120-10 et seq. Waivered Services.....3124

**STATE BOARD OF SOCIAL SERVICES**

22 VAC 40-690-10 et seq. Virginia Child Care Provider Scholarship Program. ....3124

**CALENDAR OF EVENTS**

EXECUTIVE

Open Meetings and Public Hearings.....3125

INDEPENDENT

Open Meetings and Public Hearings.....3141

LEGISLATIVE

Open Meetings and Public Hearings.....3141

CHRONOLOGICAL LIST

Open Meetings .....3142

Public Hearings .....3144

# CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2001 VAC Supplement includes final regulations published through *Virginia Register* Volume 17, Issue 11, dated February 12, 2001). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 1. Administration</b>			
1 VAC 30-60-10 et seq.	Repealed	17:19 VA.R. 2731	7/4/01
1 VAC 30-70-10 et seq.	Repealed	17:19 VA.R. 2731	7/4/01
<b>Title 2. Agriculture</b>			
2 VAC 15-20-81	Amended	17:14 VA.R. 2179	3/1/01
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 15-20-80	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-20-160	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-40-20	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-40-150	Repealed	17:19 VA.R. 2729	7/4/01
4 VAC 15-40-280	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-50-90	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-20	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-21	Added	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-70	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-80	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-85	Added	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-100	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-110	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-141	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-160	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-170	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-190	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-195	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-200	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-210	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-220	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-240	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-110-75	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-190-60	Added	17:19 VA.R. 2729	7/4/01
4 VAC 15-240-20	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-240-31	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-240-90	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-270-20	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-290-140	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-320-100	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 20-40-20	Amended	17:18 VA.R. 2576	5/1/01
4 VAC 20-252-70	Amended	17:12 VA.R. 2024	1/26/01
4 VAC 20-252-90	Amended	17:12 VA.R. 2024	1/26/01
4 VAC 20-252-100	Amended	17:12 VA.R. 2024	1/26/01
4 VAC 20-252-110	Amended	17:12 VA.R. 2025	1/26/01
4 VAC 20-252-140	Amended	17:12 VA.R. 2025	1/26/01
4 VAC 20-270-40	Amended	17:14 VA.R. 2179	3/1/01
4 VAC 20-270-40	Amended	17:18 VA.R. 2576	5/1/01
4 VAC 20-450-30	Amended	17:18 VA.R. 2576	5/1/01

# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-561-10 through 4 VAC 20-561-50	Added	17:16 VA.R. 2332	8/16/01
4 VAC 20-620-30	Amended	17:14 VA.R. 2180	3/1/01
4 VAC 20-620-50	Amended	17:14 VA.R. 2180	3/1/01
4 VAC 20-620-70	Amended	17:14 VA.R. 2180	3/1/01
4 VAC 20-620-70	Amended	17:20 VA.R. 2880	6/1/01
4 VAC 20-670-25	Added	17:18 VA.R. 2577	5/1/01
4 VAC 20-751-10	Amended	17:16 VA.R. 2333	4/1/01
4 VAC 20-751-20	Amended	17:16 VA.R. 2333	4/1/01
4 VAC 20-890-10 emer	Amended	17:20 VA.R. 2932	5/25/01-6/24/01
4 VAC 20-890-20 emer	Amended	17:20 VA.R. 2932	5/25/01-6/24/01
4 VAC 20-890-25 emer	Amended	17:20 VA.R. 2932	5/25/01-6/24/01
4 VAC 20-890-30	Amended	17:16 VA.R. 2333	4/1/01
4 VAC 20-890-40 emer	Amended	17:20 VA.R. 2933	5/25/01-6/24/01
4 VAC 20-910-30	Amended	17:14 VA.R. 2181	3/1/01
4 VAC 20-910-45	Amended	17:18 VA.R. 2577	5/1/01
4 VAC 20-950-30	Amended	17:14 VA.R. 2181	3/1/01
4 VAC 20-950-45	Amended	17:14 VA.R. 2181	3/1/01
4 VAC 20-950-45	Amended	17:16 VA.R. 2334	4/1/01
4 VAC 20-950-45 emer	Amended	17:18 VA.R. 2673	4/24/01-5/23/01
4 VAC 20-950-45	Amended	17:20 VA.R. 2880	5/25/01
4 VAC 20-995-20	Amended	17:12 VA.R. 2025	1/26/01
4 VAC 20-995-20	Amended	17:14 VA.R. 2182	3/1/01
4 VAC 20-1040-20	Amended	17:20 VA.R. 2881	5/26/01
4 VAC 25-90-10 through 4 VAC 25-90-100	Amended	17:20 VA.R. 2882-2885	7/18/01
4 VAC 25-90-120	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-270	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-300	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-340	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-360	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-100-10 et seq.	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-101-10 through 4 VAC 25-101-220	Added	17:20 VA.R. 2886	7/18/01
<b>Title 5. Corporations</b>			
5 VAC 5-10-10 et seq.	Repealed	17:18 VA.R. 2577	6/1/01
5 VAC 5-20-10 through 5 VAC 5-20-280	Amended	17:18 VA.R. 2581-2587	6/1/01
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 20-200-10 through 6 VAC 20-200-180	Amended	17:19 VA.R. 2731-2735	7/4/01
<b>Title 8. Education</b>			
8 VAC 20-110-10	Amended	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-20	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-40	Amended	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-50	Amended	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-60	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-70	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-140	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-540-10 et seq.	Repealed	17:16 VA.R. 2334	5/23/01
8 VAC 20-541-10 through 8 VAC 20-541-60	Added	17:16 VA.R. 2335-2342	5/23/01
8 VAC 20-650-10 through 8 VAC 20-650-20 emer	Added	17:14 VA.R. 2202	3/7/01-3/6/02
<b>Title 9. Environment</b>			
9 VAC 5-50-400	Amended	17:15 VA.R. 2248	6/1/01
9 VAC 5-60-60	Amended	17:15 VA.R. 2248	6/1/01
9 VAC 5-60-90	Amended	17:15 VA.R. 2248	6/1/01
9 VAC 5-60-100	Amended	17:15 VA.R. 2249	6/1/01
9 VAC 5-80-310 through 9 VAC 5-80-350	Amended	17:20 VA.R. 2887-2890	7/18/01
9 VAC 5-80-355	Repealed	17:20 VA.R. 2891	7/18/01
9 VAC 5-210-10 through 9 VAC 5-210-160	Added	17:16 VA.R. 2342-2344	7/1/01
9 VAC 20-15-10 through 9 VAC 20-15-160	Added	17:16 VA.R. 2344-2346	7/1/01

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 20-80-10	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-40	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-60	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-80	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-100	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-110	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-113	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-115	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-120	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-140 through 9 VAC 20-80-290	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-310 through 9 VAC 20-80-340	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-360 through 9 VAC 20-80-380	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-400	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-450	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-460	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-470	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-480	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-485	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-500 through 9 VAC 20-80-560	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-620 through 9 VAC 20-80-650	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-670	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-700	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-730	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-750 through 9 VAC 20-80-790	Amended	17:16 VA.R. 2349	5/23/01
Appendices 2.1 and 2.2	Added	17:16 VA.R. 2349	5/23/01
Appendix 4.1	Repealed	17:16 VA.R. 2349	5/23/01
Appendix 5.1	Amended	17:16 VA.R. 2349	5/23/01
Appendices 5.2 and 5.3	Repealed	17:16 VA.R. 2349	5/23/01
Appendix 5.5	Amended	17:16 VA.R. 2349	5/23/01
Appendix 5.6	Added	17:16 VA.R. 2349	5/23/01
Appendices 7.4 and 9.1	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 25-15-10 through 9 VAC 25-15-160	Added	17:16 VA.R. 2347-2349	7/1/01
9 VAC 25-31-10	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-30	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-50	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-100	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-110	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-120	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-170	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-220	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-280	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-370	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-390	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-410	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-110-10	Amended	17:16 VA.R. 2350	8/1/01
9 VAC 25-110-20	Amended	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-40	Repealed	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-50	Repealed	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-60	Amended	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-70	Amended	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-80	Amended	17:16 VA.R. 2353	8/1/01
9 VAC 25-115-10 through 9 VAC 25-115-50	Amended	17:16 VA.R. 2367-2380	7/24/01
9 VAC 25-260-50	Amended	17:16 VA.R. 2381	*

\* 30 days after notice in *Virginia Register* of EPA approval

# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-260-55	Added	17:16 VA.R. 2381	*
<b>Title 11. Gaming</b>			
11 VAC 10-60 (Forms)	Amended	17:15 VA.R. 2259	--
11 VAC 10-130-10	Amended	17:19 VA.R. 2736	5/7/01
11 VAC 10-130-60	Amended	17:19 VA.R. 2736	5/7/01
11 VAC 10-130-70	Amended	17:19 VA.R. 2737	5/7/01
<b>Title 12. Health</b>			
12 VAC 30-10-20	Amended	17:19 VA.R. 2737	8/2/01
12 VAC 30-10-160	Amended	17:13 VA.R. 2077	4/11/01
12 VAC 30-10-1000	Added	17:19 VA.R. 2741	7/4/01
12 VAC 30-20-80	Amended	17:13 VA.R. 2077	4/11/01
12 VAC 30-20-290 through 12 VAC 30-20-490	Added	17:19 VA.R. 2741	7/4/01
12 VAC 30-20-500 through 12 VAC 30-20-560	Added	17:19 VA.R. 2741	7/4/01
12 VAC 30-30-10	Amended	17:13 VA.R. 2077	4/11/01
12 VAC 30-30-10	Amended	17:19 VA.R. 2737	8/2/01
12 VAC 30-30-20	Amended	17:13 VA.R. 2081	4/11/01
12 VAC 30-30-20	Amended	17:18 VA.R. 2588	7/1/01
12 VAC 30-30-20	Amended	17:18 VA.R. 2589	7/1/01
12 VAC 30-30-40	Amended	17:13 VA.R. 2082	4/11/01
12 VAC 30-30-50	Amended	17:13 VA.R. 2082	4/11/01
12 VAC 30-40-80	Amended	17:13 VA.R. 2087	4/11/01
12 VAC 30-40-100	Amended	17:13 VA.R. 2083	4/11/01
12 VAC 30-40-220	Amended	17:18 VA.R. 2590	7/1/01
12 VAC 30-40-220	Amended	17:18 VA.R. 2593	7/1/01
12 VAC 30-40-240	Amended	17:13 VA.R. 2083	4/11/01
12 VAC 30-40-250	Amended	17:13 VA.R. 2085	4/11/01
12 VAC 30-40-280	Amended	17:13 VA.R. 2085	4/11/01
12 VAC 30-40-290	Amended	17:13 VA.R. 2085	4/11/01
12 VAC 30-40-350	Amended	17:13 VA.R. 2087	4/11/01
12 VAC 30-50-300	Amended	17:12 VA.R. 2026	6/1/01**
12 VAC 30-50-490	Added	17:18 VA.R. 2595	7/1/01
12 VAC 30-50-530	Amended	17:12 VA.R. 2026	6/1/01**
12 VAC 30-70-140	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-141	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-142	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-143	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-144	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-145	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-80-110	Amended	17:18 VA.R. 2597	7/1/01
12 VAC 30-90-19	Added	17:18 VA.R. 2623	7/1/01
12 VAC 30-90-20	Amended	17:18 VA.R. 2624	7/1/01
12 VAC 30-90-29	Added	17:18 VA.R. 2624	7/1/01
12 VAC 30-90-30	Amended	17:18 VA.R. 2625	7/1/01
12 VAC 30-90-31	Amended	17:18 VA.R. 2626	7/1/01
12 VAC 30-90-33	Amended	17:18 VA.R. 2626	7/1/01
12 VAC 30-90-34	Amended	17:18 VA.R. 2628	7/1/01
12 VAC 30-90-35	Amended	17:18 VA.R. 2630	7/1/01
12 VAC 30-90-36	Amended	17:18 VA.R. 2630	7/1/01
12 VAC 30-90-37	Amended	17:18 VA.R. 2632	7/1/01
12 VAC 30-90-38	Amended	17:18 VA.R. 2632	7/1/01
12 VAC 30-90-39	Amended	17:18 VA.R. 2633	7/1/01
12 VAC 30-90-40	Amended	17:18 VA.R. 2633	7/1/01
12 VAC 30-90-41	Amended	17:18 VA.R. 2633	7/1/01

\*\* Effective date changed in 17:17 VA.R. 2443.

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-90-42	Repealed	17:18 VA.R. 2635	7/1/01
12 VAC 30-90-43	Repealed	17:18 VA.R. 2636	7/1/01
12 VAC 30-90-50	Amended	17:18 VA.R. 2636	7/1/01
12 VAC 30-90-51	Amended	17:18 VA.R. 2636	7/1/01
12 VAC 30-90-55	Amended	17:18 VA.R. 2637	7/1/01
12 VAC 30-90-60	Amended	17:18 VA.R. 2638	7/1/01
12 VAC 30-90-65	Amended	17:18 VA.R. 2638	7/1/01
12 VAC 30-90-70	Amended	17:18 VA.R. 2638	7/1/01
12 VAC 30-90-80	Amended	17:18 VA.R. 2639	7/1/01
12 VAC 30-90-110	Amended	17:18 VA.R. 2639	7/1/01
12 VAC 30-90-120	Amended	17:18 VA.R. 2639	7/1/01
12 VAC 30-90-123	Amended	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-130	Repealed	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-130	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-131	Repealed	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-131	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-132	Repealed	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-132	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-133	Repealed	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-133	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-135	Repealed	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-135	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-136	Added	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-160	Amended	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-165	Added	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-170	Amended	17:18 VA.R. 2642	7/1/01
12 VAC 30-90-221	Amended	17:18 VA.R. 2642	7/1/01
12 VAC 30-90-240	Amended	17:18 VA.R. 2642	7/1/01
12 VAC 30-90-250	Amended	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-253	Amended	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-260	Repealed	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-264	Amended	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-266	Amended	17:18 VA.R. 2646	7/1/01
12 VAC 30-90-270	Amended	17:18 VA.R. 2646	7/1/01
12 VAC 30-90-272	Amended	17:18 VA.R. 2646	7/1/01
12 VAC 30-90-280	Amended	17:18 VA.R. 2648	7/1/01
12 VAC 30-110-630	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-650	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-660	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-670	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-700	Amended	17:13 VA.R. 2097	4/11/01
12 VAC 30-110-710	Amended	17:13 VA.R. 2097	4/11/01
12 VAC 30-110-720	Amended	17:13 VA.R. 2088	4/11/01
12 VAC 30-110-730	Amended	17:13 VA.R. 2090	4/11/01
12 VAC 30-110-740	Repealed	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-741	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-744	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-747	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-751	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-760	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-780	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-790	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-800	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-810	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-813	Added	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-815	Added	17:13 VA.R. 2092	4/11/01



## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-110-820	Repealed	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-830	Amended	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-840	Amended	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-850	Amended	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-853	Added	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-856	Added	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-860	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-870	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-880	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-890	Repealed	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-900	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-910	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-920	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-921	Added	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-930	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-940	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-950	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-960	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-970	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-980	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-990	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-1010	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-1011	Added	17:13 VA.R. 2095	4/11/01
12 VAC 35-110-10 et seq.	Repealed	17:20 VA.R. 2891	7/18/01
12 VAC 35-115-10 through 12 VAC 35-115-250	Added	17:20 VA.R. 2892-2920	7/18/01
12 VAC 35-120-10 et seq.	Repealed	17:20 VA.R. 2920	7/18/01
12 VAC 30-120-700 through 12 VAC 30-120-790	Added	17:18 VA.R. 2597-2622	7/1/01
12 VAC 35-130-10 et seq.	Repealed	17:20 VA.R. 2920	7/18/01
<b>Title 13. Housing</b>			
13 VAC 10-180-10	Amended	17:17 VA.R. 2444	4/9/01
13 VAC 10-180-40	Amended	17:17 VA.R. 2444	4/9/01
13 VAC 10-180-60	Amended	17:17 VA.R. 2444	4/9/01
13 VAC 10-180-70	Amended	17:17 VA.R. 2452	4/9/01
13 VAC 10-180-90	Amended	17:17 VA.R. 2452	4/9/01
13 VAC 10-180-100	Amended	17:17 VA.R. 2452	4/9/01
<b>Title 14. Insurance</b>			
14 VAC 5-215 (Forms)	Amended	17:19 VA.R. 2753-2758	7/4/01
14 VAC 5-300-130	Amended	17:16 VA.R. 2382	5/1/01
<b>Title 17. Libraries and Cultural Resources</b>			
17 VAC 15-20-20 through 17 VAC 15-20-50	Amended	17:14 VA.R. 2183	5/1/01
17 VAC 15-20-70 through 17 VAC 15-20-120	Amended	17:14 VA.R. 2183	5/1/01
17 VAC 15-20-150 through 17 VAC 15-20-170	Amended	17:14 VA.R. 2183	5/1/01
17 VAC 15-30-10 et seq.	Repealed	17:14 VA.R. 2183	5/1/01
17 VAC 15-40-10 et seq.	Repealed	17:14 VA.R. 2183	5/1/01
17 VAC 15-50-20 through 17 VAC 15-50-50	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-70	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-90 through 17 VAC 15-50-110	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-130	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-140	Repealed	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-150	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-160	Amended	17:14 VA.R. 2184	5/1/01
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 5-20-10 et seq.	Repealed	17:14 VA.R. 2184	4/25/01
18 VAC 5-21-10 through 18 VAC 5-21-170	Amended	17:14 VA.R. 2184-2198	4/25/01
18 VAC 30-10-10	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-20	Amended	17:20 VA.R. 2921	7/18/01

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 30-10-30	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-40	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-60	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-70	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-80	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-100	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-20-10	Amended	17:16 VA.R. 2383	5/23/01
18 VAC 30-20-80	Amended	17:16 VA.R. 2383	5/23/01
18 VAC 30-20-160	Amended	17:16 VA.R. 2383	5/23/01
18 VAC 30-20-300	Added	17:16 VA.R. 2384	5/23/01
18 VAC 30-20-310	Added	17:16 VA.R. 2384	5/23/01
18 VAC 30-20-320	Added	17:16 VA.R. 2384	5/23/01
18 VAC 85-40-61	Added	17:13 VA.R. 2097	4/11/01
18 VAC 85-50-58	Added	17:13 VA.R. 2098	4/11/01
18 VAC 85-80-10	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-70	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-71	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-72	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-80	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-101-150	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-101-151	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-101-152	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-110-150	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-110-155	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-110-160	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-120-10 et seq.	Added	17:17 VA.R. 2453	6/6/01
18 VAC 90-10-10	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-20	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-30	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-40	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-60	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-70	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-80	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-100	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-20-210	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-30-50	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 90-30-110	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 90-40-60	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 90-40-70	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 105-20-60	Amended	17:17 VA.R. 2453	6/6/01
18 VAC 115-60-20	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-40	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-50	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-120	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-150	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 125-20-10	Amended	17:12 VA.R. 2026	3/28/01
18 VAC 125-20-30	Amended	17:12 VA.R. 2027	3/28/01
18 VAC 125-20-30	Amended	17:18 VA.R. 2652	6/20/01
18 VAC 125-20-43	Added	17:12 VA.R. 2027	3/28/01
18 VAC 125-20-120	Amended	17:18 VA.R. 2652	6/20/01
18 VAC 125-20-121	Added	17:18 VA.R. 2653	6/20/01
18 VAC 125-20-122	Added	17:18 VA.R. 2653	6/20/01
18 VAC 125-20-123	Added	17:18 VA.R. 2653	6/20/01
18 VAC 125-20-130	Amended	17:18 VA.R. 2654	6/20/01
18 VAC 125-20-160	Amended	17:18 VA.R. 2654	6/20/01
18 VAC 140-20-100	Amended	17:14 VA.R. 2198	4/25/01

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 140-20-105	Added	17:14 VA.R. 2198	4/25/01
18 VAC 140-20-106	Added	17:14 VA.R. 2199	4/25/01
18 VAC 140-20-110	Amended	17:14 VA.R. 2199	4/25/01
18 VAC 140-20-160	Amended	17:14 VA.R. 2199	4/25/01
<b>Title 19. Public Safety</b>			
19 VAC 30-40-30	Amended	17:15 VA.R. 2252	5/9/01
19 VAC 30-70-160	Amended	17:15 VA.R. 2252	5/9/01
19 VAC 30-70-530	Amended	17:15 VA.R. 2255	5/9/01
19 VAC 30-150-5	Added	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-10	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-20	Repealed	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-30	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-50	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-5	Added	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-20	Repealed	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-30	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-40	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-45	Added	17:15 VA.R. 2257	5/9/01
19 VAC 30-165-10 et seq.	Amended	17:15 VA.R. 2258	5/9/01
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-309-10	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-15	Added	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-20	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-30	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-40	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-50	Amended	17:18 VA.R. 2658	7/1/01
20 VAC 5-309-70	Amended	17:18 VA.R. 2658	7/1/01
20 VAC 5-309-90 through 20 VAC 5-309-180	Added	17:18 VA.R. 2658-2660	7/1/01
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-10 (Forms)	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-10	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-30	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-40	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-60 through 21 VAC 5-20-80	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-85	Added	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-90	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-120	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-130	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-155	Added	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-220	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-240	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-280	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-290	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-30	Repealed	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-60	Repealed	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-80	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-90	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-10	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-30 through 21 VAC 5-80-70	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-90 through 21 VAC 5-80-110	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-160	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-200	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-210	Amended	17:20 VA.R. 2931	7/1/01
<b>Title 22. Social Services</b>			
22 VAC 40-130-10 et seq.	Withdrawn	17:17 VA.R. 2456	--
22 VAC 40-230-10 et seq.	Repealed	17:18 VA.R. 2660	6/20/01

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## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-480-10 et seq.	Repealed	17:18 VA.R. 2661	6/20/01
22 VAC 40-690-10	Amended	17:18 VA.R. 2661	9/1/01
22 VAC 40-690-15	Added	17:18 VA.R. 2662	9/1/01
22 VAC 40-690-20	Amended	17:18 VA.R. 2662	9/1/01
22 VAC 40-690-30	Amended	17:18 VA.R. 2662	9/1/01
22 VAC 40-690-35	Added	17:18 VA.R. 2663	9/1/01
22 VAC 40-690-40	Amended	17:18 VA.R. 2663	9/1/01
22 VAC 40-690-50	Repealed	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-55	Added	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-60	Amended	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-65	Added	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-70	Repealed	17:18 VA.R. 2664	9/1/01
22 VAC 40-730-10 emer	Amended	17:13 VA.R. 2103	4/1/01-3/31/02
22 VAC 40-730-40 through 22 VAC 40-730-100 emer	Amended	17:13 VA.R. 2103-2104	4/1/01-3/31/02
22 VAC 40-900-10 et seq.	Repealed	17:18 VA.R. 2671	6/20/01
22 VAC 40-901-10 through 22 VAC 40-901-30	Added	17:18 VA.R. 2671	6/20/01
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-61-20	Amended	17:17 VA.R. 2456	6/6/01
24 VAC 30-61-40	Amended	17:17 VA.R. 2456	6/6/01
24 VAC 30-240-10	Amended	17:18 VA.R. 2671	5/1/01
24 VAC 30-280-10	Amended	17:13 VA.R. 2099	2/15/01
24 VAC 30-280-20 through 24 VAC 30-280-70	Added	17:13 VA.R. 2099-2102	2/15/01
24 VAC 30-440-10 et seq.	Repealed	17:14 VA.R. 2200	3/6/01
24 VAC 30-450-10 et seq.	Amended	17:14 VA.R. 2200	3/6/01
24 VAC 30-460-10	Repealed	17:14 VA.R. 2201	3/6/01
24 VAC 30-561-10	Amended	17:18 VA.R. 2672	5/2/01

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### DEPARTMENT 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 State Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **2 VAC 5-500-10 et seq. Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including the following: the need to include certain other species of mammals if the milk or dairy products are intended for human consumption; the need for consistency and compliance with the requirements of the Pasteurized Milk Ordinance (PMO) for Grade "A" milk; provision for the cooling, storing, and sampling of milk using alternatives to bulk tanks; the need to eliminate references to fees for milk hauling permits; the need to require permits for each milk pickup tank or milk transport tank used to move milk in Virginia; the need to include recording thermometer specifications consistent with the PMO; the need to require dedicated milk transport tanks to be used to haul any pasteurized milk, milk products, or frozen dessert mixes, when the products will not be repasteurized at the plant where they are packaged; and the need to require the collection of two identical milk samples at each pickup. The agency invites comment on whether there should be an adviser. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 3.1-530.1, 3.1-530.2, 3.1-535, and 3.1-535.1 of the Code of Virginia.

Public comments may be submitted until July 9, 2001.

**Contact:** John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 505, Richmond, VA 23219, telephone (804) 786-1453 or FAX (804) 371-7792.

VA.R. Doc. No. R01-166; Filed April 16, 2001, 4:17 p.m.

## TITLE 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-20-10 et seq. Advertising.** The purpose of the proposed action is to modify current restrictions on the use of athletes or athletic teams in advertising, allowing wine and beer licensees to display point-of-sale advertising materials incorporating the use of professional athlete and athletic teams. This action is necessary to resolve a conflict between the current regulation and Chapter 361 of the 2001 Acts of Assembly. The board also intends to increase from \$5.00 to \$10.00 the maximum wholesale value of novelty and specialty items bearing alcoholic beverage advertising that may be given away by alcoholic beverage manufacturers, importers, bottlers, brokers, wholesalers, or their representatives. The allowable value has not increased since 1991. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-111 and 4.1-320 of the Code of Virginia.

Public comments may be submitted until July 5, 2001.

**Contact:** Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4411 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-199; Filed May 16, 2001, 10:24 a.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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-30-10 et seq. Tied-House.** The purpose of the proposed action is to amend the regulation to allow alcoholic beverage manufacturers, bottlers, and wholesalers to provide advertising materials to retail licensees that have been customized for the individual retailer, with some restrictions. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 5, 2001.

**Contact:** Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4411 or (804) 213-4687/TTY ☎

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# Notices of Intended Regulatory Action

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VA.R. Doc. No. R01-200; Filed May 16, 2001, 10:25 a.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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-50-10 et seq. Retail Operations.** The purpose of the proposed action is to reduce the advance notice required of events to be catered under a caterer's license from two days to 24 hours. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

**Contact:** Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-214; Filed May 30, 2001, 11:12 a.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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-60-10 et seq. Manufacturers and Wholesalers Operations.** The purpose of the proposed action is to increase from \$5.00 to \$10.00 the maximum wholesale value of novelty and specialty items bearing spirits advertising that may be given away, and allow permittees to provide routine business to mixed beverage licensees subject to the same conditions and limitations that apply to wholesalers and manufacturers. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

**Contact:** Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-215; Filed May 30, 2001, 11:12 a.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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-70-10 et seq. Other Provisions.** The purpose of the proposed action is to allow for the peddling of cider and the reporting of cider sales by wholesale wine licensees in the same manner as beer. These changes are intended to accommodate cider wholesalers who are primarily beer wholesalers, allowing them to sell and invoice cider products in the same manner as their beer products. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103, 4.1-111, and 4.1-213 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

**Contact:** Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-216; Filed May 30, 2001, 11:12 a.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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-70-10 et seq. Other Provisions.** The purpose of the proposed action is to add provisions requiring all banquet and special event licensees in charge of public events to report to the board the income and expenses associated with the event when the licensee engages another person to organize, conduct or operate the event on behalf of the licensee. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

**Contact:** Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-217; Filed May 30, 2001, 11:12 a.m.

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### BOARD OF CORRECTIONS

#### 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 Corrections intends to consider amending regulations entitled: **6 VAC 15-80-10 et seq. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.** The purpose of the proposed action is to amend the regulation to include new technologies, campus style and direct supervision facility designs and relevant aspects of the Americans with Disabilities Act. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 53.1-5, 53.1-68 and 53.1-80 through 53.1-82.1 of the Code of Virginia.

Public comments may be submitted until July 13, 2001.

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# Notices of Intended Regulatory Action

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**Contact:** J. Michael Howerton, Community Corrections/Local Facilities, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 675-3251 or FAX (804) 674-3525.

VA.R. Doc. No. R01-195; Filed May 15, 2001, 10:41 a.m.

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### † 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 Board of Education intends to consider amending regulations entitled: **8 VAC 20-360-10 et seq. Rules Governing General Educational Development Certificates.** The Regulations Governing General Educational Development (GED) Certificates were last amended in 1980. Since that time, the American Council on Education, which has oversight of GED testing, has established new requirements for the program that are not reflected in the current regulations. Additionally, the Code of Virginia has been amended to include new GED programs for 16-year olds. The purpose of the proposed action is to amend the regulation to ensure the integrity of the GED credential and align it with the Code of Virginia by adding requirements that reflect current program practice. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 22.1-223 of the Code of Virginia.

Public comments may be submitted until August 2, 2001.

**Contact:** Dr. Yvonne Thayer, Director, Adult Education Programs, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2293.

VA.R. Doc. No. R01-219; Filed June 11, 2001, 11:45 a.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL 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 Water Control Board intends to consider promulgating regulations entitled: **9 VAC 25-71-10 et seq. Regulations Governing the Discharge of Sewage and Other Waste from Boats** and repealing **9 VAC 25-70-10 et seq., Regulation No. 5 - Control of Pollution from Boats** and **9 VAC 25-730-10 et seq., Smith Mountain Lake No-Discharge Zone.** The purpose of the action is to provide a state regulation to address discharges of sewage and other wastes (decayed wood, sawdust, oil, etc.) from boats,

especially with regard to implementation of no discharge zones. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 62.1-44.33 of the Code of Virginia.

Public comments may be submitted until August 10, 2001.

**Contact:** Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.state.va.us.

VA.R. Doc. No. R01-220; Filed June 11, 2001, 8:37 a.m.

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### 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 Board of Health intends to consider amending regulations entitled: **12 VAC 5-610-10 et seq. Sewage Handling and Disposal Regulations.** The purpose of the proposed action is to address issues surrounding larger sewage disposal systems and soils with high rock content, which affects the soil's absorption ability. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-164 of the Code of Virginia.

Public comments may be submitted until July 5, 2001.

**Contact:** Donald J. Alexander, Director, Onsite Sewage and Water Services, Department of Health, 1500 E. Main St., Room 115, Richmond, VA 23219, telephone (804) 225-4030 or FAX (804) 225-4003.

VA.R. Doc. No. R01-192; Filed May 9, 2001, 10:53 a.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 State Board of Health intends to consider amending regulations entitled: **12 VAC 5-610-10 et seq. Sewage Handling and Disposal Regulations.** The purpose of the proposed action is to establish (i) new site and soil requirements for onsite sewage systems utilizing secondary and advanced secondary treatment; (ii) new design and construction criteria using the concept of a minimum footprint; and (iii) requirements for operating, maintaining, and monitoring onsite wastewater systems. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-164 of the Code of Virginia.

Public comments may be submitted until July 5, 2001.

**Contact:** Donald J. Alexander, Director, Onsite Sewage and Water Services, Department of Health, 1500 E. Main St.,

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# Notices of Intended Regulatory Action

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Room 115, Richmond, VA 23219, telephone (804) 225-4030 or FAX (804) 225-4003.

VA.R. Doc. No. R01-193; Filed May 9, 2001, 10:54 a.m.

## 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 30-110-10 et seq. Eligibility and Appeals.** The purpose of the proposed action is to amend the hardship provision in the Medicaid eligibility regulations for married institutionalized individuals who have a spouse who still lives in the community. 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 July 5, 2001, to Patricia Sykes, Analyst, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, 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. R01-191; Filed May 4, 2001, 2:48 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### VIRGINIA BOARD FOR ASBESTOS AND LEAD

#### † 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 Board for Asbestos and Lead intends to consider promulgating regulations entitled: **18 VAC 15-40-10 et seq. Virginia Board for Asbestos, Lead and Home Inspectors, Certified Home Inspectors Regulations.** The 2001 Session of the Virginia General Assembly by House Bill 2174 created a regulatory program to administer certified home inspectors. The board seeks public comment on all areas of possible regulation with emphasis on the following areas: definitions of terms to be used in the regulations; entry standards for those seeking to practice as a certified home inspector; renewal standards for regulants; standards of practice and conduct; and grounds for disciplinary action against regulants. House Bill 2174 mandates the adoption of final regulations on or before July 1, 2003. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public comments may be submitted until August 3, 2001.

**Contact:** Christine Martine, Acting Assistant Director, Virginia Board for Asbestos and Lead, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R01-222; Filed June 12, 2001, 11:25 a.m.

### AUCTIONEERS 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 Auctioneers Board intends to consider amending regulations entitled: **18 VAC 25-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed action is to amend the regulations to allow the board to accept requests to be placed on a notification list, and to notify PPG list members, via electronic means. Other changes which may be necessary will be considered. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-602 of the Code of Virginia.

Public comments may be submitted until August 1, 2001.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R01-226; Filed June 13, 2001, 11:36 a.m.

### BOARD FOR BRANCH PILOTS

#### † 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 for Branch Pilots intends to consider amending regulations entitled: **18 VAC 45-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed action is to amend the regulations to allow the board to accept requests to be placed on a notification list, and to notify PPG list members, via electronic means. Other changes which may be necessary will be considered. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-902 of the Code of Virginia.

Public comments may be submitted until August 1, 2001.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R01-227; Filed June 13, 2001, 11:37 a.m.



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# Notices of Intended Regulatory Action

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## BOARD FOR CONTRACTORS

### † 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 for Contractors intends to consider amending regulations entitled: **18 VAC 50-22-10 et seq. Board for Contractor Regulations**; and **18 VAC 50-30-10 et seq. Tradesman Rules and Regulations**. The purpose of the proposed action is to adjust the licensing fees for contractors and tradesmen regulated by the Board for Contractors. The board is mandated by statute to establish fees adequate to support the costs of board operations as well as proportionate department operations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public comments may be submitted until August 3, 2001.

**Contact:** David E. Dick, Contractor Board Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R01-221; Filed June 12, 2001, 11:25 a.m.

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## TITLE 22. SOCIAL SERVICES

### STATE 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 State Board of Social Services intends to consider promulgating regulations entitled: **22 VAC 40-675-10 et seq. Personnel Policies for Local Departments of Social Services**. The purpose of the proposed action is to establish and formalize consistent and equitable personnel policies as a basis for management of employees in local departments of social services. The proposed action, advanced after advice from legal counsel for the department, satisfies both state and federal requirements. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.1-25 and 63.1-26 of the Code of Virginia.

Public comments may be submitted until July 5, 2001.

**Contact:** Vivian Flythe Cook, Personnel Practices Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1561 or FAX (804) 692-1598.

VA.R. Doc. No. R01-196; Filed May 15, 2001, 3:26 p.m.

## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMONWEALTH TRANSPORTATION 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 Commonwealth Transportation Board intends to consider repealing regulations entitled **24 VAC 30-150-10 et seq. Land Use Permit Manual** and promulgating regulations entitled: **24 VAC 30-151-10 et seq. Lane Use Permit Manual**. The purpose of the proposed action is to replace the existing regulation with a totally rewritten regulation. Changes being considered include reorganizing the regulation to improve readability and comprehension, eliminating redundant and obsolete text, conforming the regulation to amendments that have been made to other VDOT regulations, and addressing changes in administrative practices or office technology that have occurred since the last revision in 1983. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 33.1-12 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

**Contact:** Lynn D. Wagner, Permit Operations Program Manager, Department of Transportation, Maintenance Division, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 225-3676, FAX (804) 692-0810 or e-mail [wagner\\_ld@vdot.state.va.us](mailto:wagner_ld@vdot.state.va.us).

VA.R. Doc. No. R01-212; Filed May 29, 2001, 9:50 a.m.

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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text.  
Language which has been stricken indicates proposed text for deletion.

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **Regulations for the Control and Abatement of Air Pollution (Documents Incorporated by Reference -- Rev. B00).**

**9 VAC 5-10-10 et seq. General Definitions (amending 9 VAC 5-10-20).**

**9 VAC 5-20-10 et seq. General Provisions (amending 9 VAC 5-20-21).**

**9 VAC 5-40-10 et seq. Existing Stationary Sources (amending 9 VAC 5-40-460, 9 VAC 5-40-2930, 9 VAC 5-40-5210, 9 VAC 5-40-5230, 9 VAC 5-40-8130, and 9 VAC 5-40-8150).**

**9 VAC 5-80-10 et seq. Permits for Stationary Sources (amending 9 VAC 5-80-10, 9 VAC 5-80-370, 9 VAC 5-80-390, 9 VAC 5-80-1710, and 9 VAC 5-80-2010).**

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public Hearing Date: August 16, 2001 - 9 a.m.

Public comments may be submitted until September 6, 2001.

(See Calendar of Events section for additional information)

Agency Contact: Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Purpose: The purpose of the regulation is to incorporate technical documents that are referenced in the regulations. These documents are required by federal law or regulation, and are included in order to ensure that the air pollution control regulations are properly implemented. The proposed amendments are being made to ensure that the most up-to-date and technically accurate documents are used, thus ensuring the proper implementation of the air pollution control regulations, and thereby protecting the public health and welfare.

Substance:

1. The newest editions of technical documents are being incorporated.
2. References to individual documents throughout the regulations have been revised for clarity, updated, or corrected.

Issues:

1. Public: There are no disadvantages to the public associated with this regulation while there are a number of

advantages. The health and welfare of individual citizens will be better protected through the efficient and accurate implementation of air pollution control measures. Use of these standards is also advantageous to industry, as they provide scientific and technical information otherwise not readily obtainable by individual facilities. Use of these standards assures convenience and consistency for their users, as well as a strong degree of confidence in their accuracy.

2. Department: There are no disadvantages to the department associated with this regulation while there are a number of advantages. The amendments concern documents that are technical in nature and pertain to areas in which the agency has limited expertise or resources to conduct extensive research. In addition, the agency must ensure that its references to technical standards are consistent with standards developed and accepted by the scientific and industrial communities. By keeping state requirements consistent with these standards, the state and the regulated community avoid conflict and confusion, and ensure technical accuracy. Relying on existing standards also saves the state time and financial resources by eliminating duplication of research.

Localities Particularly 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.

Public Participation: The department is seeking comment on the proposed regulation and the costs and benefits of the proposal.

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 25 (98). 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 Air Pollution Control Board proposes to update the referenced technical standards in the air pollution regulations.

Estimated economic impact. The air pollution regulations in the Commonwealth reference certain standards provided by several professional publications. The referenced publications are technical in nature and include documents such as

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# Proposed Regulations

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“Standard Test Method for Vapor Pressure of Petroleum Products” by the American Society for Testing Materials, “Evaporation Loss from Floating Roof Tanks” by the American Petroleum Industry, and “Standard for the Qualification and Certification of Resource Recovery Facility Operators” by the American Society of Mechanical Engineers. The standards incorporated by reference from these documents are related to many technical terms including true vapor pressure, Reid vapor pressure, waxy, heavy pour crude oil, pressure relief valve, conversion factor, and sample testing methods.

The Department of Environmental Quality (DEQ) is not aware of any significant changes in the standards incorporated by reference in the air pollution regulations. Thus, the proposed adoption of the updated standards is not likely to have significant economic impact.

The proposed changes are beneficial in the sense that they will help maintain current and timely regulations. DEQ indicated that these references provide very specific technical instructions on how to define terms, how to conduct tests, and what technical information to employ. These standards are reviewed frequently by professional organizations and updated on a regular basis. By referencing the latest version of these standards, the regulated sources will be able to comply with the standards that are most up-to-date and consistent nationwide. In addition, the Environmental Protection Agency indicates that outdated and inaccurate technical documents referenced in the regulations will result in disapproval of the state implementation plan.<sup>1</sup> Disapproval of the state implementation plan could potentially make Virginia subject to sanctions specified in section 179(b) of the federal Clean Air Act.<sup>2</sup> Thus, the proposed regulations are likely to promote compliance with federal regulations.

Businesses and entities affected. The proposed changes will potentially affect 4,757 active registered air pollution sources in Virginia. Certain referenced documents may affect all of the sources while some other documents may affect a specific type of source. For example, the American Conference of Governmental Industrial Hygienists’ manual affects each and every one of the air pollution sources in the Commonwealth, while the American Hospital Association’s “An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities” applies to 12 medical waste incinerators.

Localities particularly affected. The proposed regulations apply to all localities in the Commonwealth.

Projected impact on employment. No significant impact on employment is expected.

Effects on the use and value of private property. The proposed changes are not likely to significantly affect the use and value of private property.

Agency’s Response to the Department of Planning and Budget’s Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

## Summary:

*The proposed amendments incorporate the latest editions of referenced technical documents. The amendments are needed because the agency’s regulations must be current and timely, which means that documents incorporated by reference must be the most recent editions.*

### **9 VAC 5-10-20. Terms defined.**

*“Actual emissions rate”* means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

*“Administrator”* means the administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.

*“Affected facility”* means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated.

*“Air pollution”* means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

*“Air quality”* means the specific measurement in the ambient air of a particular air pollutant at any given time.

*“Air quality control region”* means any area designated as such in 9 VAC 5-20-200.

*“Air quality maintenance area”* means any area which, due to current air quality or projected growth rate or both, may have the potential for exceeding any ambient air quality standard set forth in 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.) within a subsequent 10-year period and designated as such in 9 VAC 5-20-203.

*“Alternative method”* means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

*“Ambient air”* means that portion of the atmosphere, external to buildings, to which the general public has access.

*“Ambient air quality standard”* means any primary or secondary standard designated as such in 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.).

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<sup>1</sup> Source: DEQ

<sup>2</sup> Ibid.

"Board" means the State Air Pollution Control Board or its designated representative.

"Class I area" means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in 9 VAC 5-20-205.

"Class II area" means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9 VAC 5-20-205.

"Class III area" means any prevention of significant deterioration area (i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in 9 VAC 5-20-205.

"Continuous monitoring system" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

"Control program" means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.
2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.
3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.
4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.)

"Day" means a 24-hour period beginning at midnight.

"Delayed compliance order" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable State Implementation Plan.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" or "executive director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:
  - a. Using that portion of a stack which exceeds good engineering practice stack height;
  - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
  - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.
2. The preceding sentence does not include:
  - a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;
  - b. The merging of exhaust gas streams where:
    - (1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;
    - (2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or
    - (3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;
  - c. Smoke management in agricultural or silvicultural prescribed burning programs;
  - d. Episodic restrictions on residential woodburning and open burning; or

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## Proposed Regulations

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e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

*"Emergency"* means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

*"Emission limitation"* means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

*"Emission standard"* means any provision of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) or 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.) which prescribes an emission limitation, or other requirements that control air pollution emissions.

*"Emissions unit"* means any part of a stationary source which emits or would have the potential to emit any air pollutant.

*"Equivalent method"* means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

*"Excess emissions"* means emissions of air pollutant in excess of an emission standard.

*"Excessive concentration"* is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of 9 VAC 5-80-20, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to

the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

*"Existing source"* means any stationary source other than a new source or modified source.

*"Facility"* means something that is built, installed or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

*"Federal Clean Air Act"* means 42 USC § 7401 et seq., 91 Stat 685.

*"Federally enforceable"* means all limitations and conditions which are enforceable by the administrator, including the following:

1. Any requirement approved by the administrator pursuant to the provisions of § 111 or § 112 of the federal Clean Air Act;
2. Any applicable source-specific or source-category emission limit or requirement in an implementation plan;
3. Any permit requirements established pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.), with the exception of terms and conditions established to address applicable state requirements; and
4. Any other applicable federal requirement.

*"Good engineering practice"* or *"GEP,"* with reference to the height of the stack, means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;

2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.),

$$H_g = 2.5H,$$

provided the owner produces evidence that this equation was actually relied on in establishing an emission limitation;

b. For all other stacks,

$$H_g = H + 1.5L,$$

where:

$H_g$  = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

*"Hazardous air pollutant"* means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

*"Implementation plan"* means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

*"Isokinetic sampling"* means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

*"Locality"* means a city, town, county or other public body created by or pursuant to state law.

*"Malfunction"* means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person.

*"Metropolitan statistical area"* means any area designated as such in 9 VAC 5-20-202.

*"Monitoring device"* means the total equipment used to measure and record (if applicable) process parameters.

*"Nearby"* as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

*"Nitrogen oxides"* means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

*"Nonattainment area"* means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in 9 VAC 5-20-204.

*"One hour"* means any period of 60 consecutive minutes.

*"One-hour period"* means any period of 60 consecutive minutes commencing on the hour.

*"Organic compound"* means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

*"Owner"* means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

*"Particulate matter"* means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

*"Particulate matter emissions"* means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

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## Proposed Regulations

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"*PM<sub>10</sub>*" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"*PM<sub>10</sub> emissions*" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"*Performance test*" means a test for determining emissions from new or modified sources.

"*Person*" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"*Pollutant*" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"*Potential to emit*" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

"*Prevention of significant deterioration area*" means any area not designated as a nonattainment area in 9 VAC 5-20-204 for a particular pollutant and designated as such in 9 VAC 5-20-205.

"*Proportional sampling*" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

"*Public hearing*" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"*Reference method*" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.): The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.
2. For emission standards in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) and 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.): Appendix A of 40 CFR Part 60.
3. For emission standards in 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.): Appendix B of 40 CFR Part 61.

"*Regional director*" means the regional director of an administrative region of the Department of Environmental Quality or a designated representative.

"*Regulation of the board*" means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

"*Regulations for the Control and Abatement of Air Pollution*" means 9 VAC 5 Chapters 10 (9 VAC 5-10-10 et seq.) through 80 (9 VAC 5-80-10 et seq.).

"*Reid vapor pressure*" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials publication, ~~Standard D323-82~~, "Test Method for Vapor Pressure of Petroleum Products (Reid Method)" (see ~~9 VAC 5-10-21~~ 9 VAC 5-20-21).

"*Run*" means the net period of time during which an emission sampling is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

"*Shutdown*" means the cessation of operation of an affected facility for any purpose.

"*Source*" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"*Stack*" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

"*Stack in existence*" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or
2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

"*Standard conditions*" means a temperature of 20°C (68°F) and a pressure of 760 mm of H subg (29.92 inches of H<sub>g</sub>).

"*Standard of performance*" means any provision of 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) which prescribes an emission limitation or other requirements that control air pollution emissions.

"*Startup*" means the setting in operation of an affected facility for any purpose.

"*State enforceable*" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9 VAC 5-20-110; requirements within any applicable regulation, order, consent agreement or variance; and any permit

requirements established pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.)

"*State Implementation Plan*" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"*Stationary source*" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-10-21).

"*These regulations*" means 9 VAC 5 Chapters 10 (9 VAC 5-10-10 et seq.) through 80 (9 VAC 5-80-10 et seq.).

"*Total suspended particulate (TSP)*" means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

"*True vapor pressure*" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) publication 2547, "Evaporation Loss from External Floating-Roof Tanks" (see ~~9 VAC 5-40-24~~ 9 VAC 5-20-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"*Urban area*" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in 9 VAC 5-20-201.

"*Vapor pressure,*" except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in ~~API American Petroleum Institute~~ publication 2547, "Evaporation Loss from External Floating-Roof Tanks" (see ~~9 VAC 5-40-24~~ 9 VAC 5-20-21).

"*Virginia Air Pollution Control Law*" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"*Volatile organic compound*" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:

- a. Methane;
- b. Ethane;
- c. Methylene chloride (dichloromethane);

- d. 1,1,1-trichloroethane (methyl chloroform);
- e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
- f. Trichlorofluoromethane (CFC-11);
- g. Dichlorodifluoromethane (CFC-12);
- h. Chlorodifluoromethane (H CFC-22);
- i. Trifluoromethane (H FC-23);
- j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);
- k. Chloropentafluoroethane (CFC-115);
- l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
- m. 1,1,1,2-tetrafluoroethane (HFC-134a);
- n. 1,1-dichloro 1-fluoroethane (HCFC-141b);
- o. 1-chloro 1,1-difluoroethane (HCFC-142b);
- p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
- q. Pentafluoroethane (HFC-125);
- r. 1,1,2,2-tetrafluoroethane (HFC-134);
- s. 1,1,1-trifluoroethane (HFC-143a);
- t. 1,1-difluoroethane (HFC-152a);
- u. Parachlorobenzotrifluoride (PCBTF);
- v. Cyclic, branched, or linear completely methylated siloxanes;
- w. Acetone;
- x. Perchloroethylene (tetrachloroethylene); and
- y. Perfluorocarbon compounds which fall into these classes:

- (1) Cyclic, branched, or linear, completely fluorinated alkanes;
- (2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- (4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in accordance with the provisions of 9 VAC 5-40-30 or 9 VAC 5-50-30, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or



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# Proposed Regulations

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testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly-reactive compounds in the emissions of the source.

4. Exclusion of the above compounds in this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

## DOCUMENTS INCORPORATED BY REFERENCE

~~Test Method for Vapor Pressure of Petroleum Products (Reid Method), STANDARD D323-82, ASTM D 323-99a, Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method), American Society for Testing and Materials, 1999.~~

*Standard Industrial Classification Manual, U.S. Government Printing Office stock number 041-001-00-314-2, 1987.*

*American Petroleum Institute, Manual of Petroleum Measurement Standards, Chapter 19-Evaporative Loss Measurement, Section 2—Evaporative Loss from Floating-Roof Tanks, April 1997.*

### **9 VAC 5-20-21. Documents incorporated by reference.**

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (1999 2000) in effect July 1, 1999 2000. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the ~~headquarters~~ *central* office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

#### 1. Code of Federal Regulations.

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.

(1) 40 CFR Part 50--National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A--Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(b) Appendix B--Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(c) Appendix C--Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(d) Appendix D--Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(e) Appendix E--Reference Method for Determination of Hydrocarbons Corrected for Methane.

(f) Appendix F--Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(g) Appendix G--Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(h) Appendix H--Interpretation of the National Ambient Air Quality Standards for Ozone.

(i) Appendix I--Reserved.

(j) Appendix J--Reference Method for the Determination of Particulate Matter as PM<sub>10</sub> in the Atmosphere.

(k) Appendix K--Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(2) 40 CFR Part 51--Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Appendix M--Recommended Test Methods for State Implementation Plans.

Appendix S--Emission Offset Interpretive Ruling.

Appendix W--Guideline on Air Quality Models (Revised).

(3) 40 CFR Part 58--Ambient Air Quality Surveillance.

Appendix B--Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(4) 40 CFR Part 60--Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9 VAC 5-50-400 et seq.) of Part II of Chapter 50, Rule 5-5, Environmental Protection Agency Standards of Performance for New Stationary Sources.

(5) 40 CFR Part 61--National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9 VAC 5-60-60 et seq.) of Part II of Chapter 60, Rule 6-1, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants.

(6) 40 CFR Part 63--National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9 VAC 5-60-90 et seq.) of Part II of Chapter 60, Rule 6-2, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories.

b. Copies may be obtained from: Superintendent of Documents, ~~U.S. Government Printing Office, Washington, D.C. 20402 P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954~~; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, Publication No. ~~PB95196028, 1995~~; Volume II: Supplement A, Publication No. ~~PB96192497, 1996~~ stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

b. Copies of Volume I and Supplements A through C may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone (703) 487-4650

1-800-553-6847. Copies of Supplements D and E may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/chief/ap42/index.html>.

3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from: Superintendent of Documents, ~~U.S. Government Printing Office, Washington, D.C. 20402 P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954~~; phone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-94 99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)." ~~from Section 5, Volume 05.01 of the 1985 Annual Book of ASTM Standards.~~

(2) D97-93 96a, "Standard Test Method for Pour Point of Petroleum Oils Products." ~~from Section 5, Volume 05.01 of the 1989 Annual Book of ASTM Standards.~~

(3) D129-94 00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)," 1994."

(4) D388-95 99, "Standard Classification of Coals by Rank," 1995."

(5) D396-92 98, "Standard Specification for Fuel Oils," 1992."

(6) D975-94 98b, "Standard Specification for Diesel Fuel Oils," 1994."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases," 1990, reapproved 1994."

(8) D1265-92 97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)," 1992."

(9) D2622-94 98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry," 1994."

(10) D4057-88 95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products," 1988."

(11) D4294-90 98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy," 1990."

b. Copies may be obtained from: American Society for Testing Materials, ~~1916 Race Street, Philadelphia 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19403~~ 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API).

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# Proposed Regulations

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a. The following document from the American Petroleum Institute is incorporated herein by reference: ~~API Publication 2517, Evaporation~~ *Evaporative Loss from External Floating Roof Tanks, Third Edition, 1989 API MPMS Chapter 19, April 1, 1997.*

b. Copies may be obtained from: American Petroleum Institute, ~~2404~~ 1220 L Street, Northwest, Washington, D.C. ~~20037~~ 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: *Threshold Limit Values for Chemical Substances 1991-1992 and Physical Agents and Biological Exposure Indices (ACGIH Handbook).*

b. Copies may be obtained from: ACGIH, ~~6500 Glenway Avenue, Building D-7~~ 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio ~~45211-4438~~ 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, *Standard for Tank Vehicles for Flammable and Combustible Liquids*, ~~1990~~ 2000 Edition.

(2) NFPA 30, *Flammable and Combustible Liquids Code*, ~~1993~~ 2000 Edition.

(3) NFPA 30A, ~~Automotive and Marine Service Station Code for Motor Fuel Dispensing Facilities and Repair Garages~~, ~~1993~~ 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, *One Batterymarch Park, P.O. Box 9101*, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: *Test Code for Steam Generating Units*, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: *Application, Part II of Fluid Meters*, ~~6th edition (1974)~~ 1972).

(3) *Standard for the Qualification and Certification of Resource Recovery Facility Operators*, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, ~~22 Law Drive, Fairfield, New Jersey 07004~~ *Three Park Avenue, New York, New York 10016*; phone (800) 843-2763.

9. American Hospital Association (AHA).

a. The following document from the American Hospital Association is incorporated herein by reference: *An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities*, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from: American Hospital Association, ~~P.O. Box 92683~~ *One North Franklin*, Chicago, IL ~~60675-2683~~ 60606; phone (800) 242-2626.

**9 VAC 5-40-460. Control technology guidelines.**

A. Reactors, distillation operations, crystallizers, centrifuges and vacuum dryers. The control system should consist of one of the following:

1. Surface condensation system with an outlet temperature not greater than:

a. -13°F when condensing volatile organic compounds of vapor pressure greater than 5.8 psi;

b. 5°F when condensing volatile organic compounds of vapor pressure greater than 2.9 psi;

c. 32°F when condensing volatile organic compounds of vapor pressure greater than 1.5 psi;

d. 50°F when condensing volatile organic compounds of vapor pressure greater than 1.0 psi; or

e. 77°F when condensing volatile organic compounds of vapor pressure greater than 0.5 psi.

2. Any system of equal or greater control efficiency when compared to the standard in 9 VAC 5-40-450 A 1, provided such system is approved by the board.

B. Air dryers and production equipment exhaust systems. The control system should consist of one of the following:

1. Condensation system.

2. Wet scrubbing system.

3. Carbon adsorption system.

4. Incineration.

5. Any system of equal or greater control efficiency when compared to the standard in 9 VAC 5-40-450 B 1, provided such system is approved by the board.

C. Filling of storage tanks. The tank should be a pressure tank maintaining working pressure sufficient at all times to prevent vapor loss to the atmosphere, or be designed and equipped with one of the following vapor control systems:

1. A submerged fill pipe.

2. A vapor control system with the vapor recovery portion consisting of one of the following:

a. A vapor tight return line from the storage container to the tank truck which shall be connected before liquids are transferred into the container.

b. Any adsorption system or condensation system.

3. A vapor control system with the vapor balance portion meeting the following criteria:

a. There should be no leaks in the tank trucks' pressure vacuum relief valves and hatch covers, nor truck tanks, storage tanks and associated vapor return lines during loading or unloading operations.

b. The pressure relief valves on storage containers and tank trucks should be set to release at no less than 0.7 psi or the highest possible pressure (in accordance with the following National Fire Prevention Association Standards: ~~NFPA 385~~, "Standard for Tank Vehicles for Flammable and Combustible Liquids; ~~NFPA 30~~," "Flammable and Combustible Liquids Code; ~~NFPA 30A~~, ~~Automotive and Marine Service Station~~, "Code for Motor Fuel Dispensing Facilities and Repair Garages" (see 9 VAC 5-20-21)).

c. Pressure in the vapor collection lines should not exceed tank truck pressure relief valve settings.

d. All loading and vapor lines should be equipped with fittings which make vapor tight connections and which close when disconnected.

4. Any system of equal or greater control efficiency when compared to the standard in 9 VAC 5-40-450 C 1, provided such system is approved by the board.

D. Volatile organic compound storage.

1. The tank should be a pressure tank maintaining working pressure sufficient at all times to prevent vapor loss to the atmosphere, or be designed and equipped with one of the following vapor control systems:

a. Use of pressure/vacuum conservation vent set at + or - .030 psi.

b. Vent condensation system.

c. Carbon adsorption system.

d. An internal floating roof resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and tank shell. All tank gauging and sampling devices should be vapor tight except when gauging or sampling is taking place.

e. Any system of equal or greater control efficiency when compared to the standard in 9 VAC 5-40-450 D 1, provided such system is approved by the board.

2. There should be no visible holes, tears or other openings in the seal or any seal fabric.

3. All openings, except stub drains, should be equipped with a cover, seal or lid. The cover, seal or lid should be in a closed position at all times except when the device is in actual use. Automatic bleeder vents should be closed at all times except when the roof is floated off or landed on the roof leg supports. Rim vents, if provided, should be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

4. The exterior aboveground surfaces (exposed to sunlight) should be painted white, light pastels or light metallic and such exterior paint should be periodically maintained in

good condition. Repainting may be performed during normal maintenance periods.

E. General.

1. All centrifuges containing volatile organic compounds, rotary vacuum filters processing liquids containing volatile organic compounds and any other filters having an exposed liquid surface where the liquid contains volatile organic compounds should be enclosed. This applies to liquids exerting a total volatile organic compound vapor pressure of 0.5 psi or more at 68°F.

2. All in-process tanks should have covers. Covers should be closed when possible.

3. For liquids containing volatile organic compounds, all leaks in which liquids can be observed to be running or dripping from vessels and equipment (for example: pumps, valves, flanges) should be repaired as soon as is practical.

9 VAC 5-40-2930. Monitoring.

A. The provisions of 9 VAC 5-40-40 (Monitoring) apply.

B. Unless otherwise approved by the board, owners of sulfuric acid production units specified in subsection C of this section shall install, calibrate, maintain and operate systems for continuously monitoring and recording specified emissions in accordance with 9 VAC 5-40-40 and 9 VAC 5-40-41.

C. Sulfuric acid production units of greater than 300 tons per day production capacity (the production being expressed as 100% acid) shall be monitored for sulfur dioxide emissions.

D. The pollutant gas used to prepare calibration gas mixtures under paragraph 2.1, Performance Specifications 2 of Appendix B of 40 CFR 60 and for calibration checks under 9 VAC 5-40-41 shall be sulfur dioxide (SO<sub>2</sub>). Reference Method 8 shall be used for conducting monitoring system performance evaluations under of 9 VAC 5-40-41 except that only the sulfur dioxide portion of the Reference Method 8 results shall be used. The span shall be set at 1,000 ppm of sulfur dioxide.

E. The owner shall establish a conversion factor for the purpose of converting monitoring data into units of the applicable standard (lb/short ton). The conversion factor shall be determined, as a minimum, three times daily by measuring the concentration of sulfur dioxide entering the converter using suitable methods (e.g., the Reich Test, "Atmospheric Emissions from Sulfuric Acid Manufacturing Processes," ~~Public Health Service Publication No. 999-AP-13~~ (see 9 VAC 5-20-21)) and calculating the appropriate conversion factor for each eight-hour period as follows:

$$CF = k \left( \frac{1.000 - 0.15r}{r - s} \right)$$

where:

CF = conversion factor (lb/short ton per ppm).

k = constant derived from material balance. For determining CF in English units, k = 0.1306.

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# Proposed Regulations

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r = percentage of sulfur dioxide by volume entering the gas converter. Appropriate corrections must be made for air injection plants subject to the approval of the board.

s = percentage of sulfur dioxide by volume in the emission to the atmosphere determined by the continuous monitoring system.

F. The average sulfur dioxide concentration in the flue gases shall be multiplied by the conversion factor to obtain the average sulfur dioxide emissions in units of the applicable standard. The owner shall record all conversion factors and values under subsection E of this section from which they were computed (i.e., CF, r, and s).

## 9 VAC 5-40-5210. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

*"Average monthly throughput"* means the average monthly amount of gasoline pumped at a gasoline dispensing facility during the two most recent consecutive calendar years or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Downtime, such as a full or significant shutdown of a facility's operation due to construction, shall not be included when calculating average monthly throughput.

*"Begin actual construction"* means initiation of permanent physical on-site construction of a new gasoline dispensing facility. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

*"Bulk gasoline plant"* means a secondary distribution point for delivering gasoline to local farms, businesses, service stations and other distribution points, where the total gasoline throughput is 20,000 gallons or less per working day, based on the daily average for the most recent 12-month period.

*"Bulk gasoline terminal"* means a primary distribution point for delivering gasoline to bulk plants, service stations and other distribution points, where the total gasoline throughput is greater than 20,000 gallons per working day, based on the daily average for the most recent 12-month period.

*"Certified Stage II vapor recovery system"* means any system certified by California Air Resources Board as having a vapor recovery or removal efficiency of at least 95%, and approved under the provisions of AQP-9, Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities (see 9 VAC 5-20-121).

*"Condensate"* means a hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature or pressure or both and remains liquid at standard conditions.

*"Crude oil"* means a naturally occurring mixture which consists of any combination of hydrocarbons, sulfur, nitrogen or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

*"Custody transfer"* means the transfer of produced crude oil or condensate, after processing or treating or both in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

*"Defective equipment"* means any absence, disconnection, or malfunctioning of a Stage II vapor recovery system component required by this article including, but not limited to, the following:

- a. A vapor return line that is crimped, flattened, blocked, or that has any hole or slit that allows vapors to leak out;
- b. A nozzle bellows that has any hole large enough to allow a 1/4-inch diameter cylindrical rod to pass through it or any slit one inch or more in length;
- c. A nozzle faceplate or cone that is torn or missing over 25% of its surface;
- d. A nozzle with no automatic overfill control mechanism, or an inoperable overfill control mechanism; and
- e. An inoperable or malfunctioning vapor processing unit, vacuum generating device, pressure or vacuum relief valve, vapor check valve or any other equipment normally used to dispense gasoline or is required by this article.

*"External floating roof"* means a storage vessel cover in an open top consisting of a double deck or pontoon single deck which rests upon and is supported by the liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

*"Gasoline"* means any petroleum distillate having a Reid vapor pressure of four pounds per square inch or greater.

*"Gasoline dispensing facility"* means any site where gasoline is dispensed to motor vehicle tanks from stationary storage tanks.

*"Independent small business gasoline marketer"* means a person engaged in the marketing of gasoline who owns one or more gasoline dispensing facilities and is required to pay for procurement and installation of vapor recovery equipment, unless such owner:

- a. Is a refiner; controls, or is controlled by, or is under common control with, a refiner; or is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation is by means of a supply contract or an agreement or contract to use a trademark, tradename, service mark, or other identifying

symbol or name owned by such refiner or any such person); or

b. Receives less than 50% of his annual income from refining or marketing of gasoline.

For the purposes of this definition, "control" of a corporation means ownership of more than 50% of its stock and "control" of a partnership, joint venture or other nonstock entity means ownership of more than a 50% interest in such partnership, joint venture or other nonstock entity. The lessee of a gasoline dispensing facility, for which the owner of such outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at such outlet, shall be considered an independent small business marketer if the lessee by lease agreement with the owner is required to pay for the cost of procurement and installation of vapor recovery equipment over a reasonable period.

"*Internal floating roof*" means a cover or roof in a fixed roof tank which rests upon or is floated upon the liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

"*Liquid-mounted*" means a primary seal mounted so the bottom of the seal covers the liquid surface between the tank shell and the floating roof.

"*Major system modification*" means the replacement, repair or upgrade of 75% of a facility's Stage II vapor recovery system equipment.

"*Owner*" means, for the purposes of this article, any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals who own, lease, operate, control or supervise an operation involving the storage or transfer of petroleum liquids or both.

"*Petroleum liquids*" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

"*Petroleum refinery*" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants or other products through distillation of petroleum or through redistillation, cracking, rearrangement or reforming of unfinished petroleum derivatives.

"*Refiner*" means any person or entity that owns or operates a facility engaged in the production of gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants or similar products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives and whose total refinery capacity (including the refinery capacity of any person or entity who controls, is controlled by or is under common control with, such refiner) is greater than 65,000 barrels per day.

"*Stage II vapor recovery system*" means any equipment designed and used to collect, recover, or destroy, or any combination of those, gasoline vapors displaced during the transfer of gasoline into a motor vehicle fuel tank.

"*Submerged fill pipe*" means any fill pipe the discharge opening of which is entirely submerged when the liquid level

is six inches above the bottom of the tank; or, when applied to a tank which is loaded from the side, any fill pipe the discharge opening of which is entirely submerged when at the minimum operating level.

"*Vapor-mounted*" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank shell, the liquid surface, and the floating roof.

"*Vapor tight*" means capable of holding a pressure of 18 inH<sub>2</sub>O and a vacuum of 6 inH<sub>2</sub>O without sustaining a pressure change of more than 3 inH<sub>2</sub>O in five minutes.

"*Waxy, heavy pour crude oil*" means a crude oil with a pour point of 50°F or higher as determined by the American Society for Testing and Materials ~~Standard D97-66~~ publication, "Test for Pour Point of Petroleum Oils" (see 9 VAC 5-20-21).

## **9 VAC 5-40-5230. Control technology guidelines.**

### **A. Petroleum liquid storage-fixed roof tanks.**

1. The tank should be a pressure tank maintaining working pressure sufficient at all times to prevent vapor loss to the atmosphere, or be designed and equipped with one of the following vapor control systems:

a. An internal floating roof resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and tank shell. All tank gauging and sampling devices should be vapor tight except when gauging or sampling is taking place.

b. Any system of equal or greater control efficiency to the system in subdivision A 1 a of this section, provided such system is approved by the board.

2. There should be no visible holes, tears or other openings in the seal or any seal fabric.

3. All openings, except stub drains, should be equipped with a cover, seal or lid. The cover, seal or lid should be in a closed position at all times except when the device is in actual use. Automatic bleeder vents should be closed at all times except when the roof is floated off or landed on the roof leg supports. Rim vents, if provided, should be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

4. The exterior above ground surfaces (exposed to sunlight) should be painted white, light pastels, or light metallic and such exterior paint should be periodically maintained in good condition. Repainting may be performed during normal maintenance periods.

### **B. Petroleum liquid storage-floating roof tanks.**

1. The tank should be designed and equipped with one of the following vapor control systems:

a. An external floating roof resting on the surface of the liquid contents and equipped with a seal closure device (meeting the specifications set forth in subdivisions B 2 and 3 of this section) to close the space between the roof edge and tank shell. All tank gauging and sampling

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# Proposed Regulations

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devices should be vapor tight except when gauging or sampling is taking place.

b. Any system of equal or greater control efficiency to the system in subdivision B 1 a of this section, provided such system is approved by the board.

2. Unless the tank is a welded tank fitted with a metallic-type shoe seal which has a secondary seal from the top to the shoe seal to the tank wall (a shoe-mounted secondary), the tank should be fitted with a continuous secondary seal extending from the floating roof to the tank wall (a rim-mounted secondary) if:

a. The tank is a welded tank, the true vapor pressure of the contained liquid is 4.0 psi or greater, and the primary seal is one of the following:

- (1) A metallic-type shoe seal.
- (2) A liquid-mounted foam seal.
- (3) A liquid-mounted liquid-filled type seal.
- (4) Any other seal closure device which can be demonstrated equivalent to the primary seals specified in subdivisions B 2 a (1) through (3) of this section.

b. The tank is a riveted tank, the true vapor pressure of the contained liquid is 1.5 psi, or greater, and the seal closure device is as described in subdivision B 2 a of this section.

c. The tank is a welded or riveted tank, the true vapor pressure of the contained liquid is 1.5 psi, or greater, and the primary seal is vapor mounted. When such primary seal closure device can be demonstrated equivalent to the primary seals described in subdivision B 2 a of this section, the provisions of that subdivision apply.

3. The seal closure devices should meet the following requirements:

a. There should be no visible holes, tears or other openings in the seal or any seal fabric.

b. The seal should be intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall.

c. The areas where the gap between the secondary seal, installed pursuant to subdivision B 2 c of this section, and the tank wall exceeds 1/8 inch in width shall be calculated in square inches. The sum of all such areas shall not exceed 1.0 square inch per foot of tank diameter.

4. All openings, except for automatic bleeder vents, rim space vents and leg sleeves, should provide a projection below the liquid surface. All openings, except stub drains, should be equipped with a cover, seal or lid. The cover, seal or lid should be in a closed position at all times except when the device is in actual use. Automatic bleeder vents should be closed at all times except when the roof is floated off or landed on the roof leg supports. Rim vents, if provided, should be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Any emergency roof drain should be

provided with a slotted membrane fabric cover or equivalent cover that covers at least 90% of the area of the opening.

5. The exterior above ground surfaces (exposed to sunlight) should be painted white, light pastels, or light metallic and such exterior paint should be periodically maintained in good condition. Repainting may be performed during normal maintenance periods.

C. Gasoline bulk loading-bulk terminals. The control system should consist of the following:

1. A vapor collection and disposal system with the vapor disposal portion consisting of one of the following:

- a. Compression-refrigeration-adsorption system;
- b. Refrigeration system;
- c. Oxidation system; or
- d. Any system of equal or greater control efficiency to the systems in subdivisions C 1 a through c of this section, provided such system is approved by the board.

2. A vapor collection and disposal system with the vapor collection portion meeting the following criteria:

- a. Loading should be accomplished in such manner that all displaced vapor and air will be vented only to the vapor disposal system. Measures should be taken to prevent liquid drainage from the loading device when it is not in use or to accomplish substantially complete drainage before the loading device is disconnected;
- b. The pressure relief valves on storage containers and tank trucks should be set to release at no less than 0.7 psi or the highest possible pressure (in accordance with the following National Fire Prevention Association Standards: ~~NEPA 385~~, "Standard for Tank Vehicles for Flammable and Combustible Liquids"; ~~NEPA 30~~, "Flammable and Combustible Liquids Code"; ~~NEPA 30A~~, ~~Automotive and Marine Service Station~~, "Code for Motor Fuel Dispensing Facilities and Repair Garages" (see 9 VAC 5-20-21));
- c. Pressure in the vapor collection lines should not exceed tank truck pressure relief valve settings; and
- d. All loading and vapor lines should be equipped with fittings which make vapor tight connections and which close when disconnected.

D. Gasoline bulk loading-bulk plants.

1. The control system should consist of one of the following:

- a. Submerged filling of account trucks and storage tanks (either top-submerged or bottom-fill) plus a vapor balance (displacement) system to control volatile organic compounds displaced by gasoline delivery to the storage tank and account truck;
- b. Top loading vapor recovery method of filling account trucks and storage tanks plus a vapor balance (displacement) system to control volatile organic

compounds displaced by gasoline delivery to the storage tank and account truck; or

c. Any system of equal or greater control efficiency to the system in subdivision D 1 a or b of this section, provided such system is approved by the board.

2. The control system in subdivisions D 1 a and b of this section should meet the following equipment specifications and operating procedures:

a. For top-submerged and bottom-fill. The fill pipe should extend to within six inches of the bottom of the storage tank and account truck during top-submerged filling operations. Any bottom fill is acceptable if the inlet is flush with the tank bottom; and

b. For the balance system:

(1) There should be no leaks in the account trucks' and tank trucks' pressure vacuum relief valves and hatch covers, nor tank trucks, account trucks, storage tanks or associated vapor return lines during loading or unloading operations.

(2) The pressure relief valves on storage tanks, account trucks and tank trucks should be set to release at no less than 0.7 psi or the highest possible pressure (in accordance with the following National Fire Prevention Association Standards: ~~NFPA 385~~, "Standard for Tank Vehicles for Flammable and Combustible Liquids; ~~NFPA 30~~," "Flammable and Combustible Liquids Code; ~~NFPA 30A, Automotive and Marine Service Station~~," "Code for Motor Fuel Dispensing Facilities and Repair Garages" (see 9 VAC 5-20-21)).

(3) Pressure in the vapor collection lines should not exceed account truck or tank truck pressure relief valve settings.

(4) All loading and vapor lines should be equipped with fittings which make vapor tight connections and which close when disconnected.

E. Transfer of gasoline-gasoline dispensing facilities-stage I vapor control systems. The control system should consist of the following:

1. A submerged fill pipe;

2. A vapor control system with the vapor recovery portion consisting of one of the following:

a. A vapor tight return line from the storage container to the tank truck which shall be connected before gasoline is transferred into the container;

b. Any adsorption system or condensation system; or

c. Any system of equal or greater control efficiency to the systems in subdivision E 2 a or b of this section, provided such system is approved by the board.

3. A vapor control system with the vapor balance portion meeting the following criteria:

a. There should be no leaks in the tank truck's pressure vacuum relief valves and hatch covers, nor truck tanks, storage tanks and associated vapor return lines during loading or unloading operations;

b. The pressure relief valves on storage containers and tank trucks should be set to release at no less than 0.7 psi or the highest possible pressure (in accordance with the following National Fire Prevention Association Standards: ~~NFPA 385~~, "Standard for Tank Vehicles for Flammable and Combustible Liquids; ~~NFPA 30~~," "Flammable and Combustible Liquids Code; ~~NFPA 30A, Automotive and Marine Service Station~~," "Code for Motor Fuel Dispensing Facilities and Repair Garages" (see 9 VAC 5-20-21));

c. Pressure in the vapor collection lines should not exceed tank truck pressure relief valve settings; and

d. All loading and vapor lines should be equipped with fittings which make vapor tight connections and which close when disconnected.

F. Transfer of gasoline-gasoline dispensing facilities-Stage II vapor recovery systems.

1. Stage II vapor recovery systems shall be limited to those certified systems approved under the provisions of AQP-9, Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities (see 9 VAC 5-20-121), which utilize coaxial hoses and vapor check valves in the nozzle or remote vapor check valves which do not impede the performance of the functional tests required in subdivision F 6 b of 9 VAC 5-40-5220.

2. Stage II vapor recovery systems installed prior to January 1, 1993, must meet the specifications of a system certified by the California Air Resources Board. Owners of Stage II vapor recovery systems utilizing remote check valves which will impede the performance of the functional tests required in subdivision F 6 b of 9 VAC 5-40-5220 and dual vapor recovery hoses shall replace these components with check valves in the nozzle and with coaxial hoses by January 1, 1995.

## **9 VAC 5-40-8130. Operator training and certification.**

A. Each chief facility operator and shift supervisor of an affected facility shall obtain and maintain one of the following:

1. A current provisional operator training certification from the American Society of Mechanical Engineers (~~QRO-4-1994~~) as provided in the "Standard for the Qualification and Certification of Resource Recovery Facility Operators" (see 9 VAC 5-20-21) in conjunction with licensing requirements of the Board for Waste Management Facility Operators as required by 18 VAC 155 Chapter 20 (18 VAC 155-20-10 et seq.); or

2. A license from the Board for Waste Management Facility Operators as required by 18 VAC 155 Chapter 20 (18 VAC 155-20-10 et seq.).

B. Each chief facility operator and shift supervisor of an affected facility shall have:



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# Proposed Regulations

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1. Completed full certification or scheduled a full certification exam with either the American Society of Mechanical Engineers (~~QRO-1-1994~~) or a board-approved certification program as provided in the "Standard for the Qualification and Certification of Resource Recovery Facility Operators" (see 9 VAC 5-20-21) in conjunction with the Board for Waste Management Facility Operators as required by 18 VAC 155 Chapter 20 (18 VAC 155-20-10 et seq.); or

2. Obtained a license from the Board for Waste Management Facility Operators as required by 18 VAC 155 Chapter 20 (18 VAC 155-20-10 et seq.).

C. No owner of an affected facility shall allow the facility to be operated at any time unless a person is on duty who is responsible for the proper operation of the facility and has a license from the Board for Waste Management Facility Operators in the correct classification.

D. No owner of an affected facility shall allow the facility to be operated at any time unless one of the following persons is on duty and at the affected facility: a fully certified chief facility operator, a provisionally certified chief facility operator who is scheduled to take the full certification exam according to the schedule specified in 9 VAC 5-40-8110 B 1, a fully certified shift supervisor, or a provisionally certified shift supervisor who is scheduled to take the full certification exam according to the schedule specified in 9 VAC 5-40-8110 B 1.

If one of the persons listed in this subsection must leave the affected facility during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirement in this subsection.

E. All chief facility operators, shift supervisors, and control room operators at affected facilities must complete the board-approved municipal waste combustor operator training course.

F. The owner of an affected facility shall develop and update on a yearly basis a site-specific operating manual that shall, at a minimum, address the elements of municipal waste combustor unit operation specified in this subsection.

1. A summary of the applicable standards under this article;
2. A description of basic combustion theory applicable to a municipal waste combustor unit;
3. Procedures for receiving, handling, and feeding municipal solid waste;
4. Municipal waste combustor unit startup, shutdown, and malfunction procedures;
5. Procedures for maintaining proper combustion air supply levels;
6. Procedures for operating the municipal waste combustor unit within the standards established under this article;
7. Procedures for responding to periodic upset or off-specification conditions;
8. Procedures for minimizing particulate matter carryover;
9. Procedures for handling ash;

10. Procedures for monitoring municipal waste combustor unit emissions; and

11. Reporting and recordkeeping procedures.

G. The owner of an affected facility shall establish a training program to review the operating manual according to the schedule specified in this subsection with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane/load handlers.

1. Each person specified in this subsection shall undergo initial training no later than the date specified in subdivision 1 a or 1 b of this subsection, whichever is later.

a. The date prior to the day the person assumes responsibilities affecting municipal waste combustor unit operation; or

b. The date specified in 9 VAC 5-40-8110 B 2.

2. Each person specified in this subsection shall undergo initial training annually, following the initial review required by subdivision 1 of this subsection.

H. The operating manual required by subsection F of this section shall be kept in a readily accessible location for all persons required to undergo training under subsection G of this section. The operating manual and records of training shall be available for inspection by the board upon request.

I. All training and licensing shall be in accordance with § 54.1-2212 of the Code of Virginia.

## **9 VAC 5-40-8150. Monitoring.**

A. The provisions of 9 VAC 5-40-40 (Monitoring) apply except as provided in this section.

B. The owner of an affected facility shall install, calibrate, maintain, and operate a continuous emission monitoring system and record the output of the system for measuring the oxygen or carbon dioxide content of the flue gas at each location where carbon monoxide, sulfur dioxide, or nitrogen oxides emissions are monitored and shall comply with the test procedures and test methods specified in this subsection.

1. The span value of the oxygen (or carbon dioxide) monitor shall be 25% oxygen (or carbon dioxide).

2. The monitor shall be installed, evaluated, and operated in accordance with 9 VAC 5-40-40 and 9 VAC 5-40-41.

3. The initial performance evaluation shall be completed as specified in 9 VAC 5-40-8100.

4. The monitor shall conform to Performance Specification 3 in Appendix B of 40 CFR Part 60 except for section 2.3 (relative accuracy requirement).

5. The quality assurance procedures of Appendix F of 40 CFR Part 60 except for section 5.1.1 (relative accuracy test audit) shall apply to the monitor.

6. If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels shall be established during the initial

performance test according to the procedures and methods specified in subdivisions 6 a through 6 d of this subsection. This relationship may be reestablished during performance compliance tests.

a. The fuel factor equation in Reference Method 3B shall be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Reference method 3, 3A, or 3B, as applicable, shall be used to determine the oxygen concentration at the same location as the carbon dioxide monitor.

b. Samples shall be taken for at least 30 minutes in each hour.

c. Each sample shall represent a one-hour average.

d. A minimum of three runs shall be performed.

7. The relationship between carbon dioxide and oxygen concentrations that is established in accordance with subdivision 6 of this subsection shall be submitted to the board as part of the initial performance test report and, if applicable, as part of the annual test report if the relationship is reestablished during the annual performance test.

C. The procedures specified in this subsection shall be used for determining compliance with the operating requirements under 9 VAC 5-40-8120.

1. Compliance with the carbon monoxide emission limits in 9 VAC 5-40-7980 shall be determined using a four-hour block arithmetic average for all types of affected facilities except mass burn rotary waterwall municipal waste combustors and refuse-derived fuel stokers.

2. For affected mass burn rotary waterwall municipal waste combustors and refuse-derived fuel stokers, compliance with the carbon monoxide emission limits in 9 VAC 5-40-7980 shall be determined using a 24-hour daily arithmetic average.

3. The owner of an affected facility shall install, calibrate, maintain, and operate a continuous emission monitoring system for measuring carbon monoxide at the combustor outlet and record the output of the system and shall follow the procedures and methods specified in subdivisions 3 a through 3 c of this subsection.

a. The continuous emission monitoring system shall be operated according to Performance Specification 4A in Appendix B of 40 CFR Part 60.

b. During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 4A in Appendix B of 40 CFR Part 60, carbon monoxide and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in subdivisions 3 b (1) and 3 b (2) of this subsection.

(1) For carbon monoxide, Reference Method 10, 10A, or 10B shall be used.

(2) For oxygen (or carbon dioxide), Reference Method 3, 3A, or 3B, as applicable, shall be used.

c. The span value of the continuous emission monitoring system shall be 125% of the maximum estimated hourly potential carbon monoxide emissions of the municipal waste combustor unit.

4. The four-hour block and 24-hour daily arithmetic averages specified in subdivisions 1 and 2 of this subsection shall be calculated from one-hour arithmetic averages expressed in parts per million by volume corrected to 7.0% oxygen (dry basis). The one-hour arithmetic averages shall be calculated using the data points generated by the continuous emission monitoring system. At least two data points shall be used to calculate each one-hour arithmetic average.

5. The owner of an affected facility may request that compliance with the carbon monoxide emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7.0% oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in subdivision B 6 of this section.

6. The procedures specified in subdivisions 6 a through 6 d of this subsection shall be used to determine compliance with load level requirements under 9 VAC 5-40-8120 A.

a. The owner of an affected facility with steam generation capability shall install, calibrate, maintain, and operate a steam flow meter or a feedwater flow meter; measure steam (or feedwater) flow in kilograms per hour (or pounds per hour) on a continuous basis; and record the output of the monitor. Steam (or feedwater) flow shall be calculated in four-hour block arithmetic averages.

b. The method included in the ~~"American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991),"~~ section 4 of the *American Society of Mechanical Engineers publication, "Power Test Codes: Steam Generating Units"* (see 9 VAC 5-20-21) shall be used for calculating the steam (or feedwater) flow required under subdivision 6 a of this subsection. The recommendations in ~~"American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971),"~~ chapter 4 of the *American Society of Mechanical Engineers publication, "Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters"* (see 9 VAC 5-20-21) shall be followed for design, construction, installation, calibration, and use of nozzles and orifices except as specified in subdivision 6 c of this subsection.

c. Measurement devices such as flow nozzles and orifices are not required to be recalibrated after they are installed.

d. All signal conversion elements associated with steam (or feedwater flow) measurements must be calibrated according to the manufacturer's instructions before each dioxin/furan performance test, and at least once per year.

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# Proposed Regulations

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7. To determine compliance with the maximum particulate matter control device temperature requirements under 9 VAC 5-40-8120 B, the owner of an affected facility shall install, calibrate, maintain, and operate a device for measuring on a continuous basis the temperature of the flue gas stream at the inlet to each particulate matter control device utilized by the affected facility. Temperature shall be calculated in four-hour block arithmetic averages.

8. The maximum demonstrated municipal waste combustor unit load shall be determined during the initial performance test for dioxins/furans and each subsequent performance test during which compliance with the dioxin/furan emission limit specified in 9 VAC 5-40-8040 is achieved. The maximum demonstrated municipal waste combustor unit load shall be the highest four-hour arithmetic average load achieved during four consecutive hours during the most recent test during which compliance with the dioxin/furan emission limit was achieved.

9. For each particulate matter control device employed at the affected facility, the maximum demonstrated particulate matter control device temperature shall be determined during the initial performance test for dioxins/furans and each subsequent performance test during which compliance with the dioxin/furan emission limit specified in 9 VAC 5-40-8040 is achieved. The maximum demonstrated particulate matter control device temperature shall be the highest four-hour arithmetic average temperature achieved at the particulate matter control device inlet during four consecutive hours during the most recent test during which compliance with the dioxin/furan limit was achieved.

10. At a minimum, valid continuous emission monitoring system hourly averages shall be obtained as specified in subdivisions 10 a and 10 b of this subsection for 75% of the operating hours per day for 90% of the operating days per calendar quarter that the affected facility is combusting municipal solid waste.

a. At least two data points per hour shall be used to calculate each one-hour arithmetic average.

b. At a minimum, each carbon monoxide one-hour arithmetic average shall be corrected to 7.0% oxygen on an hourly basis using the one-hour arithmetic average of the oxygen (or carbon dioxide) continuous emission monitoring system data.

11. All valid continuous emission monitoring system data must be used in calculating the parameters specified under this section even if the minimum data requirements of subdivision 10 of this subsection are not met. When carbon monoxide continuous emission data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained using other monitoring systems as approved by the board or Reference Method 10 to provide, as necessary, the minimum valid emission data.

12. Quarterly accuracy determinations and daily calibration drift tests for the carbon monoxide continuous emission monitoring system shall be performed in accordance with procedure 1 in Appendix F of 40 CFR Part 60.

## DOCUMENTS INCORPORATED BY REFERENCE

*Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, available online, 1998; Supplement E, available online, 1999.*

*Standard Industrial Classification Manual, U.S. Government Printing Office stock number 041-001-00-314-2, 1987.*

*American Conference of Governmental Industrial Hygienists Handbook, Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, 1991-1992.*

*Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.*

*D 97-96a, Standard Test Method for Pour Point of Petroleum Products, American Society for Testing and Materials, 1996.*

*NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, National Fire Prevention Association, 2000.*

*NFPA 30, Flammable and Combustible Liquids Code, National Fire Prevention Association, 2000.*

*NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, National Fire Prevention Association, 2000.*

*ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991), American Society of Mechanical Engineers, 1991.*

*ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, Sixth Edition 1971, American Society of Mechanical Engineers, 1972.*

*An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, American Hospital Association, 1993.*

## **9 VAC 5-80-10. Permits-new and modified stationary sources.**

### **A. Applicability.**

1. Except as provided in subdivision A 3 of this section, the provisions of this section apply to the construction, reconstruction, relocation or modification of any stationary source.

2. The provisions of this section apply throughout the Commonwealth of Virginia.

3. The provisions of this section do not apply to any facility exempted by 9 VAC 5-80-11. Exemption from the requirement to obtain a permit under this section shall not relieve any owner of the responsibility to comply with any other applicable provisions of these regulations or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction. Any facility which is exempt from the provisions of this section based

on the criteria in 9 VAC 5-80-11 but which exceeds the applicability thresholds for any emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) if it were an existing source or any standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) shall be subject to the more restrictive of the provisions of either the emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) or the standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

4. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this section and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

5. Unless specified otherwise, the provisions of this section are applicable to various sources as follows:

a. Provisions referring to "sources," "new or modified sources, or both" or "stationary sources" are applicable to the construction, reconstruction or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of Part II of this chapter.

b. Provisions referring to "major stationary sources" are applicable to the construction, reconstruction or modification of all major stationary sources.

c. In cases where the provisions of Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of Part II of this chapter conflict with those of this section, the provisions of Article 8 or Article 9 of Part II of this chapter shall prevail.

## B. Definitions.

1. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subdivision B 3 of this section.

2. As used in this section, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

3. Terms defined.

*"Allowable emissions"* means the emission rate of a stationary source calculated by using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

(1) Applicable emission standards;

(2) The emission limitation specified as a state and federally enforceable permit condition, including those with a future compliance date; and

(3) Any other applicable emission limitation, including those with a future compliance date.

*"Begin actual construction"* means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location of a portable facility, this term refers to the delivery of any portion of the portable facility to the site.

*"Commence,"* as applied to the construction, reconstruction or modification of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

(1) Begun, or caused to begin, a continuous program of actual on-site construction, reconstruction or modification of the unit, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction, reconstruction or modification of the unit, to be completed within a reasonable time.

*"Construction"* means fabrication, erection or installation of an emissions unit.

*"Emissions unit"* means any part of a stationary source which emits or would have the potential to emit any air pollutant.

*"Federally enforceable"* means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or this chapter, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

*"Fixed capital cost"* means the capital needed to provide all the depreciable components.

*"Major modification"* means any modification defined as such in 9 VAC 5-80-20 or Article 9 (9 VAC 5-80-2000 et seq.) of Part II of this chapter, as may apply.

*"Major stationary source"* means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any air pollutant.

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# Proposed Regulations

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*"Modification"* means any physical change in, change in the method of operation of, or addition to, an emissions unit which increases the uncontrolled emission rate of any air pollutant emitted into the atmosphere by the unit or which results in the emission of any air pollutant into the atmosphere not previously emitted, except that the following shall not, by themselves (unless previously limited by permit conditions), be considered modifications under this definition:

- (1) Maintenance, repair and replacement which the board determines to be routine for a source type and which does not fall within the definition of reconstruction;
- (2) An increase in the production rate of a unit, if that increase does not exceed the operating design capacity of that unit;
- (3) An increase in the hours of operation;
- (4) Use of an alternative fuel or raw material if, prior to the date any provision of these regulations becomes applicable to the source type, the emissions unit was designed to accommodate that alternative use. A unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications; or
- (5) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the board considers to be less efficient.

*"Modified source"* means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.

*"Necessary preconstruction approvals or permits"* means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the State Implementation Plan.

*"New source"* means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

*"Potential to emit"* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

*"Public comment period"* means a time during which the public shall have the opportunity to comment on the new

or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

*"Reactivation"* means beginning operation of an emissions unit that has been shut down.

*"Reconstruction"*

(1) Means the replacement of an emissions unit or its components to such an extent that:

- (a) The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit, and
- (b) It is technologically and economically feasible to meet the applicable emission standards prescribed under these regulations.

(2) Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

- (a) The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;
- (b) The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;
- (c) The extent to which the components being replaced cause or contribute to the emissions from the unit; and
- (d) Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

*"Secondary emissions"* means emissions which occur or would occur as a result of the construction, reconstruction, modification or operation of a stationary source, but do not come from the stationary source itself. For the purpose of this section, secondary emissions must be specific, well-defined, and quantifiable; and must impact upon the same general areas as the stationary source which causes the secondary emissions. Secondary emissions include emissions from any off site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

*"State enforceable"* means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to 9 VAC 5-20-110, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," ~~as amended by the supplement~~ (see 9 VAC 5-20-21).

"Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air pollution control equipment. Air pollutant control equipment includes control equipment which is not vital to its operation, except that its use enables the source to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8760 hours of operation per year) of the source, unless the source is subject to state and federally enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted or processed may be used in determining the uncontrolled emission rate of a source. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

## C. General.

1. No owner or other person shall begin actual construction, reconstruction or modification of any of the following types of sources without first obtaining from the board a permit to construct and operate or to modify and operate such source:

a. Any stationary source; or

b. Any stationary source of hazardous air pollutants to which an emission standard prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.) became applicable prior to the beginning of construction, reconstruction or modification. In the event that a new emission standard prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.) becomes applicable after a permit is issued but prior to initial startup, a new permit must be obtained by the owner.

2. No owner or other person shall relocate any emissions unit subject to the provisions of 9 VAC 5-20-160 without first obtaining from the board a permit to relocate the unit.

3. No owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any pollutant from an affected facility subject to the provisions of 9 VAC 5-20-160 without first obtaining a permit from the board.

4. The board may combine the requirements of and the permits for emissions units within a stationary source subject to 9 VAC 5-80-10 and Article 8 (9 VAC 5-80-1700 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of Part II of

this chapter into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by 9 VAC 5-80-10 and Articles 8 and 9 of Part II of this chapter be combined into one application.

## D. Applications.

1. A single application is required identifying at a minimum each emissions point within the emissions unit subject to this section. The application shall be submitted according to procedures approved by the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

2. For projects with phased development, a single application should be submitted covering the entire project.

3. Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows:

a. For a business entity, such as a corporation, association or cooperative, a responsible official is either:

(1) The president, secretary, treasurer, or a vice president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the business entity; or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.

b. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

4. Any person signing a document under subdivision D 3 above 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 and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate,

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# Proposed Regulations

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and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

## E. Information required.

1. Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emission standards which are applicable. The information required shall include, but is not limited to, the following:

a. That specified on applicable permit forms furnished by the board. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations. Completion of these forms serves as initial registration of new and modified sources; and

b. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the source, including the submission of measured air quality data at the proposed site prior to construction, reconstruction or modification. Such measurements shall be accomplished using procedures acceptable to the board.

2. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

## F. Action on permit application.

1. Within 30 days after receipt of an application, the board shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of this chapter are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information. The date of receipt of a complete application for processing under subdivision F 2 of this section shall be the date on which the board received all required information.

2. Processing time for a permit is normally 90 days following receipt of a complete application. Processing steps normally are as follows:

a. Completion of the preliminary review and analysis in accordance with subsection I of this section and the

preliminary decision of the board. This step may constitute the final step if the provisions of subsection G of this section concerning public participation are not applicable;

b. When required, completion of the public participation requirements in subsection G of this section; and

c. Completion of the final review and analysis and the final decision of the board.

3. The board normally will take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from that) when required, unless more information is needed. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with subsection J of this section.

4. The applicant may appeal the decision pursuant to 9 VAC 5-20-90.

5. Within 5 days after notification to the applicant pursuant to subdivision F 3 of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in subdivision G 5 a of this section.

## G. Public participation.

1. No later than 15 days after receiving the initial determination notification required under subdivision F 1 of this section, the applicant for a permit for a major stationary source or a major modification with a net emissions increase of 100 tons per year of any single pollutant shall notify the public of the proposed source as required in subdivision G 2 of this section.

2. The public notice required under this subsection shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:

a. The source name, location, and type;

b. The pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;

c. The control technology proposed to be used at the time of the publication of the notice; and

d. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

3. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subdivision G 2 of this section.

4. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period

of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subdivision G 5 of this section.

a. Applications for stationary sources of hazardous air pollutants as specified in subdivision C 1 b of this section.

b. Applications for major stationary sources and major modifications with a net emissions increase of 100 tons per year of any single pollutant.

c. Applications for stationary sources which have the potential for public interest concerning air quality issues, as determined by the board. The identification of such sources shall be made using the following criteria:

(1) Whether the project is opposed by any person;

(2) Whether the project has resulted in adverse media;

(3) Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and

(4) Whether the project has generated adverse comment by a local official, governing body or advisory board.

d. Applications for stationary sources for which any provision of the permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by paragraphs 1 and 2 of the GEP definition. The demonstration specified in paragraph 3 of the GEP definition must be available during the public comment period.

5. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision G 5 a of this section. The notification shall be published at least 30 days prior to the day of the public hearing.

a. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

b. A copy of the notice shall be sent to all local air pollution control agencies having State Implementation Plan responsibilities in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

H. Standards for granting permits. No permit will be granted pursuant to this section unless it is shown to the satisfaction of the board that the source will be designed, built and equipped to operate without causing a violation of the

applicable provisions of these regulations and that the following standards have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) and with emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.);

2. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and

3. Stack evaluation reductions under 9 VAC 5-80-10 C 3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard.

I. Application review and analysis. No permit shall be granted pursuant to this section unless compliance with the standards in subsection H of this section is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Stationary sources.

a. Applications for stationary sources shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

b. Applications shall be subject to an air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the board.

2. Stationary sources of hazardous air pollutants. Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).

3. Stack elevation reductions under 9 VAC 5-80-10 C 3. Applications under 9 VAC 5-80-10 C 3 shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions.

J. Compliance determination and verification by performance testing.

1. For stationary sources other than those specified in subdivision 2 of this subsection, compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.

2. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9 VAC 5-60-20 and shall



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# Proposed Regulations

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be verified by emission tests in accordance with the provisions of 9 VAC 5-60-30.

3. Testing required by subdivisions J 1 and 2 of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

4. For sources subject to the provisions of Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60, the requirements of subdivisions J 1 through 3 of this section shall be met in all cases.

5. For sources other than those specified in subdivision J 4 of this section, the requirements of subdivisions J 1 through 3 of this section shall be met unless the board:

- a. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
- b. Approves the use of an equivalent method;
- c. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;
- d. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or
- e. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

6. The provisions for the granting of waivers under subdivision J 5 of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

## K. Permit invalidation, revocation and enforcement.

1. A permit granted pursuant to this section shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the latest of the following time frames:

- a. Eighteen months from the date the permit is granted;
- b. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this section) from any governmental entity; or
- c. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this section).

2. A permit granted pursuant to this section shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

3. The board may extend the periods prescribed in subdivisions K 1 and 2 of this section upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted without being subject to the requirements of subsection G of this section.

4. Any owner who constructs or operates a new or modified source not in accordance (i) with the application submitted pursuant to this section or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this section who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this subsection.

5. Permits issued under this section shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

6. The board may revoke any permit if the permittee:

- a. Knowingly makes material misstatements in the permit application or any amendments to it;
- b. Fails to comply with the terms or conditions of the permit;
- c. Fails to comply with any emission standards applicable to an emissions unit included in the permit;
- d. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the State Implementation Plan in effect at the time that an application is submitted; or
- e. Fails to comply with the applicable provisions of this section.

7. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection K 6 of this section or for any other violations of these regulations.

8. Violation of these regulations shall be grounds for revocation of permits issued under this section and are subject to the civil charges, penalties and all other relief contained in Part II of these regulations and the Virginia Air Pollution Control Law.

9. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

L. Existence of permit no defense. The existence of a permit under this section shall not constitute defense to a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

M. Compliance with local zoning requirements. The owner shall comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-20-140 of these Regulations and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

N. Reactivation and permanent shutdown.

1. The reactivation of a stationary source is not subject to provisions of this section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions N2 through N4 of this section or 9 VAC 5-80-40 P 5.

2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of this chapter.

3. The final decision shall be rendered as follows:

a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.

b. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, the decision to consider the shutdown permanent shall become final.

4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under subdivision N 3 of this section.

O. Transfer of permits.

1. No persons shall transfer a permit from one location to another, or from one piece of equipment to another.

2. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

3. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

4. The provisions of this subsection concerning the transfer of a permit from one location to another shall not apply to the relocation of portable facilities that are exempt from the provisions of this section by 9 VAC 5-80-11.

P. Circumvention. Regardless of the exemptions provided in this section, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

## 9 VAC 5-80-370. Definitions.

As used in this article and related permits and orders issued by the board, all words and terms not defined herein shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless the context clearly indicates otherwise; otherwise, words and terms shall have the following meanings:

*"Acid rain compliance option"* means one of the methods of compliance used by an affected unit under the acid rain program as described in a compliance plan submitted and approved in accordance with 9 VAC 5-80-450 or 40 CFR Part 76.

*"Acid rain compliance plan"* means the document submitted for an affected source in accordance with 9 VAC 5-80-430 specifying the method or methods (including one or more acid rain compliance options under 9 VAC 5-80-450 or 40 CFR Part 76) by which each affected unit at the source will meet the applicable acid rain emissions limitation and acid rain emissions reduction requirements.

*"Acid rain emissions limitation"* means:

1. For the purposes of sulfur dioxide emissions:

a. The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under §§ 404(a)(1), (a)(3), and (h) of the federal Clean Air Act, or the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under § 410 of the federal Clean Air Act for use in a calendar year;

b. As adjusted:

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# Proposed Regulations

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(1) By allowances allocated by the administrator pursuant to §§ 403, 405(a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and 406 of the federal Clean Air Act;

(2) By allowances allocated by the administrator pursuant to Subpart D of 40 CFR Part 72; and thereafter

(3) By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34(c); and

2. For purposes of nitrogen oxides emissions, the applicable limitation established by 40 CFR Part 76, as modified by an acid rain permit application submitted to the board, and an acid rain permit issued by the board, in accordance with 40 CFR Part 76.

*"Acid rain emissions reduction requirement"* means a requirement under the acid rain program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

*"Acid rain permit"* or *"permit"* means the legally binding written document, or portion of such document, issued by the board (following an opportunity for appeal pursuant to 40 CFR Part 78 or the Administrative Process Act), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

*"Acid rain program"* means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the federal Clean Air Act, 40 CFR Parts 73, 74, 75, 76, 77, and 78, and this article.

*"Acid rain program regulations"* means regulations implementing Title IV of the federal Clean Air Act, including 40 CFR Parts 73, 74, 75, 76, 77, and 78, and this article.

*"Actual sulfur dioxide emissions rate"* means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the NADB, the "1985 actual sulfur dioxide emissions rate" for the unit shall be the rate specified by the administrator in the NADB under the data field "SO2RTE."

*"Administrative record"* means the written documentation that supports the issuance or denial of the acid rain permit and that contains the following:

1. The permit application and any supporting or supplemental data submitted by the designated representative.
2. The draft permit.
3. The statement of basis.
4. Copies of any documents cited in the statement of basis and any other documents relied on by the board in issuing

or denying the draft permit (including any records of discussions or conferences with owners, operators, or the designated representative of affected units at the source or interested persons regarding the draft permit), or, for any such documents that are readily available, a list of those documents and a statement of their location.

5. Copies of all written public comments submitted on the draft permit or denial of a draft permit.

6. The record of any public hearing on the draft permit or denial of a draft permit.

7. The acid rain permit.

8. Any response to public comments submitted on the draft permit or denial of a draft permit and copies of any documents cited in the response and any other documents relied on by the board to issue or deny the acid rain permit, or, for any such documents that are readily available, a list of those documents and a statement of their location.

*"Affected source"* means a source that includes one or more affected units.

*"Affected states"* means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

*"Affected unit"* means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation. Affected units are specifically designated in 9 VAC 5-80-380.

*"Allocate"* or *"allocation"* means the initial crediting of an allowance by the administrator to an allowance tracking system unit account or general account.

*"Allowable emissions"* means the emission rates of an affected source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation of both) and the most stringent of the following:

1. Applicable emission standards.
2. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.
3. Any other applicable emission limitation, including those with a future compliance date.

*"Allowance"* means an authorization by the administrator under the acid rain program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

*"Allowance deduction"* or *"deduct"* (when referring to allowances) means the permanent withdrawal of allowances by the administrator from an allowance tracking system compliance subaccount, or future year subaccount, to account for the number of the tons of sulfur dioxide emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR Part 75, or for any other allowance surrender obligations of the acid rain program.

*"Allowances held" or "hold allowances"* means the allowances recorded by the administrator, or submitted to the administrator for recordation in accordance with 40 CFR 73.50, in an allowance tracking system account.

*"Allowance tracking system"* means the acid rain program system by which the administrator allocates, records, deducts, and tracks allowances.

*"Allowance tracking system account"* means an account in the allowance tracking system established by the administrator for purposes of allocating, holding, transferring, and using allowances.

*"Allowance transfer deadline"* means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance subaccount for the purposes of meeting the unit's acid rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

*"Applicable federal requirement"* means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future effective compliance dates):

1. Any standard or other requirement provided for in the implementation plan, including any source-specific provisions such as consent agreements or orders.
2. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any operating permit issued pursuant to the state operating permit program, except for terms or conditions derived from applicable state requirements.
3. Any standard or other requirement prescribed under the Regulations for the Control and Abatement of Air Pollution, particularly the provisions of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.), or 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), adopted pursuant to requirements of the federal Clean Air Act or under § 111, 112 or 129 of the federal Clean Air Act.
4. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
5. Any standard or other requirement of the acid rain program under Title IV of the federal Clean Air Act or the acid rain program regulations.
6. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or the Regulations for the Control and Abatement of Air Pollution.
7. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.
8. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

9. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

10. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

*"Applicable requirement"* means any applicable federal requirement or any applicable state requirement included in a permit issued under this article as provided in 9 VAC 5-80-700.

*"Applicable state requirement"* means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future effective compliance dates):

1. Any standard or other requirement prescribed by any regulation of the board that is not included in the definition of applicable federal requirement.
2. Any regulatory provision or definition directly associated with or related to any of the state requirements listed in this definition.

*"Authorized account representative"* means a responsible natural person who is authorized, in accordance with 40 CFR Part 73, to transfer and otherwise dispose of allowances held in an allowance tracking system general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

*"Basic Phase II allowance allocations"* means:

1. For calendar years 2000 through 2009 inclusive, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.
2. For each calendar year beginning in 2010, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.

*"Boiler"* means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.

*"Certificate of representation"* means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source or sources and of the affected units at such source or sources with regard to matters under the acid rain program.

*"Certifying official"* means:

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# Proposed Regulations

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1. For a corporation, 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;
2. For partnership or sole proprietorship, a general partner or the proprietor, respectively; and
3. For a local government entity or state, federal, or other public agency, either a principal executive officer or ranking elected official.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials ~~Designation ASTM D388-92~~ *publication*, "Standard Classification of Coals by Rank" (see 9 VAC 5-20-21).

"Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquified or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

"Coal-fired" means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where:

1. For purposes of 40 CFR Part 75 (continuous emissions monitoring), a unit is "coal-fired" independent of the percentage of coal or coal-derived fuel consumed in any calendar year (expressed in mmBtu); and
2. For all other purposes under the acid rain program, except for purposes of applying 40 CFR Part 76, a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMFUEL."

"Cogeneration unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

"Commence commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.

"Commence construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

"Common stack" means the exhaust of emissions from two or more units through a single flue.

"Complete application" means an application that contains all the information required pursuant to 9 VAC 5-80-430 and

9 VAC 5-80-440 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the board from requesting or accepting additional information.

"Compliance certification" means a submission to the administrator or board, as appropriate, that is required by the acid rain program regulations to report an affected source or an affected unit's compliance or noncompliance with a provision of the acid rain program and that is signed and verified by the designated representative in accordance with Subparts B and I of 40 CFR Part 72, 9 VAC 5-80-470 and 9 VAC 5-80-490 P, and the acid rain program regulations.

"Compliance plan" means the document submitted for an affected source in accordance with 9 VAC 5-80-430 specifying the method or methods by which each emissions unit at the source will meet applicable requirements.

"Compliance subaccount" means the subaccount in an affected unit's allowance tracking system account, established pursuant to 40 CFR 73.31(a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR 73.34(a) until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR 73.35(b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's acid rain emissions limitation for sulfur dioxide.

"Compliance use date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's acid rain emissions limitation for sulfur dioxide.

"Construction" means fabrication, erection, or installation of a unit or any portion of a unit.

"Customer" means a purchaser of electricity not for the purpose of retransmission or resale. For generating rural electrical cooperatives, the customers of the distribution cooperatives served by the generating cooperative will be considered customers of the generating cooperative.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source or by the owners and operators of a combustion source or process source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this article, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.

"Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined by *in* the American Society for Testing and Materials ~~standard ASTM D975-94~~ *publication*, "Standard Specification for Diesel Fuel Oils" (see 9 VAC 5-20-21), grades 1-GT or 2-GT, as defined by ASTM D2990-90a, "Standard Specification for Gas Turbine Fuel Oils," or grades 1 or 2, as defined by ASTM D396-90, "Standard Specifications for Fuel Oils" (incorporated by reference in 40 CFR 72.13).

*"Direct public utility ownership"* means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

*"Draft permit"* or *"draft acid rain permit"* means the version of a permit, or the acid rain portion of a federal operating permit, for which the board offers public participation under 9 VAC 5-80-670 or affected state review under 9 VAC 5-80-690.

*"Emissions"* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the designated representative and as determined by the administrator, in accordance with the emissions monitoring requirements of 40 CFR Part 75.

*"Emissions allowable under the permit"* means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

*"Emissions unit"* means any part or activity of an affected source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in this article or 40 CFR Part 72.

*"EPA"* means the United States Environmental Protection Agency.

*"Excess emissions"* means:

1. Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the acid rain emissions limitation for sulfur dioxide for the unit; and
2. Any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the acid rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

*"Existing unit"* means a unit (including a unit subject to § 111 of the federal Clean Air Act) that commenced commercial operation before November 15, 1990, and that on or after November 15, 1990, served a generator with a nameplate capacity of greater than 25 MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990, served only generators with a nameplate capacity of 25 MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an "existing unit."

*"Facility"* means any institutional, commercial, or industrial structure, installation, plant, source, or building.

*"Federal operating permit"* means a permit issued under this article, Article 1 (9 VAC 5-80-50 et seq.) of this part, 40 CFR Part 72, or any other regulation implementing Title V of the federal Clean Air Act.

*"Federal Power Act"* means 16 USC § 791a et seq.

*"Federally enforceable"* means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act, as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit unless expressly designated as not federally enforceable.
4. Limitations and conditions that are part of an approved implementation plan.
5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review program permit issued under regulations approved by the EPA into the implementation plan.
6. Limitations and conditions that are part of a state operating permit issued under regulations approved by the EPA into the implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.
7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
8. Individual consent agreements that the EPA has legal authority to create.

*"Final permit"* means the version of a permit issued by the board under this article that has completed all review procedures required by 9 VAC 5-80-670 and 9 VAC 5-80-690.

*"Fossil fuel"* means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

*"Fossil fuel-fired"* means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year (expressed in mmBtu).

*"Fuel oil"* means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined by in the American Society for Testing and Materials in ~~ASTM D396-92~~ *publication*, "Standard Specification for Fuel Oils" (see 9 VAC 5-20-21), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state; provided that for purposes of monitoring requirements, "fuel oil" shall be limited to the

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# Proposed Regulations

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petroleum-based fuels for which applicable ASTM methods are specified in Appendices D, E, or F of 40 CFR Part 75.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Gas-fired" means:

1. The combustion of:
  - a. Natural gas or other gaseous fuel (including coal-derived gaseous fuel), for at least 90% of the unit's average annual heat input during the previous three calendar years and for at least 85% of the annual heat input in each of those calendar years; and
  - b. Any fuel other than coal or coal-derived fuel (other than coal-derived gaseous fuel) for the remaining heat input, if any; provided that for purposes of 40 CFR Part 75, any fuel used other than natural gas shall be limited to:
    - (1) Gaseous fuels containing no more sulfur than natural gas; or
    - (2) Fuel oil.
2. For purposes of 40 CFR Part 75, a unit may initially qualify as gas-fired under the following circumstances:
  - a. If the designated representative provides fuel usage data for the unit for the three calendar years immediately prior to submission of the monitoring plan, and if the unit's fuel usage is projected to change on or before January 1, 1995, the designated representative submits a demonstration satisfactory to the administrator that the unit will qualify as gas-fired under the first sentence of this definition using the years 1995 through 1997 as the three-calendar-year period; or
  - b. If a unit does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan, the designated representative submits:
    - (1) The unit's designated fuel usage;
    - (2) Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;
    - (3) The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and
    - (4) Demonstration satisfactory to the administrator that the unit will qualify as gas-fired under the first sentence of this definition using those three consecutive calendar years as the three-calendar-year period.

"General account" means an allowance tracking system account that is not a unit account.

"Generator" means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

"Generator output capacity" means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Heat input" means the product (expressed in mmBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Independent power production facility" means a source that:

1. Is nonrecourse project-financed, as defined by the Secretary of Energy at 10 CFR Part 715;
2. Is used for the generation of electricity, 80% or more of which is sold at wholesale; and
3. Is a new unit required to hold allowances under Title IV of the federal Clean Air Act; but only if direct public utility ownership of the equipment comprising the facility does not exceed 50%.

"Insignificant activity" means any emissions unit listed in 9 VAC 5-80-720 A, any emissions unit that meets the emissions criteria described in 9 VAC 5-80-720 B, or any emissions unit that meets the size or production rate criteria in 9 VAC 5-80-720 C. An emissions unit is not an insignificant activity if it has any applicable requirements unless those requirements apply identically to all emissions units at the facility.

"Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit;
2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
3. For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

*"Malfunction"* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by improperly designed equipment, poor maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

*"Nameplate capacity"* means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

*"National allowance data base" or "NADB"* means the data base established by the administrator under § 402(4)(C) of the federal Clean Air Act.

*"Natural gas"* means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) containing one grain or less hydrogen sulfide per 100 standard cubic feet, and 20 grains or less total sulfur per 100 standard cubic feet, produced in geological formations beneath the earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure under ordinary conditions.

*"New source review program"* means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with 9 VAC 5-80-10, or Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

*"New unit"* means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

*"Nonrecourse project-financed"* means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by § 201(e) of the Federal Power Act, as amended, 16 USC § 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such

utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility's owners or other project participants shall not disqualify a facility from being "nonrecourse project-financed" as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from revenues generated by the facility, rather than from other sources of funds. Projects that are 100% equity financed are also considered "nonrecourse project-financed" for purposes of § 416(a)(2)(B) of the federal Clean Air Act.

*"Offset plan"* means a plan pursuant to 40 CFR Part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

*"Oil-fired"* means:

1. The combustion of fuel oil for more than 10% of the average annual heat input during the previous three calendar years or for more than 15% of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel (including coal-derived gaseous fuel), other than coal or any other coal-derived fuel, for the remaining heat input, if any; provided that for purposes of 40 CFR Part 75, any fuel used other than fuel oil shall be limited to gaseous fuels containing no more sulfur than natural gas.

2. For purposes of 40 CFR Part 75, a unit that does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan may initially qualify as oil-fired if the designated representative submits:

- a. The unit design fuel usage;
- b. The unit's designed fuel usage;
- c. Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;
- d. The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and
- e. A demonstration satisfactory to the administrator that the unit will qualify as oil-fired under the first sentence of this definition using those three consecutive calendar years as the three-calendar-year period.

*"Owner,"* with respect to affected units, combustion sources, or process sources, means any of the following persons:

1. Any holder of any portion of the legal or equitable title in an affected unit, a combustion source, or a process source;
2. Any holder of a leasehold interest in an affected unit, a combustion source, or a process source;
3. Any purchaser of power from an affected unit, a combustion source, or a process source under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental



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# Proposed Regulations

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payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or

4. With respect to any allowance tracking system general account, any person identified in the submission required by 40 CFR 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

*"Owner or operator"* means any person who is an owner or who operates, controls, or supervises an affected unit, affected source, combustion source, or process source, and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit, affected source, combustion source, or process source.

*"Permit"* (unless the context suggests otherwise) means any permit or group of permits covering a source subject to this article that is issued, renewed, amended, or revised pursuant to this article.

*"Permit modification"* means a revision to a permit issued under this article that meets the requirements of 9 VAC 5-80-570 on minor permit modifications, 9 VAC 5-80-580 on group processing of minor permit modifications, or 9 VAC 5-80-590 on significant modifications.

*"Permit revision"* means any permit modification that meets the requirements of 9 VAC 5-80-570, 9 VAC 5-80-580, or 9 VAC 5-80-590 or any administrative permit amendment that meets the requirements of 9 VAC 5-80-560.

*"Permit revision for affected units"* means a permit modification, fast track modification, administrative permit amendment for affected units, or automatic permit amendment, as provided in 9 VAC 5-80-600 through 9 VAC 5-80-630.

*"Phase II"* means the acid rain program period beginning January 1, 2000, and continuing into the future thereafter.

*"Potential electrical output capacity"* means the MWe capacity rating for the units which shall be equal to 33% of the maximum design heat input capacity of the steam generating unit, as calculated according to Appendix D of 40 CFR Part 72.

*"Potential to emit"* means the maximum capacity of an affected source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

*"Power distribution system"* means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

*"Power purchase commitment"* means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

1. A power sales agreement;

2. A state regulatory authority order requiring a utility to (i) enter into a power sales agreement with the facility; (ii) purchase from the facility; or (iii) enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;

3. A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source executed within the time frame established by the terms of the letter of intent but no later than November 15, 1993, or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source executed on or before November 15, 1993; or

4. A utility competitive bid solicitation that has resulted in the selection of the qualifying facility or independent power production facility as the winning bidder.

*"Power sales agreement"* means a legally binding agreement between a qualifying facility, independent power production facility or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

*"Primary fuel"* or *"primary fuel supply"* means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

*"Proposed permit"* means the version of a permit that the board proposes to issue and forwards to the administrator for review in compliance with 9 VAC 5-80-690.

*"Qualifying facility"* means a "qualifying small power production facility" within the meaning of § 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of § 3(18)(B) of the Federal Power Act.

*"Qualifying power purchase commitment"* means a power purchase commitment in effect as of November 15, 1990, without regard to changes to that commitment so long as:

1. The identity of the electric output purchaser, or the identity of the steam purchaser and the location of the facility remain unchanged as of the date the facility commences commercial operation; and
2. The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the acid rain program to be shifted to the purchaser.

*"Qualifying repowering technology"* means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the

performance of technology in widespread commercial use as of November 15, 1990; or

2. Any oil- or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

"Receive" or "receipt of" means the date the administrator or the board comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the administrator or the board in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to allowances, the transfer of allowances by the administrator from one allowance tracking system account or subaccount to another.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.
2. Any pollutant for which an ambient air quality standard has been promulgated.
3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.
5. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.
6. Any pollutant subject to an applicable state requirement included in a permit issued under this article as provided in 9 VAC 5-80-300.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association or cooperative:
  - a. The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the business entity, or
  - b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
    - (1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
    - (2) The authority to sign documents has been assigned or delegated to such representative in accordance with

procedures of the business entity and the delegation of authority is approved in advance by the board; or

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

4. For affected sources:

- a. The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and
- b. The designated representative or any other person specified in this definition for any other purposes under this article or 40 CFR Part 70.

"Schedule of compliance" means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct noncompliance, with an applicable requirement of the acid rain program, including any applicable acid rain permit requirement.

"Secretary of Energy" means the Secretary of the United States Department of Energy or the secretary's duly authorized representative.

"Simple combustion turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

"Solid waste incinerator" means a source as defined in § 129(g)(1) of the federal Clean Air Act.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the federal Clean Air Act. For purposes of § 502(c) of the federal Clean Air Act, a source, including a source with multiple units, shall be considered a single facility.

"Stack" means a structure that includes one or more flues and the housing for the flues.

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9 VAC 5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for

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# Proposed Regulations

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EPA and public comment prior to issuance of the final permit and practicable enforceability.

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;
2. By United States Postal Service; or
3. By other equivalent means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title I modification" means any modification under Parts C and D of Title I or §§ 111(a)(4), 112(a)(5), or § 112(g) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in 40 CFR 61.07; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

"Ton" or "tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR Part 75, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.

"Total planned net output capacity" means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990.

"Total installed net output capacity" shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

"Unit" means a fossil fuel-fired combustion device.

"Unit account" means an allowance tracking system account, established by the administrator for an affected unit pursuant to 40 CFR 73.31 (a) or (b).

"Utility" means any person that sells electricity.

"Utility competitive bid solicitation" means a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility, or new independent power production facility may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

"Utility regulatory authority" means an authority, board, commission, or other entity (limited to the local, state, or federal level, whenever so specified) responsible for overseeing the business operations of utilities located within

its jurisdiction, including, but not limited to, utility rates and charges to customers.

"Utility unit" means a unit owned or operated by a utility:

1. That serves a generator in any state that produces electricity for sale; or
2. That during 1985, served a generator in any state that produced electricity for sale.

Notwithstanding subdivisions 1 and 2 of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990, is not a utility unit for purposes of the acid rain program.

Notwithstanding subdivisions 1 and 2 of this definition, a unit that cogenerates steam and electricity is not a utility unit for purposes of the acid rain program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.

## **9 VAC 5-80-390. New units exemption.**

A. This section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05% or less by weight, as determined in accordance with subdivision D 1 of this section.

B. The designated representative, authorized in accordance with Subpart B of 40 CFR Part 72, of a source that includes a unit under subsection A of this section may petition the board for a written exemption, or to renew a written exemption, for the unit from the requirements of the acid rain program as described in subdivision C 1 of this section. The petition shall be submitted on a form approved by the board which includes the following elements:

1. Identification of the unit.
2. The nameplate capacity of each generator served by the unit.
3. A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with subsection A of this section.
4. A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.
5. The special provisions in subsection D of this section.

C. The board shall issue, for any unit meeting the requirements of subsections A and B of this section, a written exemption from the requirements of the acid rain program except for the requirements specified in this section, 40 CFR 72.2 through 72.7, and 40 CFR 72.10 through 72.13 (general provisions); provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's allowances tracking system account, allowances pursuant to 40 CFR 72.7(c)(1)(i) and (d)(1) (new units exemption).

1. The exemption shall take effect on January 1 of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with subdivision 2 of this subsection, provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the acid rain program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.

2. In considering and issuing or denying a written exemption under this subsection, the board shall apply the permitting procedures in 9 VAC 5-80-510 C by:

a. Treating the petition as an acid rain permit application under such provisions;

b. Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and

c. Issuing or denying a proposed written exemption that is treated as the issuance or denial of a proposed permit under such provisions, provided that no provision under 9 VAC 5-80-510 C concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.

3. A written exemption issued under this section shall have a term of five years from its effective date, except as provided in subdivision D 3 of this section.

D. The following provisions apply to units exempted under this section:

1. The owners and operators of each unit exempted under this section shall determine the sulfur content by weight of its fuel as follows:

a. For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using *methods found in the following American Society for Testing and Materials (ASTM) methods ~~ASTM D4057-88 and ASTM D429-91, ASTM D2622-94, or ASTM D4294-90~~ publications: "Standard Practice for Manual Sampling of Petroleum and Petroleum Products" and "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)," "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Spectrometry" or "Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy" (see 9 VAC 5-20-21).*

b. For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be 0.05% or less by weight.

c. For gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ~~ASTM methods ASTM D1072-90 and ASTM D1265-92 found in the following ASTM publications: "Standard Test Method for Total Sulfur in Fuel Gases" and "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)"~~ (see 9 VAC 5-20-21); provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using ~~the method found in ASTM method ASTM D1072-90 publication, "Standard Test Method for Total Sulfur in Fuel Gases"~~ (see 9 VAC 5-20-21).

2. The owners and operators of each unit exempted under this section shall retain at the source that includes the unit, the records of the results of the tests performed under subdivisions 1 a and 1 c of this subsection and a copy of the purchase agreements for the fuel under subdivision 1 of this subsection, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.

3. On the earlier of the date the written exemption expires, the date a unit exempted under this section burns any fuel with a sulfur content in excess of 0.05% by weight (as determined in accordance with subdivision 1 of this subsection), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under this section and shall be subject to all requirements of the acid rain program, except that:

a. Notwithstanding 9 VAC 5-80-430 C, the designated representative of the source that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998, or the date the unit is no longer exempted under this section.

b. For purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of subsection A of this section.

## 9 VAC 5-80-1710. Definitions.

A. As used in this article, all words or terms not defined herein shall have the meaning given them in 9 VAC 5-10-10 et seq., unless otherwise required by context.

B. For the purpose of this article, 9 VAC 5-50-280 and any related use, the words or terms shall have the meaning given them in subsection C of this section:

C. Terms defined.

"Actual emissions":

a. Means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subdivisions b through d of this definition.

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# Proposed Regulations

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b. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

c. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

d. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

*"Administrator"* means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

*"Adverse impact on visibility"* means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal Class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

*"Allowable emissions"* means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a. The applicable standards as set forth in 40 CFR Parts 60 and 61;
- b. The applicable implementation plan emissions limitation including those with a future compliance date; or
- c. The emissions rate specified as a federally or state enforceable permit condition, including those with a future compliance date.

*"Baseline area"*:

- a. Means any intrastate area (and every part of that) designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 Sg/m<sup>3</sup> (annual average) of the pollutant for which the minor source baseline date is established.
- b. Area redesignations under § 107(d)(3) of the federal Clean Air Act cannot intersect or be smaller than the area

of impact of any major stationary source or major modification which:

- (1) Establishes a minor source baseline date; or
- (2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that such baseline shall not remain in effect if the board rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "baseline date."

*"Baseline concentration"*:

a. Means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

- (1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition;
- (2) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increases:

- (1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and
- (2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

*"Baseline date"*:

a. *"Major source baseline date"* means:

- (1) In the case of particulate matter and sulfur dioxide, January 6, 1975, and
- (2) In the case of nitrogen dioxide, February 8, 1988.

b. *"Minor source baseline date"* means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

- (1) In the case of particulate matter and sulfur dioxide, August 7, 1977, and
- (2) In the case of nitrogen dioxide, February 8, 1988.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and

(2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the board may rescind any such minor source baseline date where it can be shown, to the satisfaction of the board, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions.

*"Begin actual construction"* means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

*"Best available control technology"* means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the federal Clean Air Act which would be emitted from any proposed major stationary source or major modification which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead to satisfy the requirement of the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall

provide for compliance by means which achieve equivalent results.

*"Building, structure, facility or installation"* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same first two-digit code) as described in the "Standard Industrial Classification Manual", ~~as amended by the supplement~~ (see 9 VAC 5-20-21).

*"Commence,"* as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

*"Complete"* means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

*"Construction"* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

*"Emissions unit"* means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act.

*"Federal land manager"* means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

*"Federally enforceable"* means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or this chapter, including operating permits issued under an EPA-approved program that is incorporated into the implementation plan and expressly requires adherence to any permit issued under such program.

*"Fugitive emissions"* means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

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# Proposed Regulations

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"*High terrain*" means any area having an elevation 900 feet or more above the base of the stack of a source.

"*Indian governing body*" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"*Indian reservation*" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"*Innovative control technology*" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"*Locality particularly affected*" means any locality which bears any identified disproportionate material air quality impact which would not be experienced by other localities.

"*Low terrain*" means any area other than high terrain.

"*Major modification*":

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the federal Clean Air Act.

b. Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include:

- (1) Routine maintenance, repair and replacement;
- (2) Use of an alternative fuel or raw material by a stationary source which:
  - (a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter; or
  - (b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter;
- (3) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter.

"*Major stationary source*":

a. Means:

- (1) Any of the following stationary sources of air pollutants which emits, or has the potential to emit 100

tons per year or more of any pollutant subject to regulation under the federal Clean Air Act:

- (a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- (b) Coal cleaning plants (with thermal dryers).
- (c) Kraft pulp mills.
- (d) Portland cement plants.
- (e) Primary zinc smelters.
- (f) Iron and steel mill plants.
- (g) Primary aluminum ore reduction plants.
- (h) Primary copper smelters.
- (i) Municipal incinerators capable of charging more than 250 tons of refuse per day.
- (j) Hydrofluoric acid plants.
- (k) Sulfuric acid plants.
- (l) Nitric acid plants.
- (m) Petroleum refineries.
- (n) Lime plants.
- (o) Phosphate rock processing plants.
- (p) Coke oven batteries.
- (q) Sulfur recovery plants.
- (r) Carbon black plants (furnace process).
- (s) Primary lead smelters.
- (t) Fuel conversion plants.
- (u) Sintering plants.
- (v) Secondary metal production plants.
- (w) Chemical process plants.
- (x) Fossil fuel boilers (or combinations of them) totaling more than 250 million British thermal units per hour heat input.
- (y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (z) Taconite ore processing plants.
  - (aa) Glass fiber processing plants.
  - (bb) Charcoal production plants.
- (2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the federal Clean Air Act; or
- (3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major

stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (1) Coal cleaning plants (with thermal dryers).
- (2) Kraft pulp mills.
- (3) Portland cement plants.
- (4) Primary zinc smelters.
- (5) Iron and steel mills.
- (6) Primary aluminum ore reduction plants.
- (7) Primary copper smelters.
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day.
- (9) Hydrofluoric, sulfuric, or nitric acid plants.
- (10) Petroleum refineries.
- (11) Lime plants.
- (12) Phosphate rock processing plants.
- (13) Coke oven batteries.
- (14) Sulfur recovery plants.
- (15) Carbon black plants (furnace process).
- (16) Primary lead smelters.
- (17) Fuel conversion plants.
- (18) Sintering plants.
- (19) Secondary metal production plants.
- (20) Chemical process plants.
- (21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (23) Taconite ore processing plants.
- (24) Glass fiber processing plants.
- (25) Charcoal production plants.
- (26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- (27) Any other stationary source category which, as of August 7, 1980, is being regulated under § 111 or § 112 of the federal Clean Air Act.

*"Necessary preconstruction approvals or permits"* means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the applicable implementation plan.

*"Net emissions increase"*:

a. Means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(1) The date five years before construction on the particular change commences; and

(2) The date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if the board has not relied on it in issuing a permit for the source under this article (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM<sub>10</sub> emissions can be used to evaluate the net emissions increase for PM<sub>10</sub>.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is federally and state enforceable at and after the time that actual construction on the particular change begins; and

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to



# Proposed Regulations

emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"*Potential to emit*" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"*Secondary emissions*" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"*Significant*":

a. Means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Dioxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM <sub>10</sub>	15 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H <sub>2</sub> S)	10 tpy
Total Reduced Sulfur (including H <sub>2</sub> S)	10 tpy
Reduced Sulfur Compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 <sup>6</sup> tpy

Municipal waste combustor metals (measured as particulate matter) 15 tpy

Municipal waste combustor acid gases (measured as the sum of SO<sub>2</sub> and HC<sub>1</sub>) 40 tpy

b. Means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the federal Clean Air Act that subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 Sg/m<sup>3</sup> (24-hour average).

"*Stationary source*" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

## 9 VAC 5-80-2010. Definitions.

A. As used in this article, all words or terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

B. For the purpose of this article, 9 VAC 5-50-270 and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

"*Actual emissions*" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"*Administrator*" means the Administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.

"*Allowable emissions*" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to

federally and state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a. The applicable standards set forth in 40 CFR Parts 60 and 61;
- b. Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or
- c. The emissions rate specified as a federally and state enforceable permit condition, including those with a future compliance date.

*"Begin actual construction"* means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

*"Building, structure, facility, or installation"* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," ~~as amended by the supplement~~ (see 9 VAC 5-20-21).

*"Commence,"* as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

*"Construction"* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

*"Emissions unit"* means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act.

*"Federally enforceable"* means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan, and

any permit requirements established pursuant to 40 CFR 52.21 or this chapter, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

*"Fixed capital cost"* means the capital needed to provide all the depreciable components.

*"Fugitive emissions"* means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

*"Lowest achievable emissions rate"* means for any source, the more stringent rate of emissions based on the following:

- a. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or
- b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

*"Major modification"*

- a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the federal Clean Air Act.
- b. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.
- c. A physical change or change in the method of operation shall not include:
  - (1) Routine maintenance, repair and replacement;
  - (2) Use of an alternative fuel or raw material by a stationary source which:
    - (a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or
    - (b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter;
  - (3) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.

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# Proposed Regulations

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## "Major stationary source"

### a. Means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, (i) 100 tons per year or more of any pollutant subject to regulation under the federal Clean Air Act, (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9 VAC 5-20-204, or (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in 9 VAC 5-20-204; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (1) Coal cleaning plants (with thermal dryers).
- (2) Kraft pulp mills.
- (3) Portland cement plants.
- (4) Primary zinc smelters.
- (5) Iron and steel mills.
- (6) Primary aluminum ore reduction plants.
- (7) Primary copper smelters.
- (8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.
- (9) Hydrofluoric acid plants.
- (10) Sulfuric acid plants.
- (11) Nitric acid plants.
- (12) Petroleum refineries.
- (13) Lime plants.
- (14) Phosphate rock processing plants.
- (15) Coke oven batteries.
- (16) Sulfur recovery plants.
- (17) Carbon black plants (furnace process).
- (18) Primary lead smelters.
- (19) Fuel conversion plants.
- (20) Sintering plants.
- (21) Secondary metal production plants.

(22) Chemical process plants.

(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber manufacturing plants.

(27) Charcoal production plants.

(28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category which, as of August 7, 1980, is being regulated under § 111 or § 112 of the federal Clean Air Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

## "Net emissions increase"

a. Means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the change specified in subdivision a (1) of this definition commences and the date that the increase specified in subdivision a (1) of this definition occurs; and

(2) The board has not relied on it in issuing a permit for the source pursuant to this chapter which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is federally and state enforceable at and after the time that actual construction on the particular change begins;

(3) The board has not relied on it in issuing any permit pursuant to this chapter or the board has not relied on it in demonstrating attainment or reasonable further progress in the State Implementation Plan; and

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

*"Nonattainment pollutant"* means, within a nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.

*"Potential to emit"* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

*"Qualifying pollutant"* means, with regard to a major stationary source, any pollutant emitted in such quantities or at such rate as to qualify the source as a major stationary source.

*"Reasonable further progress"* means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of a state implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the State Implementation Plan for such area.

*"Reconstruction"* means when the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a

comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of subdivisions a through c of this definition. A reconstructed stationary source will be treated as a new stationary source for purposes of this article.

a. The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility.

b. The estimated life of the facility after the replacements compared to the life of a comparable entirely new facility.

c. The extent to which the components being replaced cause or contribute to the emissions from the facility.

*"Secondary emissions"* means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

*"Significant"* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

a. Ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	25 tpy of volatile organic compounds
Lead	0.6 tpy

b. Other nonattainment areas.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

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# Proposed Regulations

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"Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

## DOCUMENTS INCORPORATED BY REFERENCE

~~D-1265-92~~ *D 1265-97*, Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method), American Society for Testing and Materials, ~~1992~~ 1997.

~~D-1072-90~~ *D 1072-90(1999)*, Standard Test Method for Total Sulfur in Fuel Gases, American Society for Testing and Materials, ~~1990, reapproved 1994~~ 1999.

~~D-975-94~~ *D 975-98b*, Standard Specification for Diesel Fuel Oils, American Society for Testing and Materials, ~~1994~~ 1998.

~~D-396-92~~ *D 396-98*, Standard Specification for Fuel Oils, American Society for Testing and Materials, ~~1992~~ 1998.

~~D-388-95~~ *D 388-99*, Standard Classification of Coals by Rank, American Society for Testing and Materials, ~~1995~~ 1999.

~~D-129-94~~ *D 129-00*, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), American Society for Testing and Materials, ~~1994~~ 2000.

~~D-4294-90~~ *D 4294-98*, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectroscopy, American Society for Testing and Materials, ~~1990~~ 1998.

~~D-4057-88~~ *D 4057-95(2000)*, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, American Society for Testing and Materials, ~~1988~~ 2000.

~~D-2622-94~~ *D 2622-98*, Standard Test Method for Sulfur in Petroleum Products by *Wavelength Dispersive X-ray Fluorescence Spectrometry*, American Society for Testing and Materials, ~~1994~~ 1998.

*Standard Industrial Classification Manual, U.S. Government Printing Office stock number 041-001-00-314-2, 1987.*

VA.R. Doc. No. R00-223; Filed June 11, 2001, 8:38 a.m.

## **VIRGINIA WASTE MANAGEMENT BOARD**

Title of Regulation: **9 VAC 20-60-12 et seq. Virginia Hazardous Waste Management Regulations. (amending 9 VAC 20-60-261)**

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Public Hearing Date: August 15, 2001 - 10 a.m.

Public comments may be submitted until September 6, 2001.

(See Calendar of Events section for additional information)

Agency Contact: Dennis H. Treacy, Director, Department of Environmental Quality, Richmond, VA, telephone (804) 698-4020.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required

by the Virginia Waste Management Act and consistent with federal statutes and regulations.

Purpose: The Virginia Waste Management Board maintains the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 et seq., to continue the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. By regulating these activities the Commonwealth protects public health, natural resources and the environment. 9 VAC 20-60-261 B 8 is unclear and is unnecessary because it is the board's intention to have the same regulation requirements for the management of low-level radioactive wastes and mixed wastes as the federal regulations contained in Title 40 of the Code of Federal Regulations, which are incorporated by reference. Deleting this provision will eliminate the potential misinterpretation that all low-level radioactive wastes are considered hazardous waste when, in fact, only mixed low-level radioactive wastes are considered hazardous waste.

Substance: The amendment deletes 9 VAC 20-60-261 B 8. No other section of the broader regulation set 9 VAC 20-60-12 et seq. is modified by this action.

Issues: There are no disadvantages to the public or the Commonwealth. The action at issue is the repeal of an unnecessary and confusing provision. The action will improve clarity of the regulation and is an advantage to the public and the agency.

### 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 25 (98). 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 Virginia Waste Management Board proposes to eliminate subsection B 8 of the current regulations. The repeal of section B 8 will eliminate the potential misinterpretation that all low-level radioactive wastes are considered hazardous waste, when in fact only mixed low-level radioactive wastes are considered hazardous waste.<sup>1</sup>

Estimated economic impact. The proposed change will repeal section B 8 in this regulation. DEQ indicates that section B 8 is susceptible to an erroneous interpretation; it may be interpreted to require that all low-level radioactive waste be managed as hazardous waste. DEQ issued a guidance document on January 21, 2000, stating that section B 8 be implemented as applying to mixed low-level

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<sup>1</sup> Mixed radioactive wastes are radioactive wastes that also contain a substance that renders a mixture of hazardous waste.

radioactive waste, and not to all low-level radioactive waste. Section B 8 is also redundant since Title 40 of the Code of Federal Regulations are incorporated by reference in the regulation. Referenced federal regulations establish requirements for low-level radioactive wastes and mixed low-level radioactive wastes. Thus, repeal of section B 8 is not expected to affect handling of mixed low-level radioactive waste, but should eliminate potential misinterpretations. DEQ has received clarifying questions from three or four entities. The agency is not aware of any instances of erroneous actions occurring. To the extent that potential erroneous interpretations and consequently, erroneous actions are prevented, the proposed change may be beneficial.

Businesses and entities affected. The proposed regulations may potentially affect about 270 entities, including hospitals, power plants, nuclear pharmacies, and various companies.

Localities particularly affected. The proposed change will apply throughout the Commonwealth.

Projected impact on employment. No effect on employment is expected.

Effects on the use and value of private property. The proposed change is not expected to affect the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

*The proposed amendment conforms the regulation of low-level radioactive wastes and mixed wastes to the federal requirements, which provide that only mixed low-level radioactive wastes are considered hazardous.*

**9 VAC 20-60-261. Adoption of 40 CFR Part 261 by reference.**

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

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

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

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

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

4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of Parts XI (9 VAC 20-60-960 et seq.) and XII (9 VAC 20-60-1260 et seq.) of these regulations.

5. No hazardous waste from a conditionally exempt small quantity generator shall be disposed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless the solid waste management facility had written permission from the department to receive such waste.

6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

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

~~8. All radioactive wastes classified as low-level radioactive material by the United States Nuclear Regulatory Commission shall be a hazardous waste. NOTE: A waste may be a hazardous waste as defined by 40 CFR Part 261 and a low-level radioactive waste. These "mixed wastes" are required to comply with the requirements of these regulations and all regulations of the United States Nuclear Regulatory Commission that apply.~~

VA.R. Doc. No. R00-253; Filed June 11, 2001, 8:37 a.m.



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# Proposed Regulations

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

**REGISTRAR'S NOTICE:** Due to its length, the proposed regulation filed by the Department of Health is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Health (see contact information below).

**Title of Regulation:** 12 VAC 5-581-10 et seq. Sewage Collection and Treatment (SCAT) Regulations.

**Statutory Authority:** §§ 32.1-164 and 62.1-44.19 of the Code of Virginia.

**Public Hearing Dates:**

August 13, 2001 - 7 p.m. (Spotsylvania)  
August 15, 2001 - 7 p.m. (Williamsburg)  
August 16, 2001 - 7 p.m. (Roanoke)

Public comments may be submitted until September 10, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Dr. Calmet M. Sawyer, Ph.D., P.E., Division Director, Division of Wastewater Engineering, Department of Health, 1500 East Main Street, Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567, e-mail csawyer@vdh.state.va.us.

**Basis:** Section 32.1-164 of the Code of Virginia authorizes the State Board of Health to promulgate regulations to govern the safe and sanitary collection, transportation, treatment, and disposal of sewage for all sewerage systems. Section 62.1-44.18 et seq. of the Code of Virginia describes the interrelationship of the State Water Control Board and the Virginia Department of Health for regulation of sewage discharges.

Section 62.1-44.18 of the Code of Virginia specifies that all sewerage systems and sewage treatment works shall be under the general supervision of the VDH and the State Water Control Board/Department of Environmental Quality (DEQ).

Section 62.1-44.19 of the Code of Virginia specifies that before any owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works that will have a potential discharge or actual discharge to state waters, such owner shall file with the State Water Control Board/DEQ an application for a certificate. Before issuing the certificate, the State Water Control Board consults with and gives consideration to the written recommendations of the VDH pertaining to the protection of public health.

Upon completion of public notice, the State Water Control Board/DEQ determines whether the application is complete. After the certificate has been issued by the State Water Control Board/DEQ, the owner must acquire from the VDH (i) authorization to construct the systems or works for which the board has issued a discharge certificate and (ii) upon

completion of construction, authorization to operate the sewerage system or sewage treatment works. These authorizations are to be obtained in accordance with regulations promulgated by the State Board of Health under § 32.1-164 of the Code of Virginia. The VDH will then notify the State Water Control Board/DEQ when such authorizations are granted. Such authorization will be in the form of construction and operation permits issued by the State Health Commissioner, in accordance with the provisions of the SCAT Regulations.

Certain federal (PL 87-128, 7 USC 1989, 7 CFR Part 1942, Subpart A) and private loan institutions require a state certification of the adequacy of designs for sewage collection and treatment systems prior to any commitment to provide funds for construction of such projects. These loans have previously amounted to nearly 100 million dollars annually.

**Purpose:** The proposed Sewage Collection and Treatment (SCAT) Regulations will replace the existing Sewerage Regulations jointly adopted by the State Water Control Board and the State Board of Health in 1977. The 1977 joint regulations established the accepted standards for design of sewage collection systems and sewage treatment works as necessary to protect public health and prevent violations of water quality standards from improperly treated sewage discharges. The existing Sewerage Regulations were also developed in response to the creation of the Federal Construction Grants program administered by the U.S. Environmental Protection Agency. A revolving loan program involving more incentives to begin construction as expeditiously as possible has now replaced the construction grants program. The proposed SCAT Regulations are necessary in order to establish the procedures and standards that will streamline the current regulatory process for evaluating and approving the construction of sewage collection and treatment systems.

The goal of the proposed SCAT Regulations is to provide for a number of important services that will benefit the public, the private business sector and local governments, especially small communities, including:

1. Assure financial institutions that fiscal responsibility will be provided by the proposed system design so that revolving loans will be available for final design and construction.
2. Provide the means to evaluate new or nonconventional equipment in order that equipment manufacturers will be able to compete fairly and responsibly to provide the most economical technology.
3. Provide technical assistance and liability protection to consultants so that owners with limited resources can procure reasonably priced professional design services.
4. Provide assurance that constructed systems can be operated in compliance with permit requirements so that owners will not have to bear legal and other costs of permit enforcement actions.

The proposed SCAT Regulations will revise outdated technical design standards contained in the existing regulations and provide for more efficient issuance of

construction and operation permits by the State Health Commissioner in order to streamline the current permit process.

Substance: The existing 1977 Sewerage Regulations promulgated jointly by the State Water Control Board and the State Board of Health will remain in effect until superseded by the proposed SCAT Regulations adopted by either board as appropriate (Chapter 194 of the 1991 Acts of the General Assembly). Implementation of the proposed SCAT Regulations by the Virginia Department of Health (VDH) will provide owners, operators, consultants, contractors, and equipment suppliers with updated, uniform standards for design and installation of sewage collection, treatment, reuse and disposal of sewage for large and small communities.

The proposed SCAT Regulations include the following:

1. Update compliance and enforcement issues in accordance with the Administrative Process Act.
2. Establish new permit requirements and provide for waivers of formal permits for small sewage collection and treatment systems.
3. Establish procedures that are much more flexible than the procedures specified in the current Sewerage Regulations.
4. Make available a general permit for local approval of projects involving the expansion of sewage collection systems.
5. Allow the issuance of construction permits without formal technical evaluations of design documents, based upon submittals of signed statements by responsible design consultants that the designs meet the required standards.
6. Define "sludge management plans" and provide a link to the Biosolids Use Regulations (12 VAC 5-585), which have replaced several sections of the current Sewerage Regulations.
7. Update the procedures to be used to evaluate and approve new untried (nonconventional) treatment processes.
8. Address previous deficiencies in the current Sewerage Regulations, including specific information on assurance resources for performance guarantees and schedules for performance reliability testing.
9. Address a regulatory deficiency through procedures for issuance of permits for large-scale (5,000 gpd or more) subsurface sewage disposal systems that are not provided for in the Sewage Handling and Disposal Regulations (12 VAC 5-610).
10. Describe the jurisdictional relationships for approving building sewer service.
11. Provide for a more representative Regulation Advisory Committee than that specified in the current regulations.
12. Update testing and monitoring requirements in comparison to the outdated requirements in the current regulations.

13. Outline recommendations for operation of treatment works that were not included in the Sewerage Regulations.

14. Include current design standards for disinfection of treated sewage discharges including alternatives to chlorination that are not included in the current regulations.

15. Update the procedures and technical design standards for land treatment systems and other natural treatment processes.

16. Allow a more effective and earlier determination of site suitability than provided for in the Sewerage Regulations.

17. Provide design standards for constructed wetlands for natural treatment of sewage discharges.

18. Consolidate and update the advanced wastewater treatment (AWT) design and provide new design standards for the control of nutrients in sewage discharges.

Issues: Prior to the Project Streamline Initiative HB1449 (1991), § 62.1-44.19 of the State Water Control Law required that the State Health Department conduct a technical review of proposals for sewage collection, treatment, and disposal of sewage for sewerage systems, and file a report with the State Water Control Board. This letter report would contain the State Health Department's recommendations for approval or disapproval of the proposal, as authorized under § 32.1-164 of the State Health Code. Upon adoption of the SCAT Regulations, owners of sewerage facilities or associated permit applicants will be directed to obtain construction and operational permits from VDH prior to final issuance of either a Virginia Pollutant Discharge Elimination System (VPDES) permit, or a Virginia Pollution Abatement (VPA) permit by DEQ. After the adoption of SCAT Regulations the formal letter report procedure will be replaced by a simple notification that construction or operational permits have been issued by VDH. This streamlined procedure will reduce the existing time periods required to notify owners and applicants to proceed with construction. The owners will receive a notification letter including a new standard permit form authorizing construction or operation.

The proposed SCAT Regulations will outline current standards of practice and the technical design standards and operational requirements to ensure that all construction of new or upgraded processes will provide the capacity and/or performance reliability necessary to comply with permit requirements. Permit noncompliance can result in both costly enforcement actions and the improper and unregulated disposal of sewage, which would result in pollution of surface and ground water, contamination of soil and exposure of the public to infectious agents. The proposed SCAT Regulations administered through the VDH, Division of Wastewater Engineering (DWE) will not only facilitate a more expeditious evaluation and approval of plans and specifications for the construction of new or expanded sewerage systems and treatment works, but will also ensure that public health is not endangered and that environmental resources are properly managed.

Implementation of the proposed SCAT Regulations will provide for some consolidation of agency resources now utilized to ensure the safe and reliable collection, treatment



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## Proposed Regulations

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and disposal of sewage, thus eliminating previous anticipated needs for additional staff resources. A relatively small disadvantage involves the need to revise the current interagency relationships for issuance of construction and operation permits and to inform the owners of sewage collection and treatment systems of those changes.

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 25 (98). 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 provides standards for the design, construction and operation of sewage collection systems and sewage treatment facilities. This revision to the existing regulations is intended to bring the regulations into line with current best practices, to reduce the time required to license and build collection and treatment facilities, and to provide flexibility for applicants who wish to use designs different from those specified in the current regulations.

Estimated economic impact. The economic impact of these changes to the sewage collection and treatment (SCAT) regulations can be usefully divided into two parts. First, there are the costs associated with the licensing process itself. The second set of costs are those associated with the design, construction and operation of the facilities themselves.

In the past, SCAT facility design, construction and operation have been regulated both by the Department of Environmental Quality (DEQ) and by the Department of Health (VDH). Under the new regulations, DEQ will no longer be involved in decisions about design, construction and operation. Rather, DEQ will limit its involvement to enforcing water quality standards and permitting while VDH will take the full responsibility for design review. This change will simplify the licensing process and will reduce the time it takes to bring a facility on line. The simplification of the process will ultimately result in significant savings on the costs of building and licensing new facilities. VDH has indicated that expenditures on SCAT projects represent nearly \$250 million per year. Reducing construction times could conceivably save on the order of a few million dollars per year.

Another significant cost saving in the new regulations is the provision that allows applicants to proceed with construction during the design review process. Most of the construction work that would be done concurrent with VDH review would be site preparation, an aspect of construction unlikely to be affected greatly by VDH review. Savings on the order of six months could be achieved and could possibly result in

savings similar to those achieved by the licensing simplification process.

While the licensing process does add some to the cost of bringing new facilities on-line, the greatest part of the cost is due to expenses of designing, construction and operation. The question remains, what are the costs imposed by these regulations and the benefits that result. The primary function of SCAT facilities is for the protection of water quality and hence public health and safety. However, even in the absence of these regulations, anyone wishing to discharge effluents into state waters would have to treat wastes so that effluents would not result in violations of state water quality standards. The setting and enforcement of these standards is the responsibility of DEQ, not VDH. Thus, even in the absence of these regulations, SCAT facilities would be needed and would have to be built to use the best available technologies in order to allow effluents to meet standards established by the DEQ permit.

In fact, much of what is in these revised regulations is simply a restatement of best engineering practices in the field of wastewater engineering.<sup>1</sup> Few of the provisions of these regulations impose binding constraints on plant designers relative to what would be required to meet DEQ standards. It follows that the costs of building SCAT facilities are not primarily due to these regulations but to the water quality standards themselves.

The new VDH regulations contain numerous provisions allowing applicants to use technologies not specifically enumerated in the regulations. Applicants wishing to use innovative processes may substitute those processes for the processes listed in the regulations so long as the applicant can provide convincing data of and, in some cases, performance bonds to ensure that if the new process does not work, funding will be available to modify the design to bring it into compliance.

The design and building of these facilities is a complicated and specialized engineering task. All but the largest localities hire outside engineering firms rather than using in-house engineers. Localities may often find themselves without the technical expertise to evaluate the effectiveness of a given engineering proposal. These regulations make the process less risky for localities by specifying a set of design standards that will result in the facility performing as required. In addition, VDH Division of Wastewater Engineering review of plans offers localities an independent evaluation of plans. This independent evaluation may end up saving localities significant resources that would otherwise be spent on re-engineering facilities that fail to meet DEQ permit limits due to some design flaw.

In summary, SCAT facilities would need to be built to current best engineering practices to meet DEQ permit requirements. These revised regulations update SCAT facility standards to make them consistent with current best practices. In addition, the regulations clearly provide that applicants may use nonstandard facilities so long as they (i) have data to demonstrate effectiveness, and (ii) for more risky designs,

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<sup>1</sup> Personal conversation with Dr. Clifford Randall, Virginia Tech, 2/22/00.

can demonstrate the financial capacity to fix any problems if the new design does not perform up to expectations. This flexibility opens the door to innovation while still providing a clear minimum engineering standard for those applicants choosing to use standard practices. Relative to the standards being replaced, these changes may provide for significant cost savings in the design, construction and operation of SCAT facilities without posing any significant added risks to public health and safety.

Businesses and entities affected. Any business or municipality wishing to construct or expand a sewerage system or treatment works over a minimum size must get a license. This includes nearly every municipality in Virginia and many private businesses. VDH reports that it currently averages over 1,000 SCAT projects worth nearly \$250 million each year.

Localities particularly affected. These regulations are not expected to have a disproportionate impact on any particular localities in Virginia.

Projected impact on employment. While these regulations are expected to save money for applicants by shortening the time it takes to build facilities, it is not expected that the shorter construction schedules will result in any net change in the level of employment in the industry.

Effects on the use and value of private property. Most of the impact of these changes will be felt by public agencies. There may be some savings by developers and other businesses needing to build SCAT facilities, although the amount of savings by private parties is not known and hence it is not possible to give a numerical estimate of any impact on the value of the private property affected.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The economic impact analysis developed by the Department of Planning and Budget (DPB) for the Proposed Sewage Collection and Treatment (SCAT) Regulations was found to be thorough and complete by the Virginia Department of Health (VDH). The VDH has no objections and no reservations concerning the DPB Economic Impact Analysis for the proposed SCAT Regulations.

### Summary:

*The proposed regulations provide standards for the design, construction and operation of sewage collection systems and sewage treatment facilities. This proposal is intended to bring the regulations into line with current best practices, to reduce the time required to license and build collection and treatment facilities, and to provide flexibility for applicants who wish to use designs different from those specified in the current regulations.*

*The existing 1977 Sewerage Regulations promulgated jointly by the State Water Control Board and the State Board of Health will remain in effect until superseded by the proposed Sewage Collection and Treatment (SCAT) Regulations adopted by either board as appropriate (Chapter 194 of the 1991 Acts of the General Assembly). Implementation of the proposed SCAT Regulations by the Virginia Department of Health (VDH) will provide owners,*

*operators, consultants, contractors, and equipment suppliers with updated, uniform standards for design and installation of sewage collection, treatment, reuse and disposal of sewage for large and small communities.*

*The proposed SCAT Regulations include the following:*

- 1. Update compliance and enforcement issues in accordance with the Administrative Process Act.*
- 2. Establish new permit requirements and provide for waivers of formal permits for small sewage collection and treatment systems.*
- 3. Establish procedures that are much more flexible than the procedures specified in the current Sewerage Regulations.*
- 4. Make available a general permit for local approval of projects involving the expansion of sewage collection systems.*
- 5. Allow the issuance of construction permits without formal technical evaluations of design documents, based upon submittals of signed statements by responsible design consultants that the designs meet the required standards.*
- 6. Define "sludge management plans" and provide a link to the Biosolids Use Regulations (12 VAC 5-585), which have replaced several sections of the current Sewerage Regulations.*
- 7. Update the procedures to be used to evaluate and approve new untried (nonconventional) treatment processes.*
- 8. Address previous deficiencies in the current Sewerage Regulations, including specific information on assurance resources for performance guarantees and schedules for performance reliability testing.*
- 9. Address a regulatory deficiency through procedures for issuance of permits for large-scale (5,000 gpd or more) subsurface sewage disposal systems that are not provided for in the Sewage Handling and Disposal Regulations (12 VAC 5-610).*
- 10. Describe the jurisdictional relationships for approving building sewer service.*
- 11. Provide for a more representative Regulation Advisory Committee than that specified in the current regulations.*
- 12. Update testing and monitoring requirements in comparison to the outdated requirements in the current regulations.*
- 13. Outline recommendations for operation of treatment works that were not included in the Sewerage Regulations.*
- 14. Include current design standards for disinfection of treated sewage discharges including alternatives to chlorination that are not included in the current regulations.*
- 15. Update the procedures and technical design standards for land treatment systems and other natural treatment processes.*

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# Proposed Regulations

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16. Allow a more effective and earlier determination of site suitability than provided for in the Sewerage Regulations.

17. Provide design standards for constructed wetlands for natural treatment of sewage discharges.

18. Consolidate and update the advanced wastewater treatment (AWT) design and provide new design standards for the control of nutrients in sewage discharges.

VA.R. Doc. No. R01-229; Filed June 13, 2001, 11:01 a.m.

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## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Appendix A referenced in the following order is not being published. However, the appendix is available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1<sup>st</sup> Floor, 1300 East Main Street, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday.

**Title of Regulation:** 20 VAC 5-302-10 et seq. **Information Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility (amending 20 VAC 5-302-10, 20 VAC 5-302-20, and 20 VAC 5-302-30; adding 20 VAC 5-302-25 and 20 VAC 5-302-40).**

**Statutory Authority:** §§ 12.1-13, 56-234.3 and 56-265.2 of the Code of Virginia.

**Summary:**

*The proposed amendments incorporate statutory changes that have occurred since the original adoption of the regulations in 1990. In addition, the changes broaden the scope of the rules to include all electric generating facilities, with a few exceptions, rather than just facilities proposed by independent power producers.*

**Agency Contact:** Tommy Oliver, 1300 East Main Street, Richmond, Virginia 23219, telephone (804) 371-9358 or e-mail [toliver@scc.state.va.us](mailto:toliver@scc.state.va.us).

AT RICHMOND, JUNE 12, 2001

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE010313

**Ex Parte:** In the matter of amending filing requirements for applications to construct and operate electric generating facilities

### ORDER ESTABLISHING PROCEEDING AND PRESCRIBING NOTICE

By Final Order dated December 17, 1990, in Case No. PUE900044, the Commission adopted filing requirements for applications submitted by independent power producers ("IPP") for construction of electric generating facilities pursuant to §§ 56-234.3 and 56-265.2 of the Code of Virginia.<sup>1</sup>

Since the adoption of the IPP filing requirements, significant changes have occurred in the electric utility industry in Virginia. Moreover, the statutes that govern the Commission's granting of certificates of public convenience and necessity for the construction of electric generating facilities have also been amended significantly.<sup>2</sup> Therefore, we are initiating this proceeding to establish new filing requirements for all entities seeking authority to construct and operate electric generating facilities in Virginia.

Our Staff has advised us that it has distributed informally to stakeholders proposed revisions to the filing requirements; has received written comments on the proposed revised rules from some stakeholders; has convened a stakeholder meeting to discuss the proposed rule changes; and has heard numerous comments and opinions expressed concerning how the Act affects the continuing applicability of §§ 56-234.3 and 56-265.2 of the Code of Virginia. Some stakeholders expressed the opinion that pursuant to the Act, those sections will have no applicability after January 1, 2002, with regard to the certification of electric generating facilities. After January 1, 2002, the generation of electric energy shall no longer be subject to regulation under Title 56, except as specified in the Act.<sup>3</sup> Some stakeholders apparently believe that § 56-580 D will become the exclusive framework for permitting the construction and operation of electric generating facilities. However, our Staff has advised the Commission that it, as well as other stakeholders, believes that §§ 56-234.3 and 56-265.2 do not necessarily cease to have continuing applicability beyond January 1, 2002, when generation is "deregulated" pursuant to § 56-577 A 3.

In order to incorporate written comments as well as the comments received in the stakeholder meeting, our Staff has further revised its proposed filing requirements. A copy of these proposed filing requirements is attached to this Order as Appendix B. We emphasize that these new rules are our Staff's proposal and do not at this point reflect any finding by the Commission.

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<sup>1</sup> Now codified at 20 VAC 5-302-10 et seq.

<sup>2</sup> For example, effective March 13, 1998, § 56-265.2 of the Code of Virginia was amended to permit the construction of "merchant plants." In addition, Chapter 23 of Title 56, the Virginia Electric Utility Restructuring Act ("the Act"), was enacted in 1999. It significantly changed the regulation of the generation of electricity in Virginia, and includes § 56-580 D pertaining to the construction and operation of generating facilities.

<sup>3</sup> See § 56-577 A 3.

We are requesting formal comments on our Staff's proposed amendments to the filing requirements. In addition, we believe that the issue as to the continuing applicability of §§ 56-234.3 and 56-265.2 of the Code of Virginia is a threshold issue that should be decided. Therefore, we are requesting the filing of briefs on this issue by July 13, 2001. Accordingly,

IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUE010313.

(2) On or before July 13, 2001, interested parties may file with the Clerk of the Commission legal briefs regarding whether §§ 56-234.3 and 56-265.2 of the Code of Virginia continue to be applicable after January 1, 2002, in proceedings in which the Commission is requested to permit the construction and operation of electric generating facilities.

(3) On or before June 15, 2001, the Commission's Division of Information Resources shall make a downloadable version of Staff's proposed rules and this Order available at the Commission's [Web site](http://www.state.va.us/scc/caseinfo/orders.htm), <http://www.state.va.us/scc/caseinfo/orders.htm>.

(4) On or before August 13, 2001, any person desiring to participate in this proceeding shall file with the Clerk of the Commission an original and fifteen copies (15) of comments or requests for hearing, as well as justification for such request, on the Staff's proposed rules and any other comments pertinent to these proceedings.

(5) On or before June 29, 2001, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia.

NOTICE TO THE PUBLIC OF A PROCEEDING TO  
ADOPT REVISED FILING REQUIREMENTS FOR  
APPLICATIONS SEEKING AUTHORITY TO  
CONSTRUCT ELECTRICAL GENERATING  
FACILITIES IN VIRGINIA

CASE NO. PUE010313

By Final Order dated December 17, 1990, in Case No. PUE900044, the Commission adopted filing requirements for applications submitted by independent power producers ("IPP") for construction of electric generating facilities pursuant to §§ 56-234.3 and 56-265.2 of the Code of Virginia. (See 20 VAC 5-302-10 et seq.)

Since the adoption of the IPP filing requirements, significant changes have occurred in the electric utility industry in Virginia. Moreover, the statutes that govern the Commission's granting of certificates of public convenience and necessity for the construction of electric generating facilities have also been amended. For example, effective March 13, 1998, § 56-265.2 of the Code of Virginia was amended to permit the construction of "merchant plants." In addition, Chapter 23 of Title 56, the Virginia Electric Utility Restructuring Act ("the Act"), was enacted in 1999. It significantly changed the regulation of the generation of electricity in Virginia

and included § 56-580 D pertaining to the construction and operation of generating facilities.

By Order entered June 12, 2001, the Commission established a proceeding to adopt new filing requirements for all entities seeking authority to construct and operate an electric generating facility in Virginia. After receiving input from certain stakeholders, the Commission's Staff has developed proposed revisions to the existing filing requirements. In addition, the Staff has advised that an issue has arisen concerning the continuing applicability of §§ 56-234.3 and 56-265.2 of the Code of Virginia, and whether these statutes will be superceded by § 56-580 D after January 1, 2002, with regard to the certification of electric generating facilities. On and after that date, the generation of electric energy will no longer be subject to regulation under Title 56, except as specified in the Act.

Interested parties may obtain a copy of Staff's proposed rules and the Commission's June 12, 2001, Order from the Commission's Web site; <http://www.state.va.us/scc/caseinfo/orders.htm>. The Clerk's office will also provide a copy of the Order and proposed rules to any interested party, free of charge, in response to any written request for one.

Any person desiring to participate in this proceeding shall file comments on the proposed rules, or any other issue pertinent to these proceedings, or may request a hearing, by directing an original and fifteen (15) copies of such comments or request on or before August 13, 2001, to the Clerk of the State Corporation Commission at the address set forth below.

In addition, the Commission has invited interested parties to file legal briefs on the issue of the continuing applicability of §§ 56-234.3 and 56-265.2 of the Code of Virginia beyond January 1, 2002. Any such briefs on this issue should be filed with the Clerk of the Commission, at the address set forth below, by July 13, 2001.

All written communications to the Commission should be directed to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and should refer to Case No. PUE010313.

VIRGINIA STATE CORPORATION COMMISSION

(6) All written communications to the Commission concerning this case should be directed to Joel H. Peck, Clerk, State Corporation Commission, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and must refer to Case No. PUE010313.

(7) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent to: the service list as set out in Appendix A; and the Commission's Office of General Counsel and Divisions of Energy Regulation and Economics and Finance.

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# Proposed Regulations

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## CHAPTER 302.

### INFORMATION REQUIREMENTS IN SUPPORT OF PETITIONS APPLICATIONS FOR INDEPENDENT POWER FACILITIES AUTHORITY TO CONSTRUCT AND OPERATE AN ELECTRIC GENERATING FACILITY.

#### **20 VAC 5-302-10. Independent power producers Applicability and scope.**

~~Independent Power Producers (IPPs) Any application, except as noted herein, filed by a person planning to construct electric generating facilities and incidental or associated facilities in the Commonwealth of Virginia and who must apply for a certificate of public convenience and necessity approval from the State Corporation Commission ("commission"), pursuant to §§ 56-46.1, 56-234.3, 56-265.2 and 56-580 D of the Code of Virginia and for approval pursuant to § 56-234.3 of the Code of Virginia must comply with the provisions of this chapter. The petition Distributed generation facilities as defined by the commission and net energy metering facilities as defined in § 56-594 of the Code of Virginia are not subject to this chapter. Applications filed pursuant to this chapter must set forth the nature of the proposed facility and its necessity in relation to the purchasing utility's projected programs of operation. An applicant must notify the Commission of its intent to file a petition at least 30 days prior to filing, the applicant's technical and financial fitness to construct, operate and maintain the proposed facility, the effects of the facility on the environment and economic development, the effects of the facility upon reliability of electric service provided by any regulated public utility, and why construction and operation of the proposed facility is not otherwise contrary to the public interest.~~

Some of the information described in the following sections and necessary to support an ~~IPP's~~ application for approval may be considered to be confidential or proprietary by the ~~developer, the purchasing utility, or both applicant.~~ The commission recognizes the need for confidential treatment of some, although certainly not all, data required herein. Therefore, the need for confidential treatment of data should first be carefully scrutinized before submitting an application and supporting information. ~~That data deemed to be confidential may be temporarily withheld from the initial filing while a confidentiality agreement is being negotiated with the staff. Upon execution of a confidentiality agreement that information should then be provided directly to staff. The application, however, will not be processed as complete until the confidentiality agreement is executed and the confidential information and data are provided to the staff. Requests for confidential treatment of data will be handled under procedures set forth in the Commission's Rules of Practice and Procedure (5 VAC 5-20-10 et seq.).~~

~~The petition shall present the information specified in the following sections:~~

~~20 VAC 5-302-20 General information, generating facility information and documents to be included in the petition.~~

~~The information in 20 VAC 5-302-20 should be provided primarily by the IPP applicant.~~

~~20 VAC 5-302-30 Demonstration of the need, viability, and cost effectiveness of the project.~~

~~The information in 20 VAC 5-302-30 should be provided primarily by the purchasing utility.~~

~~Any modifications to these information requirements will be determined by the Commission on a case by case basis. Applicants should update the materials filed during the course of their proceedings.~~

#### **20 VAC 5-302-20. General information, electric generating facility information and documents to be included in the petition application.**

~~The following information in this section should be provided primarily by the IPP applicant for all proposed electric generating facilities.~~

~~1. Applicant's name and address Legal name of the applicant as well as any trade name.~~

~~2. Name, title and address of the person authorized to receive communications regarding the petition A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof, e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.~~

~~3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.~~

~~3- 4. Prefiled testimony in support of the application.~~

~~4- 5. A discussion of the applicant's qualifications, including:~~

~~a. A summary of other projects developed and managed by the applicant. Include location, status, and operational history.~~

~~b. A detailed description of the organizational structure of the applicant. Include the division of ownership, if applicable.~~

~~c. A description of any affiliation(s) affiliation or affiliations with the purchasing utility an incumbent electric utility as defined in § 56-576 of the Code of Virginia.~~

~~5- 6. Specific information about the site for the proposed facility, including:~~

~~a. A written description of the location and city or county in which the facility will be constructed. Such description should be suitable for newspaper publication and be sufficient for identification of affected areas.~~

~~b. A description of the site, and a depiction on topographic maps of the applicable information proposed site.~~

~~c. The status of site acquisition (i.e., purchase option, ownership, etc.).~~

~~d. A description of any applicable local zoning or land use approvals needed required and the status of these such approvals.~~

~~6- 7. A summary of the proposed project, including relevant design features, estimated costs, the schedule for engineering, and preliminary schedules for construction,~~

testing and commercialization, and decommissioning plans of the proposed facility.

~~7.~~ 8. Specific information about the proposed facility, including:

- a. Description of all major systems, *facility configuration* and expected suppliers of major components.
- b. Nameplate capacity, gross dependable capacity and net dependable capacity for generating unit.
- c. ~~Projected plant life, heat rates, equivalent availability and capacity factors.~~

~~8.~~ 9. Preliminary construction plans including (*Note: information in this subdivision will not be required if § 56-234.3 of the Code of Virginia is deemed to be inapplicable.*):

- a. The names and addresses of the architects, engineers, contractors, subcontractors, when known, proposed to do such work.
- b. ~~A description of how the project will be managed including: The plan by which the applicant will monitor construction of the proposed facility.~~
  - (1) ~~Organization plan,~~
  - (2) ~~Designation of responsibilities for management of all project functions,~~
  - (3) ~~Identification of the relationship between the petitioner and contractors,~~
  - (4) ~~The plan by which the applicant will monitor the construction.~~
- c. ~~A description of any vendor guarantees or penalties for non-performance included in equipment supplier or construction contracts. The methods by which the work will be contracted, by competitive bid or otherwise.~~
- d. ~~A description of nonperformance guarantees between the applicant and all major vendors and contractors.~~

9. 10. A description of the fuel procurement strategy including fuel type, quality, ~~source(s)~~ source or sources, and transportation arrangements for fuel delivery. Describe fuel storage arrangements, if any. *Description should also include identification of any new natural gas facilities, if any, needed to serve the proposed facility, ownership of any such natural gas facilities and plans for constructing such facilities.*

~~10.~~ The estimated cost of the project. Cost estimates should be detailed, including:

- a. ~~Annual capacity costs.~~
- b. ~~Annual production costs (operation and maintenance costs, less fuel costs).~~
- c. ~~Projected unit fuel costs by primary, alternate and ignition fuel categories on an annual basis over the life of the facility. Costs should be provided on both a cents/KWH and cents/MBTU basis.~~
- d. ~~Annual total cost in Mills per KWH.~~

~~11.~~ Expected financing for the project (development phase, construction and permanent financing) including sources, amounts, terms, conditions, and expected financial closing date.

~~12.~~ 11. Financial information for the applicant, or principal participant(s) participant or participants in the project. If the applicant or principal participant or participants is a special purpose entity with no history, including: private entity, financial information should include an analysis of the entity's financial condition and financial statements for the two most recent fiscal years. If the applicant or principal participant or participants is a public company, financial information should include the entity's most recent stockholder report or other financial statement.

- a. ~~Analysis of financial condition.~~
- b. ~~Financial statements for the two most recent fiscal years.~~

~~13.~~ 12. A discussion of economic impacts, including tax and employment implications, and environmental impacts of the project.

~~14.~~ Copies of project-related filings with the Federal Energy Regulatory Commission, and a copy of the contract between the IPP and the purchasing utility.

~~15.~~ 13. A list of other local, state or federal government agencies having whose requirements which must be met in connection with the construction or operation of the project and a statement of the status of the approval procedure procedures for each of these agencies.

~~Include~~ 14. A discussion of the environmental impact of the proposed facility with respect to the following, if applicable:

- a. ~~Air permit type, restriction, quality (discussion should identify needed air permits, expected restrictions, expected emissions, rates of emissions, and any needed emissions offsets or allowances).~~
- b. ~~Water quality and wetlands protection (discussion should include identification of any streams, rivers, lakes, ponds, tidal and non-tidal wetlands located near the proposed site).~~
- c. ~~Natural heritage, threatened and endangered species.~~
- d. ~~Source and discharge of cooling water (discussion should address potential impacts on regional water flows).~~
- e. ~~Solid and hazardous wastes (discussion should address impact on local water resources).~~
- f. ~~Erosion and sediment control.~~
- g. ~~Archaeological, historic, or architectural resources in the area.~~
- h. ~~Chesapeake Bay Preservation Areas designated by the locality.~~
- i. ~~Wildlife resources.~~

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## Proposed Regulations

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j. Recreation, agricultural and forest resources (discussion should identify federal, local, state or private parks and recreation areas).

k. The use of pesticides and herbicides.

l. Geology and mineral resources, caves, and sinkholes.

m. Transportation infrastructure.

15. A general discussion of reliability impacts including:

a. A description of transmission interconnection requirements and a preliminary discussion of the potential impact of the proposed facility on the interconnected transmission system.

b. A description of anticipated services (ancillary services, re-dispatch, energy imbalance, etc.) that may be provided to any transmission service provider.

c. A discussion of existing and expected generation reserves in the region and the impact of the proposed facility on such reserves.

16. A discussion of any impact that the proposed facility will have upon the rates paid by customers of any regulated public utility in the Commonwealth.

17. A discussion of whether the proposed facility is in the public interest.

### **20 VAC 5-302-25. Information required from incumbent electric utilities and affiliates of incumbent electric utilities.**

The information in this section should be provided by any incumbent electric utility as defined in § 56-576 of the Code of Virginia and any affiliate of an incumbent electric utility proposing to construct electric generating facilities in the Commonwealth of Virginia.

1. Total capacity controlled by the incumbent electric utility and its affiliates located within the incumbent utility's control area and reasonably accessible to the control area through transmission interconnections, with and without the proposed facility.

2. Total capacity located within the incumbent utility's control area and reasonably accessible to the control area through transmission interconnections, prior to construction of the proposed facility.

3. Five year projections of total expected capacity additions by size, technology and fuel type within the incumbent electric utility's control area and expected increases in transmission interconnection capacities into the control area.

4. Five year projections of capacity additions by size, technology and fuel type within the incumbent electric utility's control area to be made by the incumbent electric utility and its affiliates.

5. A description of the impact of the proposed facility on transmission interconnection capabilities and transmission congestion.

6. A discussion of the impact of the proposed facility on the development of a competitive generation market in Virginia.

### **20 VAC 5-302-30. Demonstration of the need, viability, and cost effectiveness of the project proposed facilities subject to the necessity determinations of § 56-265.2 A of the Code of Virginia.**

The information ~~is~~ required by this section should be provided primarily by the purchasing utility. In some instances, the utility may have already submitted the requested information in filings with the Commission. If so, the utility may reference these filings rather than provide duplicates for any facility that will be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia.

1. ~~Provide~~ A thorough discussion of the need for the facility as it relates to the purchasing utility's projected peak load and energy requirements. ~~Provide a copy of the Company's peak load and energy forecast at the time the project was selected. Provide a copy of the current peak load and energy forecast, if different. Include all assumptions incumbent electric utility's obligations to provide capped rate service and default service.~~

2. ~~Provide~~ Cost/benefit analyses or studies of the proposed facility and all supply alternatives considered to meet ~~projected load the incumbent utility's on-going service obligations.~~ All major factors should be addressed, including, but not limited to:

a. ~~System load characteristics, and operating characteristics of existing and planned utility plants.~~

b. ~~System reliability criteria and adequacy of projected capacity.~~

c. ~~Transmission system, interconnection capability and pooling agreements.~~

d. ~~Power interchange with other systems and feasibility of selling and purchasing power (including cogeneration/small power production).~~

3. ~~Provide~~ Cost/benefit analyses or studies of all demand side alternatives considered to modify projected load in order to postpone or avoid the proposed facility. This should include, but not be limited to, discussions of existing and potential demand modification programs for each customer sector.

4. ~~Provide~~ sensitivity and risk analyses for major assumptions in the demand and supply side analyses presented above.

5. ~~Demonstrate~~ that with the proposed generation facility, the utility's resource plans are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources in providing energy services.

6. ~~Provide~~ a description of all utility procedures to assure the financial and technical viability of the proposed project.

### **20 VAC 5-302-40. Waivers.**

Requests for waivers of any of the provisions of this chapter shall be considered by the State Corporation Commission on

*a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission deems appropriate in the public interest.*

VA.R. Doc. No. R01-223; Filed June 13, 2001, 7:38 a.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

**Title of Regulation: 22 VAC 40-560-10. Monthly Reporting in the Food Stamp Program (REPEALING).**

**Statutory Authority:** § 63.1-25 of the Code of Virginia.

**Public Hearing Date:** N/A--Public comments may be submitted until August 31, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Celestine Jackson, Human Services Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1716, FAX (804) 692-1704.

**Basis:** Section 2015 of the Food Stamp Act of 1977, as amended, and 7 CFR 273.21(b) allow that monthly reporting is a state option. The federal regulations further allow that if monthly reporting exists, certain households are excluded from the requirement. Section 63.1-25.2 of the Code of Virginia grants the State Board of Social Services the authority to operate the public social services programs, including the Food Stamp Program. Section 63.1-25 of the Code of Virginia provides the board with the authority to promulgate regulations.

**Purpose:** The regulation defined which households received monthly report forms. The regulation limited monthly reporting to the households that also received public assistance benefits from the Aid to Families with Dependent Children Program. Monthly reporting in this program stopped in 1991 and the department repealed the associated regulation in 1992.

This regulatory action to repeal is needed to have the regulations accurately reflect the administration of the Food Stamp Program in Virginia.

**Substance:** There are no substantive changes or provisions. The department proposes to repeal the regulation.

**Issues:** Food stamp households must report changes in their circumstances because changes could impact the amount of benefits households receive or impact eligibility for benefits. The general time frame for reporting changes is to make the report within 10 calendar days from the time changes occur. Monthly reporting was a federal requirement that set specific standards for food stamp recipients to follow for submitting reports of household circumstances each month whether or not changes occurred in the households' circumstances.

The issuance, receipt and evaluation of thousands of monthly report forms made for a costly and time-consuming process

for state and local offices. The state office mailed the forms and provided stamped envelopes for the forms' return. Local agency staff evaluated the returned forms for completeness or determined whether the forms were returned or timely returned. The evaluation of the monthly report forms required a case review for all cases regardless of whether changes occurred in household circumstances.

In 1990, monthly reporting became a state option for the Food Stamp Program. The department modified the monthly reporting procedures by limiting the reporting requirement to households that met the cash assistance program's reporting requirements. When the cash assistance program terminated the monthly reporting requirement, that termination ended monthly reporting for food stamps.

The department determined that the benefits for monthly reporting were minimal compared to the financial costs and ineffective usage of time by food stamp recipients and by local agency staff. The department determined the need for the regulation's repeal during the periodic review.

The repeal of the regulation provides no advantage or disadvantage to recipients. Recipients must continue to notify local agency workers about changes in their circumstances as the changes occur. Recipients do not have to report unchanged information.

**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 25 (98). 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 action repeals a requirement for specific food stamp recipients to file monthly reports to verify eligibility status.

Estimated economic impact. Originally a federal mandate, monthly reporting became a state option for the Food Stamp Program in 1990. At that time, the Department of Social Services (DSS) modified the monthly reporting requirement to limit reporting to only those households which contained a member required to file a monthly report with the Aid to Families with Dependent Children (AFDC) Program. In 1991, DSS determined that the benefits for monthly reporting were minimal compared to the costly and time-consuming process associated with the issuance, receipt and evaluation of thousands of monthly report forms and eliminated monthly reporting for both the AFDC and Food Stamp Programs.

Currently, DSS reports it is using other methods to monitor continued eligibility. First, recipients are required to file notice if there is any change in family status. Second, based on a statistical profile of recipients, DSS requires a substantial



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# Proposed Regulations

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portion of recipients to report to their caseworker every three months so that their eligibility status can be re-evaluated.

Given that this requirement has not been enforced since 1991, and other methods are currently in place to monitor eligibility of food stamp recipients, the proposed repeal of this regulation is not likely to have any economic effects.

Businesses and entities affected. The proposed repeal of this regulation will not affect any of the food stamp recipients in Virginia as this requirement has not been enforced since 1991.

Localities particularly affected. The proposed repeal of this regulation will not uniquely affect any particular localities.

Projected impact on employment. The proposed repeal of this regulation will not have any impact on employment in Virginia.

Effects on the use and value of private property. The proposed repeal of this regulation will not have any effect on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

*The proposed action is to repeal the regulation that identifies which households must receive monthly report forms for the Food Stamp Program. Federal regulations and the Food Stamp Act of 1977, as amended, previously mandated that almost all recipient households must receive, complete, and return to the department a monthly report each month.*

*In 1990, Congress enacted legislation that allowed monthly reporting to be optional for state agencies. At the point that monthly reporting became a state option, the department opted to align the food stamp reporting requirement with the cash assistance program, the Aid to Families with Dependent Children (AFDC) Program. This alignment resulted in monthly report forms being sent only to those households that were required to submit the forms for the AFDC program. Monthly reporting ceased for the AFDC program in 1991 and this termination resulted in the termination of monthly reporting in the Food Stamp Program.*

VA.R. Doc. No. R00-187; Filed June 12, 2001, 1:13 p.m.



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# FINAL REGULATIONS

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For information concerning Final Regulations, see Information Page.

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## 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 change from the proposed text of the regulation.

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## TITLE 9. ENVIRONMENT

### DEPARTMENT OF ENVIRONMENTAL QUALITY

**EDITOR'S NOTE:** The following regulation was initially promulgated by the Virginia Waste Management Board and published as a proposed regulation in 17:5 VA.R. 686-693 November 20, 2000, as 9 VAC 20-140-10 et seq. However, upon further review it was determined that the regulatory authority rests with the Department of Environmental Quality. Pursuant to § 58.1-3661 of the Code of Virginia, the Department of Environmental Quality amended and adopted the final regulation as 9 VAC 15-30-10 et seq. The following amendments reflect nonsubstantive changes to the regulation since it was published as proposed as well as amended VAC numbers.

Title of Regulation: [ ~~9 VAC 20-140-10 et seq.~~ **9 VAC 15-30-10 et seq.** ] **Regulations for the Certification of Recycling Machinery and Equipment for Local Tax Exemption Purposes (amending [ ~~9 VAC 20-140-20, 9 VAC 20-140-40, 9 VAC 20-140-60 through 9 VAC 20-140-110, 9 VAC 20-140-130, 9 VAC 20-140-160, and 9 VAC 20-140-170;~~ ~~repealing 9 VAC 20-140-150~~ **9 VAC 15-30-20, 9 VAC 15-30-40 through 9 VAC 15-30-110, 9 VAC 15-30-130, 9 VAC 15-30-160, and 9 VAC 15-30-170;** ~~repealing 9 VAC 15-30-150~~ ]).**

Statutory Authority: §§ 58.1-338, 58.1-439.7, 58.1-439.8, and 58.1-3661 of the Code of Virginia.

Effective Date: August 1, 2001.

#### Summary:

*This regulation provides for a state income tax credit for machinery and equipment that is used to process recyclable waste material into a usable product, and if the governing body of any county, city or town passes the applicable ordinance, an exemption or partial exemption from local property taxes. Substantive changes include:*

- 1. Removing the requirement that the applicant provide proof of the purchase price. Only proof of purchase would be required.*
- 2. Removing the requirement that the machinery and equipment be in a fixed location to qualify for a state income tax credit. However, the machinery and equipment must remain in the Commonwealth.*
- 3. To qualify for a local tax exemption, the machinery and equipment must be operated at a fixed location.*
- 4. Clarification of what is not covered by the regulations. These are:*

*a. Machinery and equipment that incorporates a finished product that is made from a recyclable waste. This is one step removed from recycling;*

*b. Nonprocessing or nonmanufacturing machinery and equipment;*

*c. Machinery and equipment used exclusively to handle finished products;*

*d. Buildings or other structures; and*

*e. Repair and maintenance items.*

#### 5. *Minor revisions to the application form.*

Summary of Public Comments and Agency's 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 Dan Gwinner, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4218.

#### CHAPTER [ ~~440 30~~ ].

### REGULATIONS FOR THE CERTIFICATION OF RECYCLING MACHINERY AND EQUIPMENT FOR [ LOCAL ] TAX EXEMPTION PURPOSES.

[ ~~9 VAC 20-140-10.~~ **9 VAC 15-30-10.** **Definition incorporated by reference.**

The definitions set out in Part I of the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) are incorporated by reference. ]

[ ~~9 VAC 20-140-20.~~ **9 VAC 15-30-20.** ] **Definitions.**

The following terms have, for the purpose of this chapter, the following [ ~~meaning~~ meanings ]:

"Act" means the Virginia Waste Management Act [ , § 10.1-1400 et seq. of the Code of Virginia ].

"Applicant" means any and all persons seeking certification of recycling machinery and equipment for [ local ] tax exemption purposes.

"Certification" means a signed statement by the director of the Department of Environmental Quality that the identified machinery and equipment qualify as integral to the recycling process.

"Department" means the Department of Environmental Quality.

"Director" means the director of the Department of Environmental Quality [ or his designee ].

"Finished product" means material that has been completely processed and is ready for sale except for packaging.

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# Final Regulations

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"Fixed location" means a site at which the processing or manufacturing is accomplished on a continuing basis.

"Integral to the recycling process" means that the machinery and equipment or system of machinery and equipment is used primarily to process recyclable material to meet a manufacturer's material input specifications or to incorporate recyclable material into a manufacturing process.

"Machinery and equipment" means a mechanical unit or system which that processes material.

"Person" means an individual, corporation, partnership, association, or any other legal entity.

"Primarily" means ~~over~~ [ greater than ] 50% [ ~~or greater~~ ] of time, of usage, or of other appropriate measure.

"Process" or "processing" means preparation, treatment, or conversion of a product or material by an action, change or function or a series of actions, changes or functions that bring about a desired end result.

~~"Purchase price" means the amount for which the machinery and equipment is purchased, excluding (i) any cash discount allowed and taken, (ii) installation charges or the cost of installation, (iii) transportation charges, or (iv) charges for maintenance agreements or contracts.~~

"Recyclable" means capable of being diverted or reclaimed from the waste stream and prepared for further beneficial use through the recycling process.

"Recycled" means having reached the end of one useful life or one intended purpose, and then being converted and utilized as a raw material in the production of another product which that may or may not be similar to the original product. The resultant manufactured product is said to have recycled content.

"Recycling" means the process of separating a given product or material from the waste stream and processing it so that it is used again as material input for a product which that may or may not be similar to the original product.

[ ~~9 VAC 20-140-30. 9 VAC 15-30-30.~~ ] Reserved.

[ ~~9 VAC 20-140-40. 9 VAC 15-30-40.~~ ] Purpose of regulation.

The purpose of this regulation is to establish the procedure for certification of recycling machinery and equipment as integral to the recycling process and for use primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth, and used in manufacturing facilities or plant units which that manufacture, process, compound, or produce for sale recyclable items of tangible personal property at [ fixed business ] locations in the Commonwealth. Such certification would [ ~~also~~ ] allow the purchaser of such machinery and equipment to apply for an exemption from [ real or ] personal property taxes as authorized by the local taxing authority.

[ ~~9 VAC 15-140-50. 9 VAC 15-30-50.~~ ] Administration of regulation.

The director [ of the department ] is authorized to administer this regulation in accordance with [ the Virginia Waste

Management Act, §§ 10.1-1400 through 10.1-1457 Chapter 11.1 ( § 10.1-1182 et seq.) of Title 10.1 ] of the Code of Virginia.

[ ~~9 VAC 20-140-60. 9 VAC 15-30-60.~~ ] Applicability of regulation.

This chapter will be applicable to any applicant to the department for machinery and equipment certification, ~~providing provided~~ that this person applicant has incurred or will incur a [ local ] tax liability to which the tax exemption can be applied [ pursuant to § 58.1-3661 of the Code of Virginia. As provided in § 10.1-1183 of the Code of Virginia, whenever a reference is made to the Department of Waste Management it shall mean the Department of Environmental Quality ].

[ ~~9 VAC 20-140-70. 9 VAC 15-30-70.~~ ] Machinery and equipment.

A. Qualifying recycling machinery and equipment [ including include ] any piece or system of machinery or equipment used at a fixed location in the Commonwealth primarily to process recyclable materials into a product suitable for sale. Such processing may include, but is not limited to, flattening, shredding, melting, pulping, compaction, granulation, ~~liquefaction~~ liquefaction or classification.

B. Qualifying recycling machinery and equipment also include any piece or system of machinery or equipment in a manufacturing facility primarily used to incorporate recycled material into a manufacturing process.

C. The following shall not qualify as recycling machinery and equipment:

1. Machinery and equipment used in the preparation of all or any part of the municipal solid waste (MSW) stream for the purpose of combustion, unless otherwise determined by the director to ~~have be~~ a process with a significant recycling ~~intent~~ value.

2. Machinery and equipment used to incorporate a finished product with recycled content that is no longer considered to be a solid waste unless otherwise determined by the director.

3. Machinery and equipment used exclusively to handle finished products unless otherwise determined by the director.

~~2-~~ 4. Nonprocessing or nonmanufacturing machinery and equipment.

~~3-~~ 5. Buildings or other structures.

6. Repairs and maintenance items.

[ ~~9 VAC 20-140-80. 9 VAC 15-30-80.~~ ] Location.

[ In order to qualify for state tax credit, recycling machinery or equipment must be operated at a facility located in Virginia. To qualify for [ local tax exemption certification ], recycling machinery or equipment must be operated at a fixed location in Virginia.

~~[ 9 VAC 20-140-90. 9 VAC 15-30-90. ]~~ **Pollution abatement.**

Recycling includes the ~~exclusion and redirection~~ *diversion* of material from the waste stream, thereby reducing the amount of material that ultimately has to be deposited in a solid waste management disposal facility ~~or discharged into the environment~~. Therefore, recycling can reduce the potential for pollution, and a facility (and the related machinery and equipment) ~~which that~~ processes recyclables to a manufacturer's specifications or utilizes recycled materials in production shall qualify as a pollution abatement system [ ~~for the purposes of certification~~ ].

~~[ 9 VAC 20-140-100. 9 VAC 15-30-100. ]~~ **Equipment documentation.**

~~In order to be considered for a certificate~~, the purchaser of the recycling machinery and equipment must file ~~Form DWM50-11 with~~ apply to the department, providing at a minimum:

1. The purchaser's name and address;
2. The name and location of the facility in which the machinery and equipment will be used;
3. A *complete* description of the machinery and equipment and a *complete description* of its intended use in the facility;
4. A statement by the purchaser of the machinery and equipment that would qualify the purchase for tax consideration; *and*
- ~~5. The purchase price of the machinery and equipment, i.e., the base amount on which the current value is to be computed for the purpose of the tax exemption; and~~
- ~~6.~~ 5. Documentation of ownership (copies of receipts, vouchers, or paid invoices) appropriate for filing with the local taxing authority.

~~[ 9 VAC 20-140-110. 9 VAC 15-30-110. ]~~ **Department certification.**

The department will review the information provided on ~~Form DWM50-11~~ to determine if the machinery or equipment meets the criteria specified in the Code of Virginia. This application review will follow the process established by [ ~~9 VAC 20-140-170 9 VAC 15-30-170~~ ] B.

~~[ 9 VAC 20-140-120. 9 VAC 15-30-120. ]~~ **Locality certification.**

After receiving a copy of the machinery or equipment certification from the department, the applicant will be responsible for validating the installation and operation of the machinery and equipment to the satisfaction of the local taxing authority. ]

~~[ 9 VAC 20-140-130. 9 VAC 20-30-130. ]~~ **Certification period.**

Machinery and equipment certified through this process shall retain certification status until its operation no longer complies with the standards established in ~~Part III of this chapter~~ [ ~~9 VAC 20-140-70 9 VAC 15-30-70~~ ].

~~[ 9 VAC 20-140-140. 9 VAC 15-30-140. ]~~ **Appeal procedure.**

All appeals taken from actions of the director relative to the provisions of this chapter shall be governed by the Administrative Process Act (Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

~~[ 9 VAC 20-140-150. 9 VAC 15-30-150. ]~~ **Severability. (Repealed.)**

~~A. If any provision or part of this chapter is held invalid, unconstitutional or inapplicable to any person, or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of these regulations and their application.~~

~~B. This chapter supersedes and replaces all previous regulations of the department to the extent that those prior regulations conflict with the regulations presented here. Prior regulations remain in effect where no conflict exists.~~

~~C. This chapter shall remain in effect until the Virginia Waste Management Board, in subsequent formal action, shall amend, rescind or otherwise alter it. Such an action will be specific in its detail and cite these regulations by their title. Where there appears to be a conflict with these regulations and regulations adopted at a future date, and such future regulations do not specifically clarify this chapter, this chapter shall be superior.~~

~~D. These regulations are completely separate from all federal regulations.~~

~~[ 9 VAC 20-140-160. General. 9 VAC 15-30-160. ]~~ **Petition for variance.**

~~[ The Any ]~~ applicant affected by this chapter may petition the director to grant a variance or an exemption from any [ *requirement* ] of this chapter, subject to the provisions of [ ~~this part 9 VAC 15-30-170~~ ]. ~~Any petition submitted to the director is also subject to the provisions of the Administrative Process Act.~~

~~[ 9 VAC 20-140-170. 9 VAC 15-30-170. ]~~ **Administrative procedures [ for variances ]**.

A. General petitioning requirements. The petition shall be submitted to the director by certified mail and shall include:

1. The petitioner's name and address;
2. A statement of petitioner's interest in the proposed action;
3. A description of desired action and a citation of the regulation from which a variance is requested;
4. A description of need and justification for the proposed action;
5. The duration of the variance, if applicable;
6. The potential impact of the variance on public health or the environment;
7. Other information believed by the applicant to be pertinent; and

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# Final Regulations

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8. The following statement signed by the petitioner or authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

B. Petition processing.

1. After receiving a petition that includes the information required in ~~9 VAC 20-140-170 A subsection A of this section~~, the director will determine whether the information received is sufficient to render the decision. If the information is deemed insufficient, the director will specify additional information needed and request that it be furnished.

2. The petitioner may submit the additional information requested, or may attempt to show that no reasonable basis exists for additional information. If the director agrees that no reasonable basis exists for the request for additional information, he will act in accordance with ~~9 VAC 20-140-170 B 3 subdivision 3 of this subsection~~. If the director continues to believe that a reasonable basis exists to require the submission of such information, he will proceed with the denial action in accordance with the Administrative Process Act.

3. ~~After the petition is deemed complete: Decisions to grant or deny a petition are subject to the provisions of Article 3 of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).~~

~~a. The director will make a tentative decision to grant or deny the petition.~~

~~b. Where the petition is tentatively denied, the director will offer the petitioner the opportunity to withdraw the petition, submit additional information, or request the director to proceed with the evaluation.~~

~~c. Upon a written request of the applicant, the director may, at his discretion, hold an informal fact-finding meeting described in § 9-6.14:11 of the Administrative Process Act. The person requesting a hearing shall state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The director may in any case decide on his own motion to hold such a meeting.~~

~~d. After evaluating all comments, the director will within 15 days after the expiration of the comment period, notify the applicant of the final decision.~~

C. Petition resolution. If the director grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the director that the petitioner has failed to comply with any ~~variance~~ requirements of the variance.

**NOTICE:** The forms used in administering 9 VAC 15-30-10 et seq., Regulations for the Certification of Recycling Machinery and Equipment for Local Tax Exemption Purposes, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

## FORMS

Form DEQ 50-11, Recycling Machinery Equipment Certification (rev. 5/22/01).

VA.R. Doc. No. R00-59; Filed June 11, 2001, 8:37 a.m.

## VIRGINIA WASTE MANAGEMENT BOARD

**Title of Regulation:** 9 VAC 20-130-10 et seq. Regulations for the Development of Solid Waste Management Plans (amending 9 VAC 20-130-10 through 9 VAC 20-130-70, 9 VAC 20-130-90, 9 VAC 20-130-110 through 9 VAC 20-130-150, [ 9 VAC 20-130-180, ] 9 VAC 20-130-190, 9 VAC 20-130-220, and 9 VAC 20-130-230; adding 9 VAC 20-130-165 and 9 VAC 20-130-175; repealing 9 VAC 20-130-80, 9 VAC 20-130-160, 9 VAC 20-130-170, and 9 VAC 20-130-240).

**Statutory Authority:** § 10.1-1411 of the Code of Virginia.

**Effective Date:** August 1, 2001.

**Summary:**

The amendments require that all cities, counties, and towns in the Commonwealth develop complete, revised solid waste management plans. These plans can be developed individually or as part of a region if the Governor has approved the region. Substantive changes include:

1. Submission of completely revised solid waste management plans starting on July 1, 2003.
2. A revised definition of the recycling rate calculations and inclusion of a minimum 25% recycling rate.
3. A required annual report by all permitted solid waste facilities and an annual report on the recycling rate by every city, county, and town, or solid waste management planning region.
4. A system requiring the solid waste management plans to be amended if changes occur and requiring amendments be approved prior to implementation. The amendments are classified as either major or minor depending on their impact. Major amendments require public participation prior to submission to the Department of Environmental Quality for approval, while minor amendments can be submitted directly to the department for processing.

Several definitions were changed from the proposed regulation including the addition of used oil filters and used antifreeze to the definition of supplemental recyclable materials. Used oil filters and used antifreeze were also added to the recycling calculations. The provision for a staggered submission of new plans was abandoned in favor of a single submission date for all plans on July 1, 2004.

Summary of Public Comments and Agency's 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 Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4313.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 17:4 VA.R. 515-529 November 6, 2000, with the additional changes shown below. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.

## 9 VAC 20-130-10. Definitions.

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

"*Abandoned material*" means any material that is: ~~1-~~ disposed of; ~~2-~~ burned or incinerated; or ~~3-~~ accumulated, stored or treated (but not recycled) before or instead of being abandoned by being disposed of, burned or incinerated.

"*Agricultural waste*" means all solid waste produced from farming operations, or related commercial preparation of farm products for marketing.

"*Board*" means the Virginia Waste Management Board.

"*Commercial waste*" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

~~"*Construction/demolition/debris landfill*" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, inert waste, or combinations of the above solid wastes.~~

"*Composting*" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"*Construction waste*" means solid waste ~~which that~~ is produced or generated during construction of, *remodeling, or repair of pavements, houses, commercial buildings, and other structures.* Construction ~~waste consists of wastes include, but are not limited to,~~ lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, *paving materials,* and metal and plastics if they are part of the construction material or ~~are~~ empty containers for such materials. Paints, coatings, solvents, *asbestos-containing material, any liquid, compressed gases, liquids or semi-liquids* and garbage are not construction wastes.

"*Contamination*" means the degradation in quality of naturally occurring water, air, or soil resulting either directly or indirectly from human activity.

~~"*Debris waste*" means stumps, wood, brush, and leaves waste resulting from land clearing operations. Debris wastes include, but are not limited to, stumps, wood, brush, leaves, soil, and road spoils.~~

"*Demolition waste*" means solid waste produced by destruction of structures and their foundations and includes the same materials as construction wastes.

"*Department*" means the Department of Environmental Quality.

"*Director*" means the Director of the Department of Environmental Quality [ or his designee ].

"*Discarded material*" means a material ~~which that~~ is: (i) abandoned material as defined in this [ ~~part chapter~~ ]; (ii) recycled material as defined in this [ ~~part chapter~~ ]; or (iii) considered inherently waste-like.

"*Disposal*" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"*Facility*" means solid waste management facility unless the context clearly indicates otherwise.

~~"*Free liquids*" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure as determined by the Paint Filter Liquids Test, Method 9095, U.S. Environmental Protection Agency, Publication SW-846.~~

"*Friable asbestos*" means any material containing more than 1.0% asbestos by weight that, when dry, may be crumbled, pulverized or reduced to powder by hand pressure and regulated as a special waste.

"*Garbage*" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

~~"*Groundwater*" means any water [ , except capillary moisture or unsaturated zone moisture, ] beneath below the land surface in the zone of saturation [ or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this Commonwealth, whatever may be the subsurface geologic structure in which such water stands, flows, or otherwise occurs ].~~

"*Hazardous waste*" means a "hazardous waste" as defined by the Virginia Hazardous Waste Management Regulation [ , 9 VAC 20-60-12 et seq. ].

"*Household waste*" means any waste material, including garbage, trash and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. *Household wastes do not include sanitary waste in septic tanks (septage), which is regulated by other state agencies.*

~~"*Illegal disposal*" means disposal which is contrary to applicable law or regulations.~~

"*Incineration*" means the controlled combustion of solid waste for disposal.

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# Final Regulations

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"*Incinerator*" means a facility or device designed for the treatment for volume reduction of solid waste by combustion.

"*Industrial waste*" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"*Industrial waste landfill*" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste ~~which~~ *that* is a byproduct of a production process.

~~"*Inert waste*" means solid waste which is physically, chemically and biologically stable from further degradation and considered to be nonreactive. Inert wastes include rubble, concrete, broken bricks, bricks, and blocks.~~

"*Institutional waste*" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include ~~infectious regulated medical~~ waste from health care facilities and research facilities that must be managed as an [ ~~infectious regulated medical~~ ] waste.

"*Integrated waste management plan*" means a governmental plan that considers all elements of waste management during generation, collection, transportation, treatment, storage, ~~and~~ disposal, *and litter control* and selects the appropriate methods of providing necessary control and services for effective and efficient management of all wastes. An "integrated waste management plan" must provide for source reduction, reuse and recycling within the jurisdiction and the proper funding and management of waste management programs.

"*Jurisdiction*" means a local governing body; city, county or town; or any independent entity, such as a federal or state agency, which join with local governing bodies to develop a waste management plan.

"*Landfill*" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

~~"*Large diameter tree stumps*" means tree stumps ~~too large to be chipped or processed using available technology~~ larger than six inches in diameter.~~

"*Litter*" means all waste material disposable packages or containers, but not including the wastes of the primary processes of mining, logging, farming, or manufacturing.

~~"*Nonhousehold waste*" or "*nonhousehold solid waste*" means any solid waste that is not defined as "*household waste*."~~

"*Mulch*" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste that has undergone size reduction by grinding, shredding, or

chipping, and is distributed to the general public for landscaping purposes or other horticultural uses.

"*Municipal solid waste*" means waste that is normally composed of residential, commercial, and institutional solid waste [ and residues derived from the combustion of these wastes ].

~~"*Open dump*" means a site on which any solid waste is placed, discharged, deposited, injected, dumped or spilled so as to create a nuisance or so as to pose within the determination of the director a substantial present or potential hazard to human health or the environment, including the pollution of air, land, surface water or groundwater. For further detail see the Virginia Solid Waste Management Regulations present a threat of a release of harmful substances into the environment or present a hazard to human health. [ Such a site is subject to the open dump criteria in 9 VAC 20-80-180. ]~~

"*Permit*" means the written permission of the director to own, operate or construct a solid waste management facility.

"*Person*" means an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.

~~"*Principal recyclable materials*" means newspaper, ferrous scrap metal, nonferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, container glass, aluminum, high-grade office paper, tin cans, cloth, automobile bodies, plastic and clean wood, brush, leaves, grass and other arboreal materials paper, metal (except automobile bodies), plastic, glass, yard waste, wood, and textiles.~~ "Principal recyclable materials" ~~de~~ does not include large diameter tree stumps.

"*Recycled material*" means a material that is derived from recycling.

"*Recycling*" means the process of separating a given waste material from the waste stream and processing it so that it may be used again as a raw material for a product, which may or may not be similar to the original product. *For the purpose of this chapter, recycling shall not include processes that only involve size reduction.*

"*Refuse*" means all solid waste products having the character of solids rather than liquids and ~~which~~ *that* are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination, or other discarded materials.

"*Regional boundary*" means the boundary defining an area of land that will be a unit for the purpose of developing a waste management plan, and is established in accordance with Part V (9 VAC 20-130-180 *et seq.*) of this chapter.

"*Regulated medical waste*" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9 VAC 20-120-10 *et seq.*) as promulgated by the Virginia Waste Management Board.

"*Residential waste*" means household waste.

"*Resource recovery system*" means a solid waste management system ~~which~~ *that* provides for collection,

separation, recycling and recovery of energy or solid wastes, including disposal of nonrecoverable waste residues.

~~"Reused" means having once been a waste and being:~~

- ~~1. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or~~
- ~~2. Employed in a particular function or application as an effective substitute for a commercial product or natural resources.~~

*"Reuse" means the process of separating a given solid waste material from the waste stream and using it, without processing or changing its form, other than size reduction, for the same or another end use.*

*"Rubbish" means combustible or slowly putrescible discarded materials which that include but are not limited to trees, wood, leaves, trimmings from shrubs or trees, printed matter, plastic and paper products, grass, rags and other combustible or slowly putrescible materials not included under the term "garbage."*

*"Sanitary landfill" means an engineered land burial facility for the disposal of solid waste which that is so located, designed, constructed and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment.*

*"Scrap metal" means bits and pieces of metal parts such as bars, rods, wire, or metal pieces that may be combined together with bolts or soldering which that are discarded material and can be recycled. For the purposes of this chapter, this definition includes the reclaimable metal parts of white goods.*

*"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the [ property facility ] boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste. (Note: This term includes all sites whether they are planned and managed facilities or open dumps.)*

*"Sludge" means any solid, semisolid or liquid waste wastes with similar characteristics and effects generated from a public, municipal, commercial or industrial waste water treatment plant, water supply treatment plant, or air pollution control facility, or any other waste producing facility.*

*"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include: 1. (i) solid or dissolved material in domestic sewage, 2. (ii) solid or dissolved material in irrigation return flows or in industrial discharges which that are sources subject to a permit from the State Water Control Board, or 3. (iii) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954, as amended. As used in this chapter, solid waste does not*

~~include hazardous wastes as defined in the Virginia Hazardous Waste Management Regulations.~~

~~"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.~~

*"Solid waste management facility ("SWMF)" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.*

*"Source reduction" means any action that reduces or eliminates the generation of waste at the source, usually within a process. Source reduction measures include process modifications, feedstock substitutions, improvements in feedstock purity, improvements in housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process.*

*"Source separation" means separation of recyclable materials from the waste stream by the waste generator of materials that are collected for use, reuse, or recycling.*

*"Special wastes" mean means solid wastes that are difficult to handle, require special precautions because of hazardous properties or the nature of the waste creates waste management problems in normal operations.*

~~[ "State solid waste management plan ("State Plan" or "Plan")" means the ] document prepared in accordance with § 4008(a)(1) of the Federal Resource Conservation and Recovery Act of 1976 and [ plan of the Virginia Waste Management Board, which sets forth solid waste management goals and objectives, and describes planning and regulatory concepts to be employed by the Commonwealth. ]~~

*"Supplemental recyclable material" means construction rubble, tires, concrete, and similar inert materials waste tires, used oil, [ used oil filters, used antifreeze, ] automobile bodies, construction waste, demolition waste, debris waste, batteries, ash, sludge or large diameter tree stumps, or material as may be authorized by the director.*

~~"Trash" means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.~~

*"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.*

*[ "Used or reused material" means a material which is either:*

- 1. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or*
- 2. Employed in a particular function or application as an effective substitute for a commercial product or natural resources.*

*For purposes of these regulations, "used or reused material" means a given solid waste material that is*



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# Final Regulations

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separated from the waste stream and used, without processing or changing its form, for the same or another end use. ]

"Trash" means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.

[ ~~"Used or reused material" means a given solid waste material that is separated from the waste stream and used, without processing or changing its form, for the same or another end use.~~ ]

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Waste exchange" means any system to identify sources of wastes with potential for reuse, recycling or reclamation and to facilitate its acquisition by persons who reuse, recycle or reclaim it, with a provision for maintaining confidentiality of trade secrets.

~~"Waste to energy facility" means a facility that uses waste to generate usable energy, or treats the waste in order to facilitate its use in the production of usable energy.~~

"White goods" means any stoves, washers, hot water heaters or other large appliances. For the purposes of this chapter, this definition also includes, but is not limited to, such Freon-containing appliances as refrigerators, freezers, air conditioners, and dehumidifiers.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

## [ PART II. LEGISLATIVE AUTHORITY AND GENERAL INFORMATION. ]

### 9 VAC 20-130-20. Authority for regulations.

These regulations are promulgated pursuant to Chapter 14 (§ 10.1-1400 et seq. and specifically §§ [ 10.1-1402, ] 10.1-1411 and 10.1-1413.1) of Title 10.1 of the Code of Virginia, which authorizes the Virginia Waste Management Board to promulgate and enforce such regulations as may be necessary to carry out its duties and powers and the intent of the Virginia Waste Management Act [ ~~(hereinafter Act)~~ ] and the federal acts.

### 9 VAC 20-130-30. Policy.

It is the policy of the Virginia Waste Management Board to require each region designated pursuant to Part V of this chapter, as well as each city, county and town not part of such a region, to develop comprehensive and integrated solid waste management plans that, at a minimum, consider and address all components of the following hierarchy:

1. Source reduction;
2. Reuse;

3. Recycling;
4. Resource recovery (waste-to-energy);
5. Incineration; and
6. Landfilling; and.
7. ~~Plan implementation.~~

### 9 VAC 20-130-40. Purpose of regulations.

The purpose of these regulations is to:

1. Establish minimum solid waste management standards and planning requirements for protection of the public health, public safety, the environment, and natural resources throughout the Commonwealth; promote local and regional planning that provides for environmentally sound and compatible solid waste management with the most effective and efficient use of available resources;
2. Establish procedures and rules for designation of regional boundaries for solid waste management plans;
3. Establish state, local government and, regional or area served by the plan responsibility and, regional or area served by the plan responsibility for meeting and maintaining the minimum recycling rates of 40% by 1991, 45% by 1993 and 25% by 1995;
4. Establish [ ~~procedure for withholding the requirement~~ ] issue [ ~~issuance of permits~~ ] to local governments [ ~~for solid waste management facilities~~ ] after July 1, 1992, pending approval of a solid waste management plan in [ ~~accordance compliance~~ ] with [ ~~the Virginia Waste Management Act,~~ ] §§ 10.1-1411 and 10.1-1408.1 D [ 1 ] (vi) of the [ ~~Code of Virginia~~ ] [ ~~Waste Management Act,~~ ] and [ ~~for withholding issuance of permits for solid waste management facility;~~ ]
5. Provide for reasonable variance and exemptions; and
6. Provide for reporting and assessment of solid waste management in the Commonwealth [ ~~in accordance with the Virginia Waste Management Act, § 10.1-1413.1 of the Code of Virginia~~ ].

### 9 VAC 20-130-50. [ No change from proposed. ]

### 9 VAC 20-130-60. [ No change from proposed. ]

### 9 VAC 20-130-70. Enforcement and appeal.

A. All administrative enforcement and appeals taken from actions of the director relative to the provisions of this chapter shall be governed by the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). [ ~~Enforcement of this chapter will be in accord with §§ 10.1-1186, 10.1-1411 and 10.1-1455 of the Code of Virginia.~~ ]

### ~~B. Orders.~~

- ~~1. The board is authorized to issue orders to require any person to comply with the provisions of this chapter. Any such order shall be issued only after a hearing with at least 30 days notice to the affected person of the time, place, and purpose of it. Such an order shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of such person.~~

~~2. The provisions of 9 VAC 20-130-70 B 1 shall not affect the authority of the board to issue separate orders and regulations to meet any emergency to protect public health, natural resources, and the environment from the release or imminent threat of release of waste.~~

~~C. B.~~ After July 1, 1992 ~~2000~~, no permit for a solid waste management facility shall be issued ~~until~~ unless the local or regional applicant has a plan approved in accordance with this chapter [ ~~and the permit complies with the statutory requirements of the Virginia Waste Management Act, §§ 10.4-1411 and 10.1-1408.1 D 1(iv) of the Code of Virginia~~ ].

~~D. C.~~ Enforcement of this chapter will be in accord with ~~§§ 10.1-1186, 10.1-1411 and 10.1-1455 of the Code of Virginia.~~ ]

**9 VAC 20-130-80. [ No change from proposed. ]**

**9 VAC 20-130-90. [ No change from proposed. ]**

[ PART III.  
OBJECTIVE AND PERFORMANCE REQUIREMENTS. ]

**9 VAC 20-130-110. Schedule for plan development.**

A. Every city, county and town in the Commonwealth shall develop a solid waste management plan or amend an existing solid waste management plan and submit [ ~~them~~ it ] for approval in accordance with this chapter. Existing plans may be amended by addendum of items such as consideration of the waste management hierarchy, the recycling program implementation activities and other requirements of this chapter that are not a part of the existing plan. A local jurisdiction participating in an authorized regional solid waste management plan is not required to develop a separate plan.

~~A. B. [ The solid waste management planning units shall be divided into four groups per Schedule 1. The first group shall provide ]~~ A complete, revised solid waste management plan in compliance with this chapter [ ~~shall be provided~~ ] to the department of Environmental Quality no later than July 1, 1991 [ ~~2003. The second group shall submit its complete, revised plans by October 1, 2003, the third group by January 1, 2004, and the fourth group by April 1, ]~~ 2004.

~~B. C.~~ The department of Environmental Quality shall review and approve or ~~disapprove~~ return comments on the deficiencies in each plan submitted in accordance with 9 VAC 20-130-110 A no later than July 1, 1992. ~~If the Department of Environmental Quality disapproves the plan, it shall cite the reasons for the disapproval and state what is required for approval 90 days from the date the plans are received. [ In the event the department is unable to complete its review within 90 days, the applicant will be notified and given a date as to when the review will be completed. ]~~

~~C. D.~~ Each submitter ~~whose~~ who receives comments on its solid waste management plan is ~~disapproved~~ under 9 VAC 20-130-110 B subsection C of this section shall submit a corrected solid waste management plan to the department of Environmental Quality no later than 90 days following [ ~~receipt of~~ ] notification of ~~disapproval~~ deficiencies.

~~D. E.~~ Plans approved without alteration shall become effective upon notification. ~~If after review of the corrected plan~~

~~submitted pursuant to subsection D of this section, the department of Environmental Quality cannot approve the corrected solid waste management plan because it finds the plans not to be in accordance with this chapter, it will issue a notice of disapproval intent to disapprove to the submitter and shall cite the reason for the disapproval and state what is required for approval. The notice of intent to disapprove shall set forth (i) the reason for the disapproval, (ii) what is required for approval, and (iii) the right of the submitter to an informational proceeding under Article 3 of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).~~ The department will give priority consideration for review of corrected plans where the local or regional body has a pending permit application for a solid waste management facility.

~~E.~~ On July 1, 1997, and each succeeding five year period after that, each city, county, town or region shall submit a report to the director updating the plan.

~~F.~~ The director may revoke the approval of any plan or require its revision and resubmittal if there is evidence that there has been significant deviation from the plan. The department will issue a notice of intent to revoke or require revision and resubmittal of a plan. The notice of intent shall set forth (i) whether the department intends to revoke or require revision and resubmittal of the plan, (ii) the reason the department intends to take the action, and (iii) the right of the submitter of the plan to an informational proceeding under Article 3 of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

**9 VAC 20-130-120. Mandatory plan objectives contents.**

A. The solid waste management plan shall include:

- ~~1.~~ 1. An integrated waste management strategy;
- ~~2.~~ 2. A discussion as to how the plan will be implemented;
- ~~2.~~ 3. Objectives for solid waste management within the jurisdiction;
- ~~3.~~ 4. Definition of incremental stages of progress toward the objectives and schedule for their accomplishment implementation;
- ~~4.~~ 5. Descriptions of the funding and resources necessary, including consideration of fees dedicated to future facility development;
- ~~5.~~ 6. Strategy for the provision of necessary funds and resources;
- ~~6.~~ 7. Strategy for public education and information on source reduction, reuse, and recycling; and
- ~~7.~~ 8. Consideration of public and private sector partnerships and private sector participation in execution of the plan. Existing private sector recycling operations should be incorporated in the plan and the expansion of such operations should be encouraged.

~~B.~~ The plan shall describe how each of the following minimum goals were or shall be achieved:

- ~~1.~~ 1. By December 31, 1991, a recycling rate of 10% of the total of household wastes and principal recyclable materials

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# Final Regulations

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~~that are wastes from nonhousehold sources generated annually in each city, county, town or region.~~

~~2. By December 31, 1993, a recycling rate of 15% of the total of household wastes and principal recyclable materials that are wastes from nonhousehold sources generated annually in each city, county, town, or region.~~

~~3. By December 31, 1995, a recycling rate of 25% of the total of household wastes and principal recyclable materials that are wastes from nonhousehold sources generated annually in each city, county, town, or region.~~

*B. A minimum recycling rate of 25% of the total municipal solid waste generated annually in each city, county, town or region shall be maintained. The plan shall describe how this rate shall be met or exceeded.*

C. Calculation methodology shall be included in the plan.

~~1. The plan shall describe method of calculating the rate of recycling. Three alternative methods of calculation are permitted. These are:~~

~~a. Where accurate documentation of the total weight of solid waste received for landfilling, incineration and recycling within the jurisdiction of the plan exists, the percentage recycled can be calculated directly as:~~

$$\text{Rate} = (\text{Recycled}/\text{Total}) \times 100\%$$

~~Where, "Total" is the weight of the total of household wastes and principal recyclable material as wastes from nonhousehold sources received from within the jurisdiction or exported during the previous 12 months for landfilling, incineration and recycling, and "Recycled" equals weight of principal recyclable material received during the previous 12 months for recycling.~~

~~b. Where accurate documentation of the total volume of solid waste received for landfilling, incineration and recycling within the jurisdiction of the plan exists, the percentage recycled can be calculated directly as:~~

$$\text{Rate} = (\text{Recycled}/\text{Total}) \times 100\%$$

~~Where, "Total" is the volume of the total of household wastes and principal recyclable materials as wastes from nonhousehold sources received from within the jurisdiction or exported during the previous 12 months for landfilling, incineration and recycling, and "Recycled" equals volume of principal recyclable material received during the previous 12 months for recycling.~~

~~c. Where accurate documentation of the total waste received for landfilling, incineration and recycling is not available, the most accurate survey or estimate of the per capita weight of the total of household wastes and principal recyclable material as wastes from nonhousehold sources generated within the jurisdiction during the previous 12 months shall be used to calculate the "Total" and the measured weight of principal recyclable material recycled shall be use as "Recycled" in the formula:~~

$$\text{Rate} = (\text{Recycled}/\text{Total}) \times 100\%.$$

1. The plan shall describe the method of calculating the rate of recycling. The following formula shall be used:

$$\text{Rate} = (\text{Recycled}/\text{Total}) \times 100\%$$

Where, "Recycled" equals the amount of principal recyclable material received during the previous 12 months for recycling and "Total" is the amount of municipal solid waste generated within the jurisdiction during the previous 12 months.

The amounts may be expressed in the following units:

a. The actual weight of each component.

b. The volume of each component.

c. The estimated weight of each component based on the most accurate survey or estimated per capita weight.

2. The amount of supplemental recyclable material that is productively used or sold as product substitute or other beneficial products reused or recycled may be added into both the "Recycled" and "Total" amounts in each calculation method.

3. Any local government or regional solid waste management body that is participating in the used tire management program sponsored by the department of Environmental Quality may add the weight amount of those tires to both the "Recycling" and "Total" amounts in the recycling rate calculation.

4. Any local government or regional solid waste management body may include mulched yard waste in [ both ] the "Recycled" and "Total" amounts simultaneously for the required recycling rate calculations if it can be demonstrated that the finished mulch will be marketed or otherwise used productively. In addition, any local government or regional solid waste management body may include composted yard waste in [ both ] the "Recycled" and "Total" amounts simultaneously for the required recycling rate calculations if it can be demonstrated that the finished compost will be marketed or otherwise used productively.

5. Any local government or regional solid waste management body may include used oil [ , used oil filters, and used antifreeze ] in the "Recycled" and "Total" amounts if it can be demonstrated that the oil [ , used oil filters and used antifreeze ] will be marketed or used productively.

4. 6. Where a source reduction of any municipal solid waste material or reuse of waste a principal recyclable material is documented to have occurred after the effective date of this chapter, is accurately quantified and is requested as a petition for a variance in accordance with Part 4 9 VAC 20-130-230, the director may issue a credit for the amount to be added into the "Recycled" and "Total" amounts in each calculation method. The credit may be for a part of the source reduction or reuse amount if the director finds that to be more appropriate. The director shall not grant such a credit only where an effective recycling program is not being implemented. The director shall not grant the credit if the minimum recycling rate of 25% is being achieved.

[ *These regulations shall permit a credit, to be added into the "Recycled" and "Total" amounts in each calculation method, of one ton for each ton of recycling residue generated in Virginia and deposited in a landfill permitted under subsection M of § 10.1-1408.1 of the Code of Virginia. The total annual credits shall not exceed one-fifth of the 25% required recycling rate.* ]

~~(Note: "Principal Recyclable Materials" means newspaper, ferrous scrap metal, nonferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, container glass, aluminum, high-grade office paper, tin cans, cloth, automobile bodies, plastic and clean wood, brush, leaves, grass and other arboreal materials. "Principal Recyclable Materials" do not include large diameter tree stumps. "Supplemental recyclable material" means construction rubble, tires, concrete, and similar inert materials, batteries, ash, sludge or large diameter tree stumps, or as may be authorized by the director.)~~

~~D. A report on progress in attaining the recycling goals established in 9 VAC 20-130-120-B shall be submitted to the Department of Environmental Quality within 120 days of the date prescribed in that section. The department will prepare a statewide summary progress report based on the data submitted.~~

~~E. By July 1, 1993, D. All known solid waste disposal sites, closed [ , inactive ] and active, within the area of the solid waste management plan shall be documented and recorded at a centralized archive authorized to receive and record information and a copy shall be sent to the director. Thereafter, All new sites shall be recorded at the same central data source.~~

~~F. By July 1, 1993, E. A method methodology shall be developed utilized to monitor the amount of solid waste of each type produced within the area of the solid waste management plan and to record the annual production by solid waste types at a centralized archive and a copy shall be sent to the director. Waste types include but are not limited to broad classes such as residential, commercial and municipal solid waste, construction/demolition/debris, industrial, regulated medical waste, white goods, friable asbestos, petroleum contaminated soil and the major categories of principle and supplemental recyclable materials.~~

**9 VAC 20-130-130. Public participation.**

A. Prior to submission of a solid waste management plan or a major amendment to the plan to the department of Environmental Quality, the submitter shall publish a notice and hold a public hearing on the plan in accordance with the procedures of the local government or regional planning agency. A record of the public hearing and, a copy of all written comments and the submitter's response to all comments received shall be submitted with the plan.

B. Plan developers should shall, in accordance with their own rules and procedures, provide for extensive participation by the public through the use of citizen advisory committees and public meetings during the development of the plan.

[ PART IV.  
WASTE MANAGEMENT PLAN CONTENTS. ]

**9 VAC 20-130-140. General Plan objectives.**

Every solid waste management plan shall be a fully integrated waste management plan that considers all elements of waste management [ . The plan shall ]:

1. Include consideration of the hierarchy defined in 9 VAC 20-130-30 giving preference to alternatives in the following order of priority: source reduction, reuse, recycling, resource recovery, incineration, [ and ] landfilling;
2. Clearly and explicitly demonstrate the manner in which the goals of the mandatory objectives defined in 9 VAC 20-130-120 shall be accomplished;
3. Include, when developed locally, a copy of the local governing body's resolution adopting the plan; and
4. Include, when developed regionally, a copy of the resolution approving the plan adopted in accordance with the Virginia Area Development Act, the Virginia Water and [ Sewer Waste ] Authorities Act, the provisions of the Code of Virginia governing joint exercise of powers by political subdivisions § 15.1-24 15.2-1300 of the Code of Virginia, or other authority as applicable.

**9 VAC 20-130-150. Incorporated data.**

The local government or regional solid waste management plan shall include data and analyses of the following type for each jurisdiction. Each item below shall be in a separate section and labeled as to content:

1. ~~Demographic~~ Population information and projections ~~ever 20 for [ 40 20 ]~~ years of population growth and development patterns;
2. Urban concentrations, geographic conditions, economic growth and development, markets for the reuse and recycling of materials, transportation conditions, and related factors;
3. Estimates of solid waste generation from households, commercial institutions, industries and other types of sources, including the amounts reused, recycled, recovered as a resource, incinerated and landfilled. Estimates should identify special waste to include, at least, the following: stumps, land-clearing debris and construction wastes, motor vehicle tires, waste oil, batteries, sludges, mining wastes, septage, agricultural wastes and spill residues;
4. A listing of existing and planned solid waste collection, storage, treatment, transportation, disposal and other management facilities, their projected capacities, expected life and systems for their use;
5. All milestones in the implementation of the solid waste management plan over the 20-year projection and the parties responsible for each milestone;
6. A description of programs for solid waste reduction, reuse, recycling, reuse resource recovery, incineration, storage, treatment, disposal and litter control;

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# Final Regulations

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7. A description of outreach programs for waste exchange, public education and public participation; and

8. The procedures for and results of evaluating solid waste collection, including transfer stations; and

9. The assessment of all current and [ ~~predictable~~ predicted ] needs for solid waste management for a period of 20 years and a description of the action to be taken to meet those needs.

## **9 VAC 20-130-160. [ No change from proposed. ]**

### **9 VAC 20-130-165. Waste Information and Assessment Program.**

A. The owners or operators of all permitted facilities that treat, store, or dispose of solid waste shall report by March 31 of each year the amount of solid waste, by weight or volume, received and managed in the Commonwealth during the preceding calendar year. The report shall identify solid waste by the following categories: (i) municipal solid waste; (ii) construction and demolition debris; (iii) industrial waste; (iv) regulated medical waste; (v) vegetative and yard waste; (vi) incinerator ash; (vii) sludge other than sludge that is land applied in accordance with § 32.1-164.5 of the Code of Virginia; (viii) tires; (ix) white goods; (x) friable asbestos; (xi) petroleum contaminated soil; and (xii) other special waste. For each such category the report shall include an estimate of the amount that was generated outside of the Commonwealth and the jurisdictions where such waste originated. The report shall also estimate the amount of solid waste managed or disposed of by each of the following methods: (i) recycling; (ii) composting; (iii) landfilling; (iv) incineration (v) sending off site for further management; and (vi) stored on site on December 31 of the reporting year. This section shall not apply to captive waste management facilities. [ The report is to be sent to the department regional office for the facility's location ].

Information on the available capacity and expected life of the facilities at the disposal rates submitted in this subsection shall be included in the annual report required by this section.

B. At the option of the facility owner, the data collected may include an accounting of the facility's economic benefits to the locality where the facility is located including the value of disposal and recycling facilities provided to the locality at no cost or reduced cost, direct employment associated with the facility, and other economic benefits resulting from the facility during the preceding calendar year.

C. No facility shall be required pursuant to this section to provide information that is a trade secret as defined in § 59.1-336 of the Code of Virginia.

D. Every city, county and town in the Commonwealth, or solid waste management planning region approved pursuant to 9 VAC 20-130-180, shall submit to the department by April 30 of each year, the data and calculations required in 9 VAC 20-130-120 B and C.

## **9 VAC 20-130-170. [ No change from proposed. ]**

## **9 VAC 20-130-175. Amendments to plans.**

A. Amendments to the plans shall be classified as major or minor. These classifications are described [ in this section below.

1. Major amendments shall include any addition, deletion, or cessation of operation of any solid waste facility; any increase in landfill capacity; any change that moves toward implementation of a waste management strategy that is lower in the waste management hierarchy; and any change to membership in the approved area.

2. Minor amendments shall include any change that moves toward implementation of a waste management strategy that is higher in the waste management hierarchy and any nonsubstantive administrative change such as a change in name. ]

B. Any amendments to the plans shall be approved by the department prior to implementation.

[ ~~1. Major amendments shall include any addition, deletions, or cessation of operation of any solid waste facility; any increase in landfill capacity; any change that moves toward implementation of a waste management strategy that is lower in the waste management hierarchy; and any change to membership in the approved area.~~

~~2. Minor amendments shall include any change that moves toward implementation of a waste management strategy that is higher in the waste management hierarchy and any nonsubstantive administrative change such as a change in name. ]~~

C. Major amendments shall require the same public participation as detailed in 9 VAC 20-130-130 before being submitted to the department for approval.

D. Minor amendments shall be submitted directly to the department for approval.

E. The department shall review [ 7 amendments ] and approve or return comments on the deficiencies in each amendment submitted in accordance with this section no later than 90 days from the date the plans are received. [ In the event the department is unable to complete its review within 90 days, the applicant will be notified and given a date as to when the review will be completed. ]

F. Each submitter who receives comments on his solid waste management plan under subsection E of this section shall submit a corrected amendment to the department no later than 90 days following notification of deficiencies.

G. Amendments approved without alteration shall become effective upon notification. If after review of the corrected amendment submitted pursuant to subsection F of this section, the department cannot approve the corrected amendment because it finds the amendment not to be in accordance with this chapter, it will issue a notice of intent to disapprove to the submitter. The notice of intent to disapprove shall set forth (i) the reason for the disapproval, (ii) what is required for approval, and (iii) the right of the submitter to an informational proceeding under Article 3 of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of

Virginia). The department will give priority consideration for review of corrected amendments when the local or regional body has a pending permit application for a solid waste management facility.

[ PART V.  
~~AUTHORIZING OF REGIONAL BOUNDARIES.~~ ]

[ **9 VAC 20-130-180. Designation of regions.** ]

The director has been authorized by the Governor to designate regional boundaries defining areas and jurisdictions to be considered for joint development of solid waste management plans. Only those regions meeting the standards established in this ~~part~~ chapter will be considered. Any group of jurisdictions may petition the director for designation as a region, and, if the proposed region meets the standards established for designation, the director shall approve the request. ]

**9 VAC 20-130-190. [ No change from proposed. ]**

**9 VAC 20-130-220. [ No change from proposed. ]**

[ PART VI.  
~~RULEMAKING PETITIONS AND PROCEDURES.~~ ]

**9 VAC 20-130-230. ~~General~~ Petitioning for variance or exemption.**

A. Any person ~~affected~~ regulated by this chapter may petition the director to grant a variance or an exemption from any requirement of this chapter subject to the provisions of this [ ~~part~~ section ]. Any petition submitted to the director is also subject to the ~~provisions~~ Article 3 of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

B. The petition shall be submitted to the director by certified mail and shall include:

1. The petitioner's name and address;
2. A statement of petitioner's interest in the proposed action;
3. A description of desired action and a citation of the regulation from which a variance is requested;
4. A description of need and justification for the proposed action, including impacts from existing operations and market conditions (if, based on the evidence submitted in a petition, the director determines that market conditions within a county, city, town or region make unreasonable the mandatory recycling rates specified in this chapter and that the market conditions are beyond the control of the county, city, town or region, a variance from those rates may be issued-);
5. The duration of the variance, if applicable;
6. The potential impact of the variance on public health or the environment;
7. Other information believed by the applicant to be pertinent; and
8. The following statement signed by the petitioner or authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

**9 VAC 20-130-240. [ No change from proposed. ]**

<p><b>NOTICE:</b> The forms used in administering 9 VAC 20-130-10 et seq., Regulations for the Development of Solid Waste Management Plans, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.</p>
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FORMS

*Form DEQ 50-25, Solid Waste Information and Assessment Program – Reporting Table, rev. 6/6/00.*

*Form DEQ 50-30, Locality Recycling Rate Report, [ ~~eff. 6/15/00~~ rev. 4/01 ].*

**I. Form DEQ 50-25 Solid Waste Information and Assessment Program- Reporting Table**

Facility Name \_\_\_\_\_ Permit No. \_\_\_\_\_  
 Date Submitted to DEQ \_\_\_\_\_ Annual Reporting Period: \_\_\_\_\_  
 Available Permitted Capacity \_\_\_\_\_ Total Annual Disposal Rate \_\_\_\_\_ Expected Remaining Permitted Life \_\_\_\_\_

**II. Originating Jurisdiction (ie. State):** \_\_\_\_\_ Is Jurisdiction Outside Virginia? YES \_\_\_\_\_ NO \_\_\_\_\_

Waste Type	Units (check one)		Waste Management- Report Amount by Weight or Volume (REPORTING UNITS MUST BE CONSISTENT FOR ALL FIELDS OF A PARTICULAR WASTE TYPE, USE TONS OR CUBIC YARDS, NOT BOTH)							
	Tons	cu.yds	Received	Recycled	Composted	Landfilled	Incinerated	Sent off site	Stored on site	Other:
Municipal Solid Waste										
Construction/ Demolition/Debris										
Industrial Waste										
Regulated Medical Waste										
Vegetative/Yard Waste										
Incineration Ash										
Sludge*										
Tires										
White Goods										
Friable Asbestos										
Petroleum Contaminated Soil										
Other Waste(specify):										

NOTE: Report each different jurisdiction on a separate page \*Sludge other than that applied to the land in accordance with § 32.1-164. Revised 6/6/00

LOCALITY RECYCLING RATE REPORT

DEQ Form 50-30 6/15/2000

Reporting Entity: \_\_\_\_\_  
 Person Completing This form: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_ Street / P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Phone Number: (\_\_\_\_) \_\_\_\_\_  
 Fax Number: (\_\_\_\_) \_\_\_\_\_  
 Email Address: (\_\_\_\_) \_\_\_\_\_  
 Member Governments: the local governments identified in your regional solid waste management plan \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

WASTE TYPE

WASTE TYPE	Management Action	
	Recycled (Amount in tons)	Reused* (Amount in tons)
Paper	_____	_____
Metal	_____	_____
Plastic	_____	_____
Glass	_____	_____
Yard waste (composted or mulched)	_____	_____
Wood	_____	_____
Textiles	_____	_____
Subtotals	+++	+
Total PRM	_____	_____ (A)

P.1

\*material must be reused in its present form or be size - reduced

II. Supplemental Recyclable Material (SRM)	Management Action	
	Recycled (Amount in tons)	Reused* (Amount in tons)
Tires	_____	_____
Used Oil	_____	_____
Auto Bodies	_____	_____
Construction Waste	_____	_____
Demolition Waste	_____	_____
Debris Waste	_____	_____
Batteries	_____	_____
Ash	_____	_____
Sludge	_____	_____
Subtotals	+++	+
Grand Total SRM	_____	_____ (B)

III. Total MSW Generated

Household	_____
Commercial	_____
Institutional	_____
Other**	_____
Total	+++ (C)

IV. Recycling Rate =  $\frac{A+B}{A+B+C} \times 100 =$  \_\_\_\_\_ %

\*\*May add total amounts of SRM generated, if known.

I certify that I have personally examined and am familiar with the information submitted in this form and any attached documents, and that, based on my inquiry of these individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. These records will be made available for auditing purposes, if requested.

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

P.2



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# Final Regulations

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## STATE WATER CONTROL BOARD

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exclusion 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 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 25-110-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less than or Equal to 1,000 Gallons per Day (amending 9 VAC 25-110-70).

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia.

**Effective Date:** August 1, 2001.

**Summary:**

*The amendments change the requirements for registering under the general permit for small sewage discharges. This amendment is based on a revision to the State Control Law enacted by the 2001 General Assembly.*

**Agency Contact:** Copies of the regulation may be obtained from Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075.

CHAPTER 110.  
VIRGINIA POLLUTANT DISCHARGE ELIMINATION  
SYSTEM (VPDES) GENERAL PERMIT FOR DOMESTIC  
SEWAGE DISCHARGES OF LESS THAN OR EQUAL TO  
1,000 GALLONS PER DAY.

**9 VAC 25-110-70. Registration statement.**

A. Deadlines for submitting registration statement. The owner shall file a complete General VPDES Permit Registration Statement for domestic sewage discharges of less than or equal to 1,000 gallons per day. Any owner proposing a new discharge shall file a complete registration statement with the department at least 60 days prior to the date planned for commencing construction or operation of the treatment works from which the discharge will emanate. Any owner of an existing treatment works covered by an individual VPDES permit who proposes to be covered by this general permit shall file a complete registration statement at least 180 days prior to the expiration date of the individual VPDES permit. To avoid a lapse in permit coverage, any owner of an existing treatment works that was authorized to discharge under the general permit issued in 1996 shall have filed a complete registration statement prior to August 1, 2001.

B. Registration statement. The owner shall submit a registration statement that contains the following information:

1. Name and location of the facility/residence.
2. Name, mailing address, and work and home telephone numbers of the facility owner. Indicate if the owner is or will be the occupant of the facility.

3. Name of the water body receiving the discharge. Indicate if the discharge point is on a stream that usually flows during dry weather.

4. The amount of discharge, in gallons per day, on a monthly average.

5. A description of any pollutants, other than domestic sewage, to be discharged.

6. If there are central sewage facilities available to serve this facility.

7. If the facility currently has a VPDES permit. Provide the permit number, if applicable. Indicate if the facility has been built and begun discharge.

8. For the owner of any proposed treatment works or any treatment works that has not previously been issued a valid VPDES permit:

a. A topographic map that indicates the discharge point, the location of the property to be served by the treatment works, and the location of any wells, springs, and other water bodies, or downstream residences within 1/2 mile downstream from the discharge;

b. A site diagram of the existing or proposed sewage treatment works, including the property boundaries, the location of the facility/residence to be served, the individual sewage treatment units, the receiving water body, and the discharge line location; and

c. A notification from the Virginia Department of Health that an onsite sewage disposal system permit has been applied for and that the Virginia Department of Health has determined that there is no technology available to serve that parcel of land with an onsite system; and

~~d. For discharges into any water impoundment, a notification from the governing body of the county, city, or town in which the discharge is to take place that the location and operation of the treatment works are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. Should the governing body fail to provide such written notification within 45 days from the receipt of a request from the applicant, the requirement for such notification is waived.~~

9. For the owner of any existing treatment works, a copy of a valid maintenance contract that provides for the following:

a. Performance of all testing required in accordance with 9 VAC 25-110-80 Part I A and periodic inspections of the treatment works;

b. A written notification to the owner within 24 hours whenever the contract provider becomes aware that maintenance or repair of the owner's treatment works is necessary. The owner is responsible for prompt maintenance and repair of the treatment works including all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated in the

dwelling if full and complete repairs cannot be accomplished within 48 hours.

c. A log of the following items will be maintained by the contract provider:

- (1) Results of all tests and sampling;
- (2) Alarm activation incidents;
- (3) Maintenance, corrective, or repair activities performed;
- (4) Recommended repair or replacement items; and
- (5) Copies of all reports prepared by the contract provider.

d. An inspection will be conducted by the contract provider within 48 hours after notification by the owner that a problem may be occurring; and

e. A minimum of 24 months of consecutive coverage under the maintenance contract.

10. The owner of any existing treatment works may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to the department for review and approval. At a minimum, the plan shall contain the following information:

a. An up-to-date operation and maintenance manual for the treatment works;

b. A log of maintenance performed on the plant including, but not limited to, the following:

- (1) The date and amount of disinfection chemicals added to the chlorinator.
- (2) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.
- (3) The date and time of equipment failure(s) and the date and time the equipment was restored to service.
- (4) The date and approximate volume of sludge removed;

c. Dated receipts for chemicals purchased, equipment purchased, and maintenance performed;

d. Proof of installation of a nonresettable elapsed time meter for electric motor-driven equipment; and

e. An effluent monitoring plan in accordance with the requirements of 9 VAC 25-110-80 Part I A.

11. The following certification: "I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit. 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."

The registration statement shall be signed in accordance with the requirements of 9 VAC 25-31-110.

VA.R. Doc. No. R01-224; Filed June 13, 2001, 10:54 a.m.

\* \* \* \* \*

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exclusion 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 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 25-192-10 et seq. **Virginia Pollution Abatement (VPA) General Permit Regulation for Confined Animal Feeding Operations (amending 9 VAC 25-192-50 and 9 VAC 25-192-60).**

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia.

**Effective Date:** August 1, 2001.

**Summary:**

*The board is amending the adjacent property notification requirements for farms registering under the general permit for confined animal feeding operations. This amendment is based on a revision to the State Water Control Law enacted by the 2001 General Assembly.*

**Agency Contact:** Copies of the regulation may be obtained from Richard Ayers, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4075.

**9 VAC 25-192-50. Authorization to manage pollutants.**

Any owner governed by this general permit is hereby authorized to manage pollutants at confined animal feeding operations provided that the owner files the registration statement of 9 VAC 25-192-60, complies with the requirements of 9 VAC 25-192-70, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the Permit Regulation. Currently permitted operations may submit a registration statement for operation under the general permit and be authorized under this general permit provided that the criteria of the general permit are met.

2. The operation of the facilities of the owner shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater except in the case of a storm event greater than the 25-year, 24-hour storm. Domestic sewage or

# Final Regulations

industrial waste shall not be managed under this general permit.

3. The owner of any proposed pollutant management activities or those which have not previously been issued a valid Virginia Pollution Abatement (VPA) permit or Industrial Waste-No Discharge (IW-ND) Certificate must attach to the registration statement a notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

4. A Nutrient Management Plan (NMP) for the facility must be approved by the Department of Conservation and Recreation (DCR) prior to the submittal of the registration statement. The owner of the pollutant management activities shall attach to the registration statement a copy of the approved Nutrient Management Plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan.

5. The owner shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the confined animal feeding operation will be located. Such notice shall include (i) the types and maximum number of animals which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted. *This notice requirement is waived whenever registration is for the purpose of renewing coverage under the permit and no expansion is proposed and the department has not issued any special or consent order relating to violations under the existing permit.*

6. Each operator of a facility covered by this general permit on July 1, 1999, shall, by January 1, 2000, complete the training program offered or approved by the Department of Conservation and Recreation. Each operator of a facility permitted after July 1, 1999, shall complete such training within one year after the registration statement has been submitted for general permit coverage. Thereafter, all operators shall complete the training program at least once every three years.

Receipt of this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance, or regulation.

## 9 VAC 25-192-60. Registration statement.

The owner shall file a complete VPA General Permit Registration Statement for the management of pollutants at confined animal feeding operations in accordance with this chapter.

Any owner proposing a new pollutant management activity shall file a complete registration statement. Any owner with an existing pollutant management activity covered by an individual VPA permit who is proposing to be covered by this general permit shall file a complete registration statement.

The required registration statement shall be in the following form:

## COMMONWEALTH of VIRGINIA

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### VIRGINIA POLLUTION ABATEMENT GENERAL PERMIT REGISTRATION STATEMENT FOR CONFINED ANIMAL FEEDING OPERATIONS

1. Facility Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_ Zip Code: \_\_\_\_\_

2. Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_

3. Operator Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_

Facility Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Best Time to Contact (day time): \_\_\_\_\_

4. Does this facility have an existing VPA permit or IW-ND Certificate? Yes/No

If yes, list the existing VPA Permit Number or IW-ND Certificate Number: \_\_\_\_\_

5. Indicate the maximum number and average weight of the types of animals which will be maintained at your facility:

Animal Type	Maximum Number	Average Weight
Dairy Cattle		
Slaughter and Feeder Cattle		
Swine		
Other		

6. The owner of any proposed pollutant management activities or those which have not previously been issued a valid VPA permit or IW-ND Certificate must attach to the registration statement the notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

7. The owner of the pollutant management activities must attach to the registration statement a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan and a copy of the approved Nutrient Management Plan.

8. Certification: "I certify that notice of the registration statement has been given to all owners or residents of

property that adjoins the property on which the confined animal feeding operation will be located. This notice included the types and numbers of animals which will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. *(The preceding certification is waived if the registration is for renewing coverage under the general permit and no expansion of the operation is proposed and the department has not issued any special or consent order relating to violations under the existing permit.)* I certify under penalty of law that all the requirements of the board for the general permit are being met and 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."

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## INSTRUCTIONS

### VPA GENERAL PERMIT REGISTRATION STATEMENT FOR CONFINED ANIMAL FEEDING OPERATIONS

#### General

A VPA General Permit Registration Statement must be submitted when an owner makes application to the Department of Environmental Quality for coverage under the VPA General Permit for Confined Animal Feeding Operations.

#### Section 1 Facility Information

Give the name of the animal feeding operation and enter its complete mailing address.

#### Section 2 Owner Information

Give the legal name of the person, firm, public organization, or any other entity that owns the facility or site described in this registration statement. The address of the owner may or may not be the same as the address of the facility. If they are the same, write "SAME AS ABOVE" in the appropriate spaces. Please include the owner's telephone number.

#### Section 3 Operator Information

Give the operator's name, mailing address and phone number. If these are the same as the owner information, write "SAME AS ABOVE" in the appropriate spaces. The operator is the person who manages daily activities at the site. Please also provide the name of a contact person, their phone number and the best time to make contact with them during regular working hours.

#### Section 4 Existing Permit Numbers

List the number of any expiring or currently effective permits issued to the animal feeding operation under the VPA permit program or the IW-ND certificate program.

#### Section 5 Animal Information

Indicate the maximum number and average weights of animals in each category that the operation will have at any one time.

#### Section 6 Local Government Ordinance Form (LGOF)

Every animal feeding operation seeking coverage under the general permit must provide notification that the operation is not in conflict with the local zoning and planning ordinances. This notification should be made on the LGOF which was provided with the Registration Statement and it must be signed by either the County Administrator, the City/Town Manager, the Mayor, or the Chairman of the Board of Supervisors. The LGOF form you submit must bear an original signature in ink, photocopies are not acceptable. Operations which have previously been issued a VPA permit or IW-ND certificate are not required to submit the LGOF because this issue was resolved during the earlier permit/certificate issuance. All operations which are applying for a permit for the first time must attach the LGOF to the Registration Statement.

#### Section 7 Nutrient Management Plan (NMP)

State law requires that every animal feeding operation seeking coverage under the VPA general permit have a Nutrient Management Plan. A copy of the operation's Nutrient Management Plan and a copy of the letter from the Virginia Department of Conservation and Recreation approving the operation's NMP must be attached to the Registration Statement.

#### Section 8 Certification

The Certification must bear an original signature in ink, photocopies are not acceptable. State statutes provide for severe penalties for submitting false information on this Registration Statement. State regulations require this Registration Statement to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) 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, 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;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

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**Title of Regulation:** 9 VAC 25-210-10 et seq. Virginia Water Protection Permit Program Regulation (amending 9 VAC 25-210-10 and [9 VAC 25-210-40 9 VAC 25-210-50] through 9 VAC 25-210-260; adding 9 VAC 25-210-45, 9 VAC 25-210-115, and 9 VAC 25-210-185; repealing 9 VAC 25-210-20 [ and 9 VAC 25-210-30 through 9 VAC 25-210-40 ] ).

**Statutory Authority:** §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

**Effective Date:** August 1, 2001.

**Summary:**

*In response to 2000 legislation, the regulations restore the regulatory jurisdiction of the Department of Environmental Quality (DEQ) in issuing water protection permits over specific areas known as isolated wetlands and over a specific type of excavation activity known as Tulloch ditching, which is a method used to actively drain wetlands without adding fill to the wetland. In addition, the regulations shorten the time allowed for DEQ to issue a permit, expand the maximum time allowed for a permit by 10 years, and allow an applicant to make more changes that qualify as a minor modification to an existing permit.*

*Changes made to the regulation since its publication as proposed have included clarification of definitions, clarification of exemptions and exclusions, and clarification of the evaluation of compensatory mitigation options. A provision has been added to allow for certifications of Corps of Engineers nationwide or regional permits as meeting the requirements of this regulation after an approval period involving public comment.*

**Summary of Public Comments and Agency's 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 Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, e-mail egilinsky@deq.state.va.us.

CHAPTER 210.  
VIRGINIA WATER PROTECTION PERMIT PROGRAM  
REGULATION.  
PART I.  
GENERAL.

**9 VAC 25-210-10. Definitions.**

Unless a different meaning is required by the context, the following terms, as used in this chapter, shall have the following meanings:

*"Act" or "Clean Water Act" means 33 USC § 1251 et seq. as amended 1987.*

*"Adjacent" means bordering, contiguous or neighboring; wetlands separated from other surface water by man-made*

*dikes or barriers, natural river berms, sand dunes and the like are adjacent wetlands.*

*"Applicant" means an individual, operator or owner filing a joint permit to dredge or fill, or both, or requiring a Federal Energy Regulatory Commission (FERC) permit or conducting other activities which require a permit under this chapter a person applying for a VWP individual or general permit.*

*"Approval authority" means the executive director of the State Water Control Board.*

*"Aquatic resources" or "aquatic environment" mean surface waters and the habitat they provide, including both plant and animal communities.*

*"Avoidance" means not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment.*

*"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to: the protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to: domestic (including public water supply); agricultural; electric power generation; [ and ] commercial and industrial uses.*

*"Best management practices [ (BMPs) ] " means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to that prevent or reduce the pollution of surface waters.*

*"Board" means the State Water Control Board.*

*"Certificate" means certification required under § 401 of the Clean Water Act (33 USC § 1341), provided by the State Water Control Board.*

*[ "Code" means the Code of Virginia. ]*

*"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.*

*"Composite sample" means a combination of individual samples of sediment or water taken in proportion to the area to be impacted which ensures that a representative sample is obtained.*

*"Consumptive use" means the withdrawal of surface waters, without recycle of said waters to their source or basin of origin.*

*"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.*

*"Director" means the Director of the Department of Environmental Quality [ (DEQ) or an authorized representative ].*

*"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.*

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# Final Regulations

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"Draft VWP permit" means a prepared document indicating the board's tentative decision relative to a VWP permit action.

"Draining" means human-induced activities such as ditching, excavation, installation of tile drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or similar activities such that the activities have the effect of artificially dewatering the wetland or altering its hydroperiod.

"Dredged material" means material that is excavated or dredged from surface waters.

[ "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters. ]

"Ecologically preferable" means capable of providing a higher likelihood of replacing existing wetland functions and values, water quality and fish and wildlife resources than alternative proposals.

~~"Effluent" means dredged material or fill, including return flow from confined sites.~~

"Enhancement" means activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions or values.

~~"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.~~

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

~~"Executive director" means executive director of the State Water Control Board.~~

"Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a [ ~~water body or wetland~~ surface water ] for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a [ ~~water body~~ surface water ] for any purpose.

"General permit" means a permit [ issued ] by the ~~Corps of Engineers, such as Regional or Nationwide Permits or a permit issued by the State Water Control Board (SWCB) [ under 40 CFR Part 241 ]~~ authorizing a specified category of activities within a geographic area.

"Geographic area of a delineated wetland" means the area contained within and up to a wetland boundary determined by delineation methods consistent with this chapter.

"Impairment" means the damage, loss or degradation of the functions and values of state waters.

[ "In-lieu fee fund" means a monetary fund operated by a nonprofit organization or governmental agency which receives financial contributions from persons impacting wetlands or streams pursuant to an authorized permitted activity and which expends the moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts. ]

"Isolated wetlands of minimal ecological value" means those wetlands that [ : ] (i) do not have a surface water connection to other state waters; (ii) are less than one-tenth of an acre in size; (iii) are not located in a [ ~~FEMA Federal Emergency Management Agency~~ ] designated 100-year floodplain; (iv) are not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) are not forested; and (vi) do not contain listed federal or state threatened or endangered species.

"Joint Permit Application (JPA)" means an application form that is used to apply for permits from the Norfolk District [ Army ] Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetland boards for work in waters of the United States and in surface waters of Virginia.

[ "Law" means the State Water Control Law of Virginia. ]

"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

[ "Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks, and is operating under a signed banking agreement. ]

~~"Mitigation banking" means compensating for unavoidable wetland [ or stream ] losses in advance of development actions through the sale, purchase or use of credits from a mitigation bank [ that is operating under a signed banking instrument in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks ].~~

"Multi-project mitigation site" means an area of wetland restoration, creation, enhancement and, in appropriate circumstances, preservation of wetlands [ or streams ] or upland buffers adjacent to wetlands or other state waters, that is or has been utilized to meet compensation requirements for more than one project but that is not a mitigation bank.

"Nationwide permit" means a general permit governing specified activities, issued by the U.S. Army Corps of Engineers, the conditions of which are [ issued by the USACE under 40 CFR Part 241 and ] applicable nationwide.

[ "~~Nonpoint source~~" means a source of pollution, such as a farm, forest or construction site run-off, urban storm water run-off or mine run-off that is not collected or discharged as a point source. ]

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.1-22.29 of the Code of Virginia and any activity that is conducted as part of or in furtherance of such agricultural operation, but shall not include any activity for which a permit would have been

required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

"Normal residential gardening, lawn and landscape maintenance" means ongoing noncommercial residential activities conducted by or on behalf of an individual occupant, including mowing, planting, fertilizing, mulching, tilling, vegetation removal by hand or by hand tools, placement of decorative stone, fencing and play equipment. Other appurtenant noncommercial activities, provided that they do not result in the conversion of a wetland to upland or to a different wetland type, may also be included.

"Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 of the Code of Virginia, and any activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

"Permanent flooding or impounding" means an increase in the duration [ ~~and/or~~ or ] depth of standing water on a land surface, other than that resulting from extended-detention basins and enhanced extended-detention basins designed, constructed, and maintained to function in accordance with Virginia Department of Conservation and Recreation (DCR) standards for such facilities (Virginia Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3) or local standards that, at a minimum, meet the DCR standards.

~~"Permit" means a Virginia Water Protection Permit (VWP) which is the Commonwealth of Virginia's § 401 Water Quality Certification.~~

~~"Permittee" means an owner or operator the person who currently has an effective VWP permit issued by the board holds a VWP individual or general permit.~~

"Person" means any firm, corporation, association, or partnership, one or more individuals, or any governmental unit or agency of it.

~~"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. It does not mean water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for the disposal purposes if approved by the Department of Mines, Minerals and Energy unless the board determines that such injection or disposal will result in the degradation of surface or groundwater resources.~~

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters [ : ] (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the

physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.

"Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to the board's Procedural Rule No. 1 [ (9 VAC 25-230-10 et seq.) ].

~~"Regional permit" means a type of general permit [ issued by ] the Corps of Engineers authorizing a specified category of activities [ the USACE under 40 CFR Part 241 and ] applicable within the Commonwealth of Virginia or other a specified geographic region and whose conditions are applicable within the geographic area specified.~~

"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

"Schedule of compliance" means a schedule of remedial measures including a sequence of enforceable actions or operations leading to compliance with the Act, the law, and the board regulations, standards and policies.

~~"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community-type [ (as defined by the Cowardin classification system or similar terminology) ] resulting in the loss or more than minimal degradation of its existing ecological functions.~~

~~[ "Single and complete project" means the total project proposed or accomplished by one person. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland, lake, etc. are not separate waterbodies. A single and complete project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend~~



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# Final Regulations

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~~upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility. ]~~

~~"State general permit" means a VWP permit issued by the Commonwealth of Virginia through the State Water Control Board, and applicable statewide, for activities of minimal environmental consequence.~~

~~"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.~~

~~"Surface water" means: all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.~~

~~1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;~~

~~2. All interstate waters including interstate wetlands;~~

~~3. All other waters such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such waters:~~

~~a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;~~

~~b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or~~

~~c. Which are used or could be used for industrial purposes by industries in interstate commerce;~~

~~4. All impoundments of waters otherwise defined as surface waters under this definition;~~

~~5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;~~

~~6. The territorial sea; and~~

~~7. "Wetlands" adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.~~

~~"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Act (33 USC § 1317(a)), which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.~~

~~[ "USACE" means the United States Army Corps of Engineers.~~

~~"VMRC" means the Virginia Marine Resources Commission. ]~~

~~"VWP general permit" means a regulation that constitutes a VWP permit for a category of activities.~~

~~"VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:5 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.~~

~~"Water quality standards" means water quality standards 9 VAC 25-260-10 et seq. adopted by the board [ promulgated and approved ] by the administrator of the EPA under § 303 of the Act [ .Note: these can be found as defined ] at 9 VAC 25-260-5 et seq.~~

~~"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.~~

## ~~9 VAC 25-210-20. Purpose. (Repealed.)~~

~~This chapter delineates the procedures and requirements to be followed in connection with the Virginia Water Protection Permit issued by the board pursuant to the State Water Control Law. This chapter supersedes Procedural Rule No. 3 of the regulations of the State Water Control Board.~~

## ~~9 VAC 25-210-30. Authority for chapter. (Repealed.)~~

~~The authority for this chapter is pursuant to the State Water Control Law (law), Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1, in particular §§ 62.1-44.15:5, 62.1-44.15(7) and 62.1-44.15(10); and 33 USC § 1251 et seq.~~

## ~~9 VAC 25-210-40. [ Federal guidelines. (Repealed.)~~

~~The following federal guidelines are incorporated by reference:~~

~~Guideline for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 (Federal Register December 24, 1980). ]~~

## ~~9 VAC 25-210-45. Wetland delineation.~~

~~Each delineation shall be conducted in accordance with the [ U.S. Army Corps of Engineers' USACE ] "Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" (Federal Manual). The Federal Manual shall be interpreted in a manner consistent with [ Corps USACE ] guidance [ and the requirements of this regulation, and any delineation guidance adopted by the board as necessary to ensure consistency with the USACE implementation of delineation practices ] .~~

## ~~9 VAC 25-210-50. Prohibitions and requirements for VWP permits.~~

~~A. [ Except in compliance with a VWP permit, ] no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, excavate in a wetland, or otherwise alter the physical, chemical or biological properties of surface waters, except as authorized pursuant to a Virginia Water Protection Permit, or as excluded in 9 VAC 25-210-60 excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland:~~

[ ~~(i)~~ 1. ] *New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;*

[ ~~(ii)~~ 2. ] *Filling or dumping;*

[ ~~(iii)~~ 3. ] *Permanent flooding or impounding; or*

[ ~~(iv)~~ 4. ] *New activities that cause significant alteration or degradation of existing wetland acreage or functions*

B. No VWP permit shall be issued for the following:

1. Where the *proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations including but not limited to § 10.1-1408.5 of the Code of Virginia;*

2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into surface waters;

3. For any discharge which will result in the pollution of surface waters or the violation of standards, regulations or policies adopted by the board pursuant to state law.

**9 VAC 25-210-60. Exclusions.**

The following do not require a [ ~~Virginia Water Protection Permit VWP permit~~ ] but may require other permits under state and federal law:

[ ~~4. A.~~ ] Discharges of dredged or fill material [ *into state waters, excepting wetlands,* ] which are [ *addressed authorized* ] under a [ ~~U.S. Army Corps of Engineers USACE~~ ] Regional, General or Nationwide Permit, and for which [ ~~no~~ ] § 401 Water Quality [ *Certificate is required Certification has been granted as of the effective date of this chapter* ]. Such permits include the following activities:

a. ~~The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR 66, Subchapter C, § 10).~~

b. ~~Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (33 CFR 322.5(g), § 10).~~

c. ~~The repair, rehabilitation or replacement of any previously authorized, currently serviceable structure or fill, or any currently serviceable structure or fill constructed prior to the requirement for authorization, provided such repair, rehabilitation, or replacement does not result in a deviation from the plans of the original structure or fill, and further provided that the structure or fill has not been put to uses differing from uses specified for it in any permit authorizing its original construction. Minor deviations due to changes in materials or construction techniques and which are necessary to make repair, rehabilitation, or replacement are permitted. Maintenance dredging and beach restoration are not authorized under nationwide permits (33 CFR 330.5(a), § 10).~~

~~d. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, eel pots, duck blinds, and clam and oyster digging (33 CFR 330.5(a), § 10).~~

~~e. Staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar scientific structures (33 CFR 330.5(a), § 10).~~

~~f. Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory type bore holes. Drilling of exploration type bore holes for oil and gas exploration is not authorized by any nationwide permit (33 CFR 330.5(a), § 10).~~

~~g. Structures for the exploration, production, and transportation of oil, gas and minerals on the outer continental shelf within areas leased for such purposes by the Department of Interior, Mineral Management Service, provided those structures are not placed within the limits of any designated shipping safety fairway or traffic separation scheme (33 CFR 330.5(a), § 10).~~

~~h. Structures placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard (33 CFR 330.5(a), § 10).~~

~~i. Noncommercial, single boat, mooring buoys (33 CFR 330.5(a), § 10).~~

~~j. Temporary buoys and markers placed for recreational use such as water skiing and boat racing provided that the buoy or marker is removed within 30 days after its use has been discontinued (33 CFR 330.5(a), § 10).~~

[ ~~2. B.~~ ] Any activity discharge, other than an activity in a surface water governed by § [ ~~§ 62.1-44.5 and~~ ] 62.1-44.15:5 of the Code of Virginia, permitted by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9 VAC 25-30-10 9 VAC 25-31-10 et seq.

[ ~~3. C.~~ ] Any activity, other than an activity in a surface water governed by § [ ~~§ 62.1-44.5 and~~ ] 62.1-44.15:5 of the Code of Virginia, permitted by a Virginia Pollution Abatement (VPA) permit in accordance with 9 VAC 25-30-10 9 VAC 25-32-10 et seq.

[ ~~4. D.~~ ] Land disposal activities including Septic tanks, when authorized by a state Department of Health permit or a State Department of Waste Management Permit;

[ ~~5. E.~~ ] Discharges authorized by EPA under the Safe Drinking Water Act Underground Injection Control Program (UIC). Any activity permitted under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act.

[ ~~6. F.~~ ] Normal residential gardening, lawn and landscape maintenance.

6. [ ~~7. a.~~ G. ] Normal farming, agriculture and silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices.

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# Final Regulations

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[ 1. To fall under this exclusion, the activities specified in this subsection must be part of an established (i.e., ongoing) agriculture or silviculture, operation, and must be in accordance with applicable best management practices set forth in either *Forestry Best Management Practices for Water Quality in Virginia Technical Guide (Third Edition, 1997)* or *Virginia Agricultural BMP Manual (2000)*, which facilitate compliance with the § 404(b)(1) Guidelines (40 CFR Part 230). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.

2. Activities which bring a new area into agricultural or silvicultural use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If the activity takes place outside surface waters, it does not need a VWP permit, whether or not it is part of an established agriculture or silviculture operation.

3. ] For the purposes of [ ~~this subdivision~~ ] 6 of [ this subsection 7 ], cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

[ ~~(4)~~ a. ] "Cultivating" means physical methods of soil treatment employed within established [ ~~farming agriculture~~ ], ~~ranching~~ and silviculture lands on farm [ ; ] ~~ranch~~, or forest crops to aid and improve their growth, quality, or yield.

[ ~~(2)~~ b. ] "Harvesting" means physical measures employed directly upon farm, forest, or ~~ranch~~ crops within established agricultural and silviculture lands to bring about their removal from farm [ ; or ] forest [ , ~~or~~ ] ~~ranch~~ land, but does not include the construction of farm [ ; or ] forest [ , ~~or~~ ] roads.

[ ~~(3)~~ c. ] "Minor drainage" means:

[ ~~(a)~~ (1) ] The discharge of dredged or fill material incidental to connecting upland drainage facilities to surface waters, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling incidental to the planting, cultivating, protecting, or harvesting of crops, ~~involve no discharge of dredged or fill material into surface waters, and as such never require a § 404 Water Quality Certificate, and hence no Virginia Water Protection Permit;~~

[ ~~(b)~~ (2) ] The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, or other wetland crop species, where these activities and the discharge occur in surface waters which are in established use for such agricultural and silviculture wetland crop production;

[ ~~(c)~~ (3) ] The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed

in accordance with applicable requirements of the Act, and which are in established use for the production of rice, or other wetland crop species;

[ ~~(4)~~ (4) ] The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exclusion; [ and ]

[ ~~(e)~~ (5) ] Minor drainage in surface waters is limited to drainage within areas that are part of an established [ ~~farming agriculture~~ ] or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to [ ~~farming agriculture~~ ]). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting surface water. Any discharge of dredged or fill material into surface water incidental to the construction of any such structure or waterway requires a VWP permit.

[ ~~(4)~~ d. ] "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm [ ; or ] forest [ ~~or ranch~~ ] land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of surface water to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities does not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

[ ~~(5)~~ e. ] "Seeding" means the sowing of seed and placement of seedlings to produce farm [ , ~~ranch~~ ] or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

[ ~~b. To fall under this exclusion, the activities specified in subdivision 6 7 a of this subsection must be part of an~~

~~established (i.e., ongoing) farming, or silviculture, or ranching operation, and must be in accordance with applicable best management practices set forth in either Virginia Forestry Best Management Practices for Virginia, Third Edition, 1997 or Virginia Agricultural BMP Manual, June 2000, which facilitate compliance with the § 404(b)(1) guidelines (40 CFR Part 230). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.~~

~~c. Activities which bring a new area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If the activity takes place outside surface waters, or does not involve a discharge, it does not need a § 404 Water Quality Certificate, and therefore no Virginia Water Protection Permit, whether or not it is part of an established farming, silviculture or ranching operation. ]~~

~~7. [ 8. H. ] Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, groins, levees, dams, riprap breakwaters, causeways, bridge abutments or approaches, and transportation and utility structures. Maintenance does not include modifications that change the character, scope, or size of the original design. In order to qualify for this exemption, emergency reconstruction must occur within a reasonable period of time after damage occurs.~~

~~8. [ 9. I. ] Construction or maintenance of farm or stock ponds or irrigation ditches [ , ] or the maintenance (but not construction) of drainage ditches. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exclusion. [ The maintenance dredging of existing ditches is included in this exclusion provided that the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch. This exclusion does not apply to the construction of new ditches or to the channelization of streams. ]~~

~~9. [ 10. J. ] Construction of temporary sedimentation basins on a construction site which does not include the placement of fill materials into surface waters [ or excavation in wetlands ]. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term "construction site" also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in run-off of sediment is controlled through the use of temporary sedimentation basins.~~

~~10. [ 11. Any activity with respect to which the Commonwealth of Virginia has an approved program under § 208(b)(4) of the Act which meets the requirements of § 208(b)(4)(B) and (C) (33 USC § 1288). ]~~

~~11. [ 12. K. ] Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with applicable best management practices (BMPs) set forth in either [ Virginia ] Forestry Best Management Practices for [ Water Quality in ] Virginia, [ Technical Guide, ] Third Edition, 1997, or Virginia Agricultural BMP Manual, [ June ] 2000, to ensure that flow and circulation patterns and chemical and biological characteristics of surface waters are not impaired, that the reach of such waters is not reduced, and that any adverse effect on the aquatic environment will otherwise be minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:~~

~~[ a. 1. ] Permanent roads (for [ farming agriculture ] or forestry activities), temporary access roads (for mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific [ farming agriculture ], silviculture or mining operations, and local topographic and climatic conditions;~~

~~[ b. 2. ] All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into surface waters;~~

~~[ c. 3. ] The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;~~

~~[ d. 4. ] The fill shall be properly stabilized and maintained to prevent erosion during and following construction;~~

~~[ e. 5. ] Discharges of dredged or fill material into surface waters to construct road fill shall be made in a manner which minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within state waters (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;~~

~~[ f. 6. ] In designing, constructing, and maintaining roads, vegetative disturbance in surface waters shall be kept to a minimum;~~

~~[ g. 7. ] The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;~~

~~[ h. 8. ] Borrow material shall be taken from upland sources whenever feasible;~~

~~[ i. 9. ] The discharge shall not take, or jeopardize the continued existence of a [ federally state- ] or [ state federally- ] listed threatened or endangered species as defined under the Endangered Species Act (16 USC § 1531 et seq.), in § 29.1-566 of the Code of Virginia and in 4 VAC 15-20-130 B and C, except as provided in § 29.1-568 of the Code of Virginia, or adversely modify or destroy the critical habitat of such species;~~

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# Final Regulations

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[ ~~j~~ 10. ] Discharges into the nesting and breeding areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

[ ~~k~~ 11. ] The discharge shall not be located in proximity of a public water supply or intake;

[ ~~l~~ 12. ] The discharge shall not occur in areas of concentrated shellfish production;

[ ~~m~~ 13. ] The discharge shall not occur in a component to the National Wild and Scenic River System;

[ ~~n~~ 14. ] The discharge material shall consist of suitable material free from toxic pollutants in toxic amounts; and

[ ~~o~~ 15. ] All temporary fills shall be removed in their entirety and the area restored to its original elevation.

## 9 VAC 25-210-70. Effect of a VWP permit.

A. *As to the permitted activity*, compliance with a VWP permit constitutes compliance with the VWP permit requirements of the [ ~~State Water Control~~ ] Law and regulations.

B. The issuance of a VWP permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

### PART II. VWP PERMIT APPLICATION AND ISSUANCE DEVELOPMENT.

## 9 VAC 25-210-80. Application for a VWP permit.

A. ~~Duty~~ *How to apply*. Any person who is required to obtain a Federal 404 permit or federal license or relicense which requires a § 401 Certification and proposes the discharge of dredged or fill material into or adjacent to surface waters, or proposes to construct an intake for the purpose of withdrawing water from surface waters which has the potential to affect the beneficial use of such waters, or is required to have a permit under 9 VAC 25-210-50, and who does not have an effective permit except persons excluded under 9 VAC 25-210-60, VWP permit shall submit a complete Joint VWP permit application to [ the ] State Water Control Board DEQ through [ the Virginia Marine Resources Commission ( VMRC ) ], consisting of the [ Joint Permit Application ( JPA ) ] with the DEQ [ ~~VWPP~~ VWP ] Addendum, or [ shall ] submit a complete registration statement for coverage under a VWP general permit, as applicable. [ ~~These applications are available from VMRC, the Norfolk District, U.S. Army Corps of Engineers, or DEQ. The Virginia Department of Transportation (VDOT) may use its monthly Interagency Coordination Meeting (IACM) process for submitting JPAs or registration statements. ]~~

1. A complete Joint Permit Application shall be completed and submitted to the Virginia Marine Resources Commission (VMRC) by any owner or applicant who discharges or proposes to discharge dredged or fill materials or requires a FERC permit before a Virginia Water Protection Permit can be issued. These applications are available from VMRC, the Norfolk District, U.S. Army Corps of Engineers, or the State Water Control Board. This

~~item does not apply where Nationwide or general permits, for which the board has waived certification, are applicable.~~

[ 1. The amount of time allowed by § 62.1-44.15:5 D of the Code of Virginia for DEQ to process a complete VWP permit application for any project, excluding water withdrawal projects, is 15 days for completeness review; 120 days for processing the complete application by issuing a VWP permit, issuing a VWP permit with conditions, denying the VWP permit, or deciding to conduct a public meeting or hearing; 60 days to hold a public meeting or hearing; and 90 days after the public meeting or hearing, if held, to make a final VWP permit decision. The required 15-day timeframe for completeness review for all projects, with the exception of minimum instream flow and water withdrawal projects, will commence upon receipt of the application by the DEQ office having authority over the project (i.e., the regional office in the region in which the project is located, or central office for VDOT projects). ]

2. A complete 404/401/VWPP application to the State Water Control Board, as a minimum, consists of the following:

a. A joint 404/401/VWPP application being completed in its entirety and all maps, attachments and addenda being included;

b. The application must be accompanied by a Local Government Approval Form;

c. The application must have an original signature;

d. A detailed location map of the impact area with the latitude and longitude, hydrologic unit code, stream classification, the drainage area of the affected surface waters and the watershed in which the surface water occurs clearly identified on the map. The map should be of sufficient detail such that the site may be easily located for site inspection;

e. An assessment of functional values of the affected surface waters including information on existing beneficial uses of the surface waters at the proposed project location;

f. A complete narrative description of the project, with detailed sketches, of the type of activity to be conducted and showing any physical alteration to surface waters;

g. If dredged or fill material is involved the applicant must provide evidence that the material is free from toxic contaminants, or that the material, if not free of contaminants, will be placed in an approved disposal area;

h. An assessment of the impacts of the activity to existing beneficial uses;

i. A delineation map of all wetlands if any on the site as required by the U.S. Army Corps of Engineers or U.S. EPA or the Federal Energy Regulatory Commission, including the data utilized to develop the delineation map and the latitude and longitude of the center of the wetland area to be impacted;

j. The drainage area of any wetland identified in subdivision i above, or the watershed in which the wetland occurs;

k. A plan of mitigation for unavoidable impacts to surface waters which must include: measures taken to avoid impacts, the measures proposed to reduce the impacts to surface waters and where impacts could not be avoided the means by which mitigation will be accomplished (e.g., channel relocation, aquatic habitat enhancement, wetland replacement, recreational enhancement etc.).

[ 2. There shall be no commencement of any activity for which a VWP permit is required prior to the issuance of a VWP permit. ]

3. In addition to requirements of subdivision 2 of this subsection, applications involving a surface water withdrawal or a FERC license or relicense also shall include:

a. The drainage area, the average annual flow and the median monthly flows at the withdrawal point;

b. The average daily withdrawal, the maximum daily and instantaneous withdrawals and information on the variability of the demand by season;

c. The consumptive use and the average daily return flow of the proposed project and the location of the return flow;

d. Information on the proposed use of the surface water and information on how the demand for surface water was determined;

e. Information on flow dependent beneficial uses at the proposed project location; and

f. Information on the aquatic life at the proposed project location, including species and habitat requirements.

4. Where an application is considered incomplete, the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a permit application, or submitted incorrect information in a permit application or in any report to the board, he shall immediately submit such facts or the correct information.

[ 1. The required 15-day timeframe for completeness review for all projects, with the exception of minimum instream flow and water withdrawal projects, will commence upon receipt of the application by the office having authority over the project (i.e., the regional office in the region in which the project is located, or central office for Virginia Department of Transportation projects). ]

5. Any person proposing a new discharge for an individual permit of dredged or fill material shall submit a complete Joint Permit Application at least 180 days prior to the date planned for commencement of the activity resulting in the discharge. Any person proposing a new discharge which

meets the criteria for a nationwide or state general permit shall submit a complete Joint Permit Application at least 60 days prior to the commencement of the activity resulting in the discharge. [ 2. There shall be no ] discharge of dredged or fill material [ commencement of any activity for which a VWP permit is required prior to the issuance of a VWP permit.

*Note: The amount of time allowed by statute for processing a complete application for any project, excluding water withdrawal projects, is 15 days for completeness review; 120 days for processing the complete application by issuing a VWP permit, issuing a VWP permit with conditions, denying the VWP permit, or deciding to conduct a public meeting or hearing; 60 days to hold a public meeting or hearing; and 90 days after the public meeting or hearing, if held, to make a final VWP permit decision, pursuant to § 62.1-44.15:5-D of the Code of Virginia. ]*

6. For any person possessing a § 401 Water Quality Certificate as of December 31, 1989, such certificate shall remain valid and enforceable until such time as the certificate expires, or reapplication or modification is necessary. For certificates issued under § 401 of the Act after December 31, 1989, the board may at its option issue a Virginia Water Protection Permit.

7. Any person with an existing unpermitted discharge of dredged or fill material shall submit a Joint Permit Application immediately upon discovery by the owner or within 30 days upon being requested to by the board which ever comes first.

8. Pursuant to § 62.1-44.15:3 of the Code of Virginia no application for a new permit will be deemed complete until the board receives notification from the local government body of the county, city or town in which the discharge is to take place that the location and operation of the discharging activity is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1, and Chapter 21 (§ 10.1-2100 et seq.) of Title 10.1 of the Code of Virginia where applicable.

## B. Duty to reapply.

1. Any permittee with an effective permit shall submit a new permit application at least 180 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.

2. Owners or persons who have effective permits shall submit a new application 180 days prior to any proposed modification to their activity which will:

a. Result in significantly new or substantially increased discharge of dredged or fill material, or significant change in the nature of the pollutants; or

b. Violate or lead to the violation of the terms and conditions of the permit or the water quality standards of the Commonwealth.

C. Informational requirements. All applicants for a Virginia Water Protection Permit shall provide information in accordance with § 404(b)(1) Guidelines for Specification of Disposal Sites of Dredged or Fill Material, 40 CFR 230.60 and

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# Final Regulations

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230.61, as revised 1990, where appropriate. All applicants for a permit must submit a complete permit application in accordance with 9 VAC 25-210-80 A.

~~D. Confidentiality. In accordance with § 62.1-44.21 of the Code of Virginia or as otherwise required by state or federal law and as provided in 9 VAC 25-210-80 A information submitted to the executive director in accordance with this subpart may be claimed as confidential.~~

## B. Informational requirements.

1. A complete VWP permit application, at a minimum, consists of ~~[ the following: ]~~ a JPA completed in its entirety with all appropriate maps, appendices, attachments and addenda included. The JPA must include the following information:

a. Name and address of ~~[ permittee applicant ]~~ (and property owner, if different).

b. Name and address of authorized agent (if applicable).

c. Name of the waterbody or receiving waters, as applicable, at the project site.

d. Name of the city or county where the project occurs.

e. Project purpose, need and description. The purpose and need for the project shall be specified. A complete narrative description of the project shall include: the type of activity to be conducted; any physical alteration to surface waters; and all impacts, permanent and temporary, associated with the project. Wetland impacts should be ~~[ defined by the ]~~ quantified according to their Cowardin classification ~~[ method ]~~ or similar terminology. Conversion of one type of wetland to another type of wetland is considered to be a permanent impact.

f. Amount of surface water impacts (wetlands, streams ~~[ and/or ]~~ open water) by type in square feet or acres, or linear feet for streams (if applicable).

g. Materials assessment. If dredged or fill material is involved, the applicant must provide evidence or certification that the material is free from toxic contaminants, or that the material, if not free of contaminants, will be placed in an approved disposal area. If applicable, the applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.

h. Proposed construction schedule. An estimate of the construction timeframe for the project will be used to determine the VWP permit term.

i. Signed and dated signature page. The application signature page, either on the copy submitted to VMRC or to the DEQ, must have an original signature.

j. Appendices (from the JPA) that apply to the project.

k. The ~~[ Department of Environmental Quality DEQ ]~~ Addendum, including latitude and longitude (to the nearest second) at the center of the project, United States Geological Survey Hydrologic Unit Code for the project and compensatory mitigation site, DEQ stream

classification, stream drainage area, functions and values assessment for wetlands impacts (if applicable), wetlands delineation information, state- and federally-listed threatened and endangered species information, mitigation plan (demonstrating avoidance and minimization to the maximum extent practicable, and compensation for unavoidable impacts).

(1) For wetland impacts greater than one acre and for all water withdrawals, the assessment of functional values of the affected surface waters must include information on existing beneficial uses of the surface waters and information on fish and wildlife resources and habitat at the proposed project location:

(a) Functional values may include: water quality, floodflow desynchronization, nutrient import or export, stormwater retention or detention, groundwater recharge or discharge, fish and wildlife habitat, recreation, education, and aesthetics. These values shall be assessed using an acceptable method appropriate for the type of impacted resource. This information will be used to determine the type of compensatory mitigation required to ensure no net loss of wetland functions.

(b) Beneficial uses ~~[ { means ]~~ both instream and offstream uses ~~[ } ]~~. Instream beneficial uses include, but are not limited to: the protection of fish and wildlife habitat ~~[ ; ]~~ maintenance of waste assimilation ~~[ ; ]~~ recreation ~~[ ; ]~~ navigation ~~[ ; ]~~ and cultural and aesthetic values ~~[ ; ]~~. Offstream beneficial uses include, but are not limited to: domestic (including public water supply) ~~[ ; ]~~ agricultural ~~[ ; ]~~ electric power generation ~~[ ; ]~~ and commercial and industrial uses.

(2) The assessment of potential impacts to federally-listed and state-listed threatened or endangered species shall include correspondence or documentation from federal or state resource agencies addressing potential impacts to listed species.

(3) A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types ~~[ should shall ]~~ be noted ~~[ using the ]~~ according to their Cowardin classification ~~[ scheme ]~~ or similar terminology. A copy of the ~~[ Corps of Engineers' ]~~ USACE delineation confirmation ~~[ , ]~~ or other correspondence from the USACE indicating their approval of the wetland boundary,  ~~]~~ shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. ~~[ If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP permit review. ]~~ The delineation map should also include the location of all impacted and non-impacted streams, open water and other surface waters on the site ~~[ , as well as the ]~~. The

approximate ] limits of any Chesapeake Bay Resource Protection Areas (RPAs) [ - shall be shown on the map as ] additional state or local requirements may apply if the project is located within an RPA.

(4) The plan of mitigation for unavoidable impacts to surface waters must include, in accordance with current federal regulations: measures taken to avoid impacts to the maximum extent practicable, the measures proposed to reduce the impacts to surface waters [ to the maximum extent practicable ], and where impacts could not be avoided, the means by which compensation will be accomplished [ to achieve no net loss of wetland acreage and function ].

(a) A narrative description must be provided detailing the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable (see 9 VAC 25-210-115 A) [ ;. ]

(b) The compensatory mitigation plan, unless dependent solely on wetland banking or [ ~~trust fund contributions~~ monetary contribution to an in-lieu fee fund ], shall include the goals and objectives of the plan, in terms of replacement of functions and values and expressed in acres of each wetland or stream type. The plan shall also address any inclusion of buffers, any structures and features necessary for the success of the site, and the schedule for compensatory mitigation site construction.

(c) In order for an application to be deemed complete, at a minimum, a conceptual compensatory mitigation plan must be submitted, and shall include: the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical [ year, a ] dry [ year ] and [ a ] wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect [ ~~this~~ these ] data; wetland delineation [ confirmation and data ] sheets [ ; and ] maps [ ~~and a jurisdictional determination from the Corps of Engineers~~ ] for existing wetland areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures [ ;. ]

(d) The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in [ ~~subpart (ii) above~~ subdivision 1 K (4) (c) of this subsection ], as well as a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and

reference wetlands [ or streams ] (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed restriction language for protecting the compensation [ ~~site(s)~~ site or sites ] in perpetuity. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation [ ~~site(s)~~ site ] boundary.

[ (e) Any compensation plan proposing to include contributions to an in-lieu fee fund shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated. ]

[ ~~(e)~~ (f) ] Any [ ~~wetland~~ ] compensation plan proposing the purchase of [ ~~wetland~~ mitigation ] banking credits shall include:

(i) The name of the proposed [ ~~wetland~~ ] mitigation bank [ ~~within the same or adjacent hydrologic unit code within the same river watershed with available credits~~ ];

(ii) The number of credits proposed to be purchased; and

(iii) Certification from the bank owner of the availability of credits.

[ ~~(f)~~ (g) ] Applicants proposing off-site compensatory mitigation, [ including ] purchase or use [ of ] mitigation bank credits, or contribution to an in-lieu fee fund shall [ first ] discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants must provide documentation as to why the proposed off-site compensatory mitigation [ ~~mitigation banking, or in-lieu fee fund~~ ] is ecologically preferable. The evaluation should include, at a minimum, a comparison of the following criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, [ ~~wetlands~~ surface water ] functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation [ ~~vs.~~ versus ] impacts, acquisition, constructability, and cost.

[ ~~(g)~~ (h) ] Any compensation plan involving stream restoration shall submit a plan that includes: goals and objectives in terms of water quality benefits; location map, including the latitude and longitude (to the nearest second) at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

[ (i) Compensation for open water impacts may be required, as appropriate, to protect state waters and



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# Final Regulations

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fish and wildlife resources from significant impairment.]

*l. Detailed project location map. The detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the impact area must include the latitude and longitude for the project, hydrologic unit code, and stream classification (if applicable) clearly identified on the map. The map should be of sufficient detail such that the site may be easily located for site inspection.*

*m. Project plan view and cross-sectional sketches. All plan view sketches and cross-sectional sketches must include, at a minimum, north arrow, scale, existing structures, existing and proposed (if available) contours, limit of [ jurisdictional surface water] areas, ebb and flood or direction of flow, impact limits, [ and] location and dimension of all structures in impact areas,*

*n. Application processing fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9 VAC 25-20-10 et seq. The board will continue to process the application, but the fee must be received prior to release of a draft VWP permit.*

*2. In addition to requirements of subdivision 1 of this subsection, applications involving a surface water withdrawal or a Federal Energy Regulatory Commission (FERC) license or re-license shall include:*

*a. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;*

*b. The average daily withdrawal, the maximum daily and instantaneous withdrawals and information on the variability of the demand by season;*

*c. Information on how the proposed withdrawal will impact flows in terms of flow reduction;*

*d. The consumptive use and the average daily return flow of the proposed project and the location of the return flow;*

*e. Information on the proposed use [ of] and need [ of for] the surface water and information on how the demand for surface water was determined (e.g., per capita use, population growth rates, new uses, changes to service areas, and if applicable, acreage irrigated and evapotranspiration effects);*

*f. Information on flow dependent beneficial uses at the proposed project location; and*

*g. Information on the aquatic life at the proposed project location, including species and habitat requirements.*

*C. Additional information. The board may require additional information [ if ] needed to evaluate compliance with this chapter.*

*D. Incomplete application. [ 4. ] Where an application is not accepted complete by the board within 15 days of receipt, the board may request additional specific information from the applicant, and may suspend processing of any application*

*until such time as the applicant has supplied missing or deficient information and the board considers the application complete. [ 2. ] Further, where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application, or submitted incorrect information in a VWP permit application or in any report to the board, he shall immediately submit such facts or the correct information.*

## **9 VAC 25-210-90. Conditions applicable to all VWP permits.**

**A. Duty to comply.** The permittee shall comply with all conditions of the VWP permit. Nothing in this chapter shall be construed to relieve the [ ~~VWP holder~~ permittee ] of the duty to comply with all applicable federal and state statutes, regulations [ ~~and toxic standards~~ ] and prohibitions. Any VWP permit ~~noncompliance violation~~ is a violation of the Act and law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of [ ~~an application for~~ ] a VWP permit ~~renewal application extension or reissuance~~.

**B. Duty to cease or confine activity.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

**C. Duty to mitigate.** The permittee shall take all reasonable steps to (i) ~~avoid all adverse environmental impact which could result from the activity,~~ (ii) ~~minimize the adverse environmental impact where avoidance is impractical,~~ and (iii) ~~provide mitigation of the adverse impact on an in-kind basis where impacts cannot be avoided minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.~~

## **D. VWP permit action.**

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in this ~~regulation~~ chapter.

2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. *If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit [ or comply with the provisions of 9 VAC 25-210-185].*

3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee [ ~~or other person at the board's discretion~~ ], or upon board initiative to reflect the requirements of any changes in the statutes or regulations [ , ] or as a result of VWP permit noncompliance as indicated in subsection A of this section [ , or for other reasons listed in 9 VAC 25-210-180].

**E. Inspection and entry.** Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit; [ and ]
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to provide information.

1. The permittee shall furnish to the board, ~~within a reasonable time,~~ any information which the board may request to determine whether cause exists for modifying, revoking, reissuing [ and or ] terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

G. Monitoring and records requirements.

1. Monitoring of *parameters, other than pollutants*, shall be conducted according to approved analytical methods as specified in the VWP permit ~~as approved by the board. The board may require sediment monitoring in all surface waters where it determines the potential presence of contaminated sediments exists. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.~~
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include:
  - a. The date, exact place and time of sampling or measurements;
  - b. The name of the individuals who performed the sampling or measurements;
  - c. The date [ and time ] the analyses were performed;
  - d. The name of the individuals who performed the analyses;
  - e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; ~~and~~

- f. The results of such analyses.; and
- g. Chain of custody documentation.

**9 VAC 25-210-100. Signatory requirements.**

[ Any application, report, or certification shall be signed as follows: ]

~~1. Application.~~

~~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.~~

~~d. [ 4. A. Application. ] Any application for a VWP permit under this chapter must bear the signatures of the responsible party and any agent acting on the responsible party's behalf applicant's signature or the signature of a person acting in the applicant's behalf, with the authority to bind the applicant.~~

[ ~~2. B. ] Reports. All reports required by VWP permits and other information requested by the board shall be signed by:~~

[ ~~a. 1. ] One of the persons described in [ ~~subdivision 1~~ ] ~~a, b or c~~ [ subsection A ] of this section; or~~

[ ~~b. 2. ] A duly authorized representative of that person. A person is a duly authorized representative only if:~~

[ ~~(1) a. ] The authorization is made in writing by a person described in [ ~~subdivision 1~~ ] ~~a, b or c~~ [ subsection A ] of this section; [ and ]~~

[ ~~(2) 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, 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) c. ] If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a~~

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# Final Regulations

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new authorization must be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.

[ ~~3~~ C. ] Certification of application and reports. Any person signing a document under [ ~~subdivision 1 or 2 subsection A or B~~ ] of this section 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."

## 9 VAC 25-210-110. Establishing applicable standards, limitations or other VWP permit conditions.

In addition to the conditions established in 9 VAC 25-210-90 and 9 VAC 25-210-100, each VWP permit ~~may~~ shall include conditions meeting the following requirements where applicable.

[ ~~4~~ A. ] Instream flow conditions. Subject to the provisions of *Chapter 24* (§ 62.1-242 et seq.) of *Title 62.1* of the Code of Virginia, and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in *Chapter 7* (§ 62.1-80 et seq.) of *Title 62.1* of the Code of Virginia, instream flow conditions may include but are not limited to conditions that limit the volume and rate at which water may be withdrawn at certain times and conditions that require water conservation and reductions in water use.

[ ~~2~~ B. ] Water quality standards and state requirements. The VWP permit shall include requirements to comply with all appropriate provisions of state laws and regulations. [ ~~VWP permit limitations shall be based on water quality, technology and/or best professional judgment as appropriate.~~ ]

[ ~~3~~ C. ] Toxic pollutants.

[ ~~a~~ 1. ] Where the board finds that appropriate limitations may not ensure compliance with the law or state water quality standards the board shall require the permittee to follow a program of biological or chemical toxics monitoring. The requirement may include a VWP permit reopener to allow the imposition of toxicity reduction or elimination measures determined to be necessary as a result of the board's evaluation of the results of the toxic monitoring and other available information. Based upon this determination, appropriate limitations will be included in the VWP permit to ensure the reduction or elimination of toxic pollutants and allow the board to ensure that the proposed project will comply with water quality standards and other appropriate requirements of [ ~~state the~~ ] law.

[ ~~b~~ 2. ] Limitations will be included in the VWP permit to control all toxic pollutants which the board determines (based on information reported in a VWP permit application or a notification or on other information) are or may be

discharged at a level which would adversely affect the beneficial use of the receiving waters.

[ ~~4~~ D. ] Duration of VWP permits. ~~Virginia water protection~~ VWP permits issued under this ~~regulation~~ *chapter* shall have an effective [ *date* ] and expiration date which will determine the life of the permit. ~~Virginia water protection~~ VWP permits shall be effective for a fixed term based upon the projected duration of the project, the length of any required monitoring, or other project operations or VWP permit conditions; however, the term shall not exceed 15 years and will be specified in the conditions of the VWP permit. The term of these VWP permits shall not be extended by modification beyond the maximum duration. Extension of VWP permits for the same activity beyond the maximum duration specified in the original VWP permit will require reapplication and reissuance of a new VWP permit [ *unless the permittee complies with the provisions of 9 VAC 25-210-185* ] .

[ ~~5~~ E. ] Monitoring requirements as conditions of VWP permits. ~~may include but are not limited to:~~

a. All permits shall specify:

(~~1~~) [ ~~a~~ 1. ] Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate) when required as a condition of the VWP permit;

(~~2~~) [ ~~b~~ 2. ] Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and composite samples;

(~~3~~) [ ~~c~~ 3. ] Applicable reporting requirements based upon the impact of the regulated activity on water quality; [ *and* ]

b. All permits shall include

[ ~~d~~ 4. ] Requirements to report monitoring results with a frequency dependent on the nature and effect of the [ *discharge regulated activity* ] , but in no case less than once per year.

c. In addition, the following monitoring requirements may be included in the permits:

(~~1~~) Mass or other measurements specified in the permit for each pollutant limited in the permit;

(~~2~~) The volume of effluent discharged; or

(~~3~~) Other measurements as appropriate, including intake water.

[ ~~6~~ F. ] Best Management Practices (BMPs). The VWP permit may require the use of BMPs to control or abate the discharge of pollutants.

[ ~~7~~ G. ] Reissued VWP permits. When a VWP permit is renewed or reissued, limitations, standards or conditions must be in conformance with current limitations, standards, or conditions.

[ ~~8~~ H. ] Reopening VWP permits. Each VWP permit shall have a condition allowing the reopening of the VWP permit for

the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits ~~include~~ *includes*, but ~~are~~ *is* not limited to:

~~a. When state law prohibits conditions in a permit which are more stringent than an applicable effluent limitation guideline;~~

~~b. When subsequently promulgated effluent guidelines are modified, and are based on best conventional pollutant control technology; or~~

~~c. when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.~~

## 9 VAC 25-210-115. Evaluation of mitigation alternatives.

A. Avoidance and minimization opportunities shall be evaluated as follows: The applicant must demonstrate to the satisfaction of the board that practicable alternatives, including design alternatives, have been evaluated and that the proposed activity, in terms of impacts to water quality and fish and wildlife resources, is the least environmentally damaging practicable alternative. The applicant must also demonstrate to the [ satisfaction of the ] board that all steps have been taken [ in accordance with the Guideline for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 (Federal Register December 24, 1980) ] to first avoid and then minimize adverse impacts to [ state surface ] waters to the maximum extent practicable. Measures, such as reducing the size, scope, configuration, or density of the proposed project, that would avoid or result in less adverse impact to [ state surface ] waters shall be considered to the maximum extent practicable.

B. Compensatory mitigation proposals shall be evaluated as follows:

1. On-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site [ ~~and/or~~ or ] out-of-kind compensation opportunities [ ~~may be considered~~ ] that prove to be more ecologically preferable or practicable [ may be considered ] . When the applicant can demonstrate satisfactorily that an off-site [ ~~and/or~~ or ] out-of-kind compensatory mitigation proposal is practicable and ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.

2. Compensatory mitigation for unavoidable project impacts may be met through wetland [ or stream ] creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. [ Compensation may incorporate ] preservation of wetlands [ or streams ] or preservation or restoration of upland buffers adjacent to state waters [ ~~is acceptable~~ ] when utilized in conjunction with creation, restoration or mitigation bank credits as appropriate to ensure protection [ ~~and/or~~

or] enhancement of state waters or fish and wildlife resources and their habitat.

[ 3. ] Generally, preference shall be given in the following sequence: restoration, creation, mitigation banking, in-lieu fee [ fund ] . However, the appropriate compensatory mitigation option for project impacts shall be evaluated on a case-by-case basis, in terms of replacement of wetland [ or stream ] acreage and function.

C. No net loss. Compensatory mitigation for project impacts shall be sufficient to achieve no net loss of existing wetland acreage and functions. Compensatory mitigation ratios appropriate for the type of aquatic resource impacted and the type of compensation provided shall be applied to permitted impacts to help meet this requirement. Credit may be given for preservation of upland buffers already protected under other ordinances to the extent that additional protection and water quality and fish and wildlife resource benefits are provided.

D. Alternatives analysis.

1. An alternatives analysis shall be required to justify that the following alternatives are ecologically preferable and practicable compensatory mitigation options to on-site, in-kind compensation: off-site [ ~~;-out-of-kind;~~ including ] purchase or use of mitigation bank credits [ ~~;~~ ] or contribution to an in-lieu fee fund [ , or out-of-kind ] .

2. An alternatives analysis shall include, but is not limited to, the following criteria, which shall be compared between the impacted and replacement sites: water quality benefits; acreage of impacts; distance from impacts; hydrologic source; hydrologic regime; watershed; functions and values; vegetation type; soils; constructability; timing; property acquisition; and cost. The alternatives analysis shall compare the ability of each compensatory mitigation option to replace lost acreage and function.

E. In-lieu fee fund approval.

1. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board and must be dedicated to the achievement of no net loss of wetland [ or stream ] acreage and function [ through the preservation, restoration and creation of wetlands or streams ] .

2. The board may approve the use of a fund by:

a. Approving use of a fund [ ~~on a VWP permit-specific basis for a specific project~~ ] when approving [ ~~an individual a~~ ] VWP permit [ or ] ;

b. Granting approval of a fund at a board meeting [ ~~;-or.~~

~~c. Entering into a memorandum of agreement with the fund administrator. ]~~

3. In order for the board to approve the use of a fund, the fund must meet the following criteria:

a. Demonstration of a no net loss policy in terms of wetland [ ~~and~~ ] or stream acreage and function [ by adoption of operational goals or objectives for

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# Final Regulations

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preservation, creation or restoration of wetland or stream acreage and function ];

b. ~~[ Inclusion of DEQ as a significant participant in the management or oversight of the fund; and Consultation with DEQ on selection of sites for preservation, restoration, or creation; ]~~

c. ~~[ Proof, and/or a commitment to provide proof in the future, of disbursement of fund contributions in the watersheds of project impacts through an annual report submitted to the board, which includes an accounting of financial receipts, expenditures and compensatory mitigation projects completed and in progress. A commitment to provide annual reports to the board detailing contributions received and acreage and type of wetlands or streams preserved, created or restored in each watershed with those contributions, as well as the mitigation credits contributed for each watershed of project impact;~~

d. A mechanism to establish fee amounts that will ensure each contribution will be adequate to compensate for the wetland or stream acreage and function lost in the impacted watershed; and

e. Such terms and conditions as the board deems necessary to ensure a no net loss of wetland or stream acreage and functions from permitted projects providing compensatory mitigation through contributions to the fund.

4. Such approval may be granted for up to five years and may be renewed by the board upon a demonstration that the fund has enhanced wetland or stream acreage or function through the preservation, creation or restoration of wetlands or streams. Such demonstration may be made with the reports submitted pursuant to subdivision 3 c of this subsection. ]

[ 4. 5. ] The board may approve the use of an in-lieu fund only after publishing a notice of its intent in the Virginia Register of Regulations at least 45 days prior to taking such action and after accepting and considering public comments on its approval of the fund for at least a 30-day period. Where approval is contemplated in accordance with subdivision 2 a of this subsection, compliance with the public notice and comment requirements for approval of the VWP permit shall meet this requirement.

F. Use of mitigation banks and multi-project mitigation sites. The use of mitigation banks or multi-project mitigation sites for compensating project impacts shall be deemed appropriate if the following criteria are met:

1. ~~[ Except as specified below, ] The bank or multi-project mitigation site [ must be in the same U.S.G.S. cataloging unit as the project impacts, or an adjacent cataloging unit within the same river basin meets the criteria and conditions found in § 62.1-44.15:5 E of the Code of Virginia ]:~~

~~[ a. The U.S.G.S. cataloging units are derived from the Hydrologic Unit Map of the United States (U.S.G.S. 1980).~~

~~b. The river basins are defined in the Water Quality Standards (9 VAC 25-260-5 et seq.).~~

~~c. The criteria do not apply if the following criteria are met:~~

~~(1) The impacts are a result of a Virginia Department of Transportation linear project or a locality project for a locality with a jurisdiction crossing multiple river basins;~~

~~(2) There is no practical compensatory mitigation alternative within the same river basin;~~

~~(3) The impacts for a single and complete project are less than one acre within a cataloging unit;~~

~~(4) There is no significant harm to water quality or fish and wildlife resources within the river basin of the impacts; and~~

~~(5) Impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed (within the Commonwealth) as close as possible to the impact, or impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205 are mitigated in-kind within those same cataloging units as close as possible to the impacts.~~

~~Note: After July 1, 2002, the above provision for cataloging units 02080108, 02080208, and 03010205 shall only apply to areas within these three units where overlapping watersheds occur, as determined by the board; ]~~

2. The bank or multi-project mitigation site is ecologically preferable to practicable on-site and off-site individual compensatory mitigation options;

3. For mitigation banks only, the banking instrument, if approved after July 1, 1996, has been approved by a process that involved public review and comment [ in accordance with federal guidelines ];

4. The applicant provides verification to DEQ of purchase of the required amount of credits; and

5. For multi-project mitigation sites, the VWP permit shall include conditions sufficient to ensure long term monitoring and maintenance of [ ~~wetlands~~ surface water ] functions and values.

## 9 VAC 25-210-120. Draft VWP permit formulation.

A. ~~Upon receipt~~ After evaluation of a complete application, the board shall make a decision to tentatively issue or deny the application VWP permit pursuant to this section.

B. If [ a the ] tentative decision is to issue the VWP permit then a draft VWP permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft VWP permit:

1. Conditions, discharge limitations, standards and other requirements applicable to the VWP permit;

2. Monitoring requirements; and

3. Requirements for mitigation of adverse environmental impacts.

B. C. If the tentative decision is to deny the application, the board shall do so in accordance with 9 VAC 25-210-230.

C. D. Should a decision be made to waive the requirement for a VWP permit, the board shall do so in accordance with 9 VAC 25-210-220.

## 9 VAC 25-210-130. State VWP general permits.

A. The board may issue state VWP general permits by regulation for certain specified categories of activities which have been determined to be of minimal environmental consequence as it deems appropriate.

A. After public interest review, and after such general permits have been issued, individual activities falling within the categories that are authorized do not have to receive an individual permit as described by the procedures of this chapter.

B. The board will determine by regulation the appropriate conditions, duration of the permit and restrictions to protect the interests of the citizens of the Commonwealth for each general permit issued.

C. B. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may exercise its authority to require individual applications and VWP individual permits rather than issuing approving coverage under a VWP general permit. Cases where an individual VWP permit may be required include the following:

1. Where the discharges are activity may be a significant contributors of contributor to pollution;
2. Where the discharger applicant or permittee is not in compliance with the conditions of the VWP general permit;
3. When a discharger an applicant or permittee no longer [ meets qualifies for coverage under the ] VWP general permit [ conditions ] ; [ and ]
4. Any owner When a permittee operating under a VWP general permit may request requests to be excluded from the coverage of the VWP general permit by applying for an a VWP individual permit.

[ 5. When an a VWP individual permit is issued to an owner a permittee, the applicability of the VWP general permit to the individual permittee is automatically terminated on the effective date of the VWP individual permit;

6. When a VWP general permit is issued which applies to an owner a permittee already covered by an individual permit, such owner person may request exclusion from the provisions of the VWP general permit and subsequent coverage under an a VWP individual permit; and

7. A VWP general permit may be revoked as to an individual owner permittee for any of the reasons set forth in 9 VAC 25-210-180 subject to appropriate opportunity for a hearing.

C. Coverage under a VWP general permit shall be approved for a fixed term for each category of activities based upon project length and duration. If the VWP general permit under which a project was authorized expires prior to the expiration

~~of the coverage term, the project shall remain authorized under the replacement VWP general permit unless project conditions have materially changed, and all conditions and requirements imposed under the initial VWP general permit shall be continued and enforced under the replacement VWP general permit. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.~~

C. When a VWP individual permit is issued to a permittee, the applicability of the VWP general permit to the individual permittee is automatically terminated on the effective date of the VWP individual permit.

D. When a VWP general permit is issued which applies to a permittee already covered by a VWP individual permit, such person may request exclusion from the provisions of the VWP general permit and subsequent coverage under a VWP individual permit.

E. A VWP general permit may be revoked from an individual permittee for any of the reasons set forth in 9 VAC 25-210-180 subject to appropriate opportunity for a hearing.

F. When all permitted activities requiring notification have been completed, the permittee shall be required to submit a notice of termination.

G. Activities authorized under a VWP general permit regulation shall be authorized for a fixed term based upon project length and duration. When a general permit regulation is amended or replaced, it shall contain provisions such that coverage authorized under the general permit existing as of the effective date of the amended or replacement VWP general permit regulation may continue under the amended or replacement VWP general permit and that all terms and conditions of the authorization may continue in full force and effect. Notwithstanding any other provision, a request for reissuance of authorization of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application for coverage and no application fee will be charged.

H. The board may certify, or certify with conditions, a nationwide or regional permit proposed by the USACE in accordance with § 401 of the federal Clean Water Act as meeting the requirements of this regulation and the requirements for a VWP general permit if the nationwide or regional permit, including any conditions contained in the certification:

1. Requires that wetland or stream impacts be avoided and minimized to the maximum extent practicable;
2. Does not allow impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources;
3. Requires compensatory mitigation sufficient to achieve no net loss of existing wetland acreage and function; and
4. Requires that compensatory mitigation be provided through wetland or stream creation or restoration, purchase or use of mitigation bank credits in accordance with § 62.1-

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# Final Regulations

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44.15:5 E of the Code of Virginia, contribution to an in-lieu fee fund approved by the board in accordance with these regulations, or preservation or restoration of upland buffers adjacent to wetlands or other state waters or preservation of wetlands or streams when done in conjunction with creation, restoration or mitigation bank credits.

Such certifications may be provided only after the board has advertised and accepted public comment on its intent to provide certification for at least 30 days.

I. Coverage under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with this section shall be deemed coverage under a VWP general permit upon submission of proof of coverage under the nationwide or regional permit and any other information required by the board through the certification process. Notwithstanding the provisions of 9 VAC 25-20-10, no fee shall be required from applicants seeking coverage under this subsection. ]

## PART III. PUBLIC INVOLVEMENT.

### 9 VAC 25-210-140. Public notice of VWP permit action and public comment period.

A. Every draft VWP permit shall be given public notice paid for by the ~~owner~~ applicant, by publication once in a newspaper of general circulation in the area affected by the [ ~~discharge proposed activity~~ ]. The public notice must be published within 14 days of issuance of a draft VWP permit, or the 120-day VWP permit processing timeframe will be suspended until such publication.

B. The board shall [ ~~allow provide~~ ] a [ *comment* ] period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request a public hearing [ *on the VWP permit* ]. All written comments submitted during the comment period shall be retained by the board and considered during its final decision on the VWP permit ].

C. The contents of the public notice of an application for a VWP permit or proposed VWP permit action shall include:

1. Name and address of the applicant. If the location of the activity differs from the address of the applicant the notice shall also state the location in sufficient detail such that the specific location may be easily identified;
2. Brief description of the business or activity to be conducted at the [ ~~discharge~~ ] site [ *of the proposed activity* ];
3. The name of the receiving waterway;
4. A statement of the tentative determination to issue or deny a VWP permit;
5. A brief description of the final determination procedure;
6. The address, *e-mail address* and phone number of a specific person at the state office from whom further information may be obtained; and
7. A brief description on how to submit comments and request a public hearing.

D. 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.

E. When a VWP permit is denied, the board will do so in accordance with 9 VAC 25-210-230.

### 9 VAC 25-210-150. Public access to information.

All information pertaining to VWP permit processing or in reference to [ any ] source of discharge of any pollutant, including discharges of dredged or fill material, activity requiring a VWP permit under this chapter shall be available to the public, unless the applicant has made a showing that the information ~~has been identified~~ is protected by the applicant as a trade secret covered by § 62.1-44.21 of the Code of Virginia. All information claimed confidential must be identified as such at the time of submission to the board and [ ~~Virginia Marine Resources Commission VMRC~~ ].

### 9 VAC 25-210-160. Public comments and hearing.

[ ~~A. The board shall provide a comment period of at least 30 days following the date of public notice of the formulation of a draft VWP permit during which interested persons may submit written comments and requests for an informal public hearing on the VWP permit. All written comments submitted during the comment period shall be retained by the board and considered during its final decision on the VWP permit.~~

~~B. A. ]~~ The executive [ ~~director board~~ ] shall consider all written comments and requests for an ~~informal~~ a public hearing received during the comment period, and shall make a determination on the necessity of an ~~informal~~ a public hearing in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.). All proceedings, ~~informal public~~ hearings and decisions from it will be in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.).

[ ~~C. B. ]~~ Should the executive [ ~~director board~~ ], in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.) ], determine to dispense with the ~~informal public~~ hearing, [ ~~he it~~ ] may grant the VWP permit, or, at [ ~~his its~~ ] discretion, transmit the application or request, together with all written comments from it and relevant staff documents and staff recommendations, if any, to the board for its decision.

[ ~~D. C. ]~~ Any ~~owner~~ [ *applicant or* ] *permittee* aggrieved by [ ~~any an~~ ] action of the board taken without a ~~formal public~~ hearing [ *, or inaction of the board,* ] may request in writing a [ ~~formal~~ ] hearing pursuant to Procedural Rule No. 1 [ (9 VAC 25-230-10 et seq.) ].

### 9 VAC 25-210-170. Public notice of hearing.

A. Public notice of any ~~informal public~~ hearing held pursuant to 9 VAC 25-210-160 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the activity is to occur; [ *and* ]
2. Notice of the ~~informal public~~ hearing shall be sent to all persons and government agencies ~~which that~~ received a copy of the notice of VWP permit application and to those

persons requesting an ~~informal~~ *public* hearing or having commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 and 2 of this section at least 30 days in advance of the ~~informal~~ *public* hearing.

C. The content of the public notice of any ~~informal~~ *public* hearing held pursuant to 9 VAC 25-210-160 shall include at least the following:

1. Name and address of each person whose application will be considered at the ~~informal~~ *public* hearing and a brief description of the person's activities or operations;
2. The precise location of such activity and the surface waters that will, or may, be affected. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information;
3. A brief reference to the public notice issued for the *VWP* permit application, including identification number and date of issuance unless the public notice includes the ~~informal~~ *public* hearing notice;
4. Information regarding the time and location for the ~~informal~~ *public* hearing;
5. The purpose of the ~~informal~~ *public* hearing;
6. A concise statement of the relevant water quality [ , or fish and wildlife resource ] issues raised by the persons requesting the ~~informal~~ *public* hearing;
7. Contact person and the address, *e-mail* address and phone number of the ~~State Water Control Board~~ *DEQ* office at which the interested persons may obtain further information or request a copy of the draft *VWP* permit prepared pursuant to 9 VAC 25-210-120; [ and ]
8. A brief reference to the rules and procedures to be followed at the ~~informal~~ *public* hearing.

D. Public notice of any [ ~~formal~~ *public* ] hearing held pursuant to 9 VAC 25-210-160 [ ~~D~~ C ] shall be in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 et seq.).

PART IV.  
VWP PERMIT MODIFICATION, REVOCATION, AND REISSUANCE, TERMINATION AND DENIAL.

**9 VAC 25-210-180. Rules for [ ~~the~~ ] modification, revocation, and reissuance and termination[ of *VWP* permits ] .**

- [ A. ] *VWP* permits shall be modified, revoked, and reissued, or terminated only as authorized by this section [ ~~as follows~~. ]
- [ ~~1~~. B. ] A *VWP* permit may be modified in whole or in part, revoked and reissued or terminated [ ; . ]
- [ ~~2~~. C. ] *VWP* permit modifications shall not be used to extend the term of a *VWP* permit [ ; beyond 15 years from the date of original issuance. ]
- [ ~~3~~. D. ] Modification, revocation and reissuance, or termination may be initiated by the board, on the request of

the permittee, or other person at the board's discretion under applicable laws or the provisions of this chapter [ ; and. ]

[ ~~4~~. E. ] After ~~public~~ notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a *VWP* permit can be terminated for cause. Causes for termination are as follows:

- [ ~~a~~. 1. ] Noncompliance by the permittee with any condition of the *VWP* permit;
- [ ~~b~~. 2. ] The permittee's failure in the application or during the *VWP* permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
- [ ~~c~~. 3. ] The permittee's violation of a special or judicial order;
- [ ~~d~~. 4. ] A determination *by the board* that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by *VWP* permit modification or termination; [ and ]
- [ ~~e~~. 5. ] A change in any condition that requires either a temporary or permanent reduction or elimination of any ~~discharge of dredged and fill material~~ *activity* controlled by the *VWP* permit [ ; and ]
- [ ~~f~~. 6. ] A *determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.*

**9 VAC 25-210-185. *VWP* permit extension.**

*Any permittee with an effective *VWP* permit for an activity that is expected to continue after the expiration date of the *VWP* permit, without any change in the activity authorized by the *VWP* permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the *VWP* permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the *VWP* permit. If the request for extension is denied, the *VWP* permit will still expire on its original date and, therefore, care should be taken to allow for sufficient time for the board to evaluate the extension request and to process a full *VWP* permit [ ~~amendment~~ modification ], if required.*

**9 VAC 25-210-190. Causes for modification.**

A *VWP* permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of *VWP* permit conditions that differ from those of the existing *VWP* permit or are absent from it;
2. When new information becomes available about the operation or ~~discharge~~ *activity* covered by the *VWP* permit which was not available at *VWP* permit issuance and would have justified the application of different *VWP* permit conditions at the time of *VWP* permit issuance;



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# Final Regulations

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3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;

4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;

~~5. 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 Act;~~

~~6.~~ 5. When changes occur which are subject to "reopener clauses" in the VWP permit; or

~~7.~~ 6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water [ ~~is are~~ ] detrimental to the instream beneficial use, and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit;

~~8. When the level of discharge of a pollutant not limited in a permit exceeds the level which can be achieved by available methodology for controlling such discharges;~~

~~9. When the permittee begins or expects to begin to cause the discharge of any toxic pollutant not reported in the application; or~~

~~10. When other states were not notified of the change in the permit and their waters may be affected by the discharge.~~

## 9 VAC 25-210-200. Transferability of VWP permits.

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer or has been revoked and reissued to the new ~~owner~~ permittee.

B. Automatic transfer. Any VWP permit shall be automatically transferred to a new ~~owner~~ permittee if:

1. The current ~~owner~~ permittee notifies the board *within* 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~~ permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability ~~between them~~ [ *liability to the new permittee* ], or that the [ *seller existing permittee* ] will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and

3. The board does not within the 30-day time period notify the existing ~~owner~~ permittee and the [ *proposed new* ] ~~owner~~ permittee of its intent to modify or revoke and reissue the VWP permit.

## 9 VAC 25-210-210. Minor modification.

A. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the VWP permit without following the public involvement procedures.

B. For [ ~~Virginia Water Protection Permits~~ VWP permits ], [ a ] minor modification may only:

1. Correct typographical errors;

2. Require *monitoring and* reporting by the permittee at a ~~greater~~ *different* frequency than required in the VWP permit, *based on new information justifying the change in conditions*;

3. Change an interim compliance date in a schedule of compliance to no more than ~~420~~ 180 days from the original compliance date and provided it will not interfere with the final compliance date;

4. Allow for a change in ownership or operational control when the board determines that no other change in the VWP permit is necessary, provided that a written agreement containing a specific date for transfer of VWP permit responsibility, coverage and liability from the current to the new permittee has been submitted to the board;

5. Change plans and specifications ~~where no change in discharge limitations in the permit are required~~ *that do not result in an increase to permitted project impacts*;

6. *Occur* when facility expansion, production increases and modification will not cause significant change in the discharge of pollutants; ~~and~~

7. Delete VWP permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated; [ *and* ]

8. *Occur when subsequent to issuance of a VWP individual [ or general ] permit, the permittee determines that additional wetland or stream impacts are necessary, provided that the [ unavoidable ] cumulative increase in the acreage of wetland impacts is not greater than 1/4 acre and the [ unavoidable ] cumulative increase in stream impacts is less than 50 linear feet, and also provided that the additional impacts are fully mitigated at ratios not less than compensatory mitigation ratios for the original impacts [ ; and. ]*

[ ~~9. Occur when subsequent to issuance of a VWP general permit, the permittee determines that additional wetland or stream impacts are necessary, provided that the cumulative increase in impacts does not exceed the maximum limit of wetland and stream impacts authorized by the appropriate VWP general permit, and also provided that the additional impacts are fully mitigated at ratios not less than compensatory mitigation ratios for the original impacts. ]~~

## 9 VAC 25-210-220. Waiver of [ a ] permit VWP [ permits permit ].

A. ~~In applications where the State Water Control Board determines that a proposed activity or activities will have~~

~~minimal or no environmental consequence, a waiver of the requirement for a permit may be granted.~~

~~B. The applicant and the Corps of Engineers will be notified of this decision. Waiver of the requirement for a permit shall be considered when:~~

- ~~1. The impact of the proposed activity is of minimal environmental consequence;~~
- ~~2. The impacts of the proposed activity are temporarily in nature and recovery of the beneficial use of the area is ensured; and~~
- ~~3. The impacts of the proposed activity will be fully and successfully mitigated by the applicant such that additional conditions imposed by the board are unnecessary.~~

~~A. The board may waive permitting requirements when the board determines that [ a proposed project impacts] an isolated wetland [ that ] is of minimal ecological value [ as defined in 9 VAC 25-210-10. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver ].~~

~~B. The board may waive the requirement for a VWP individual permit when the proposed activity qualifies for [ an Abbreviated Standard Permit a permit ] issued by the [ U.S. Army Corps of Engineers USACE ] and receives a permit from the [ Virginia Marine Resources Commission VMRC, pursuant to Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia ], and the activity does not [ involve impacts to nontidal surface waters or impact ] instream flows.~~

#### **9 VAC 25-210-230. Denial of the VWP permit.**

~~A. The board shall make a decision to tentatively deny the VWP permit if the requirements of this chapter are not met. Basis for denial include, but are not limited to, the following:~~

- ~~1. The project will result in violations of water quality standards or will impair the beneficial uses of state waters.~~
- ~~2. As a result of project implementation, shellfish waters would be condemned in accordance with 9 VAC 25-260-5 et seq.~~
- ~~3. The project that the applicant proposed fails to adequately avoid and minimize impacts to state waters to the maximum extent practicable.~~
- ~~4. The proposed compensatory mitigation plan is insufficient or unsatisfactory for the proposed impacts [ and fails to achieve no net loss of existing acreage and function ].~~
- ~~5. The Department of Game and Inland Fisheries indicates that natural or stockable trout waters would be permanently and negatively impacted by the proposed activity.~~
- ~~6. The proposed activity is prohibited by 9 VAC 25-210-50.~~
- ~~7. The effect of project impacts, together with other existing or proposed impacts to wetlands, will cause or contribute to a significant impairment of state waters or fish and wildlife resources.~~

~~[ 8. Failure to submit the required permit fee in accordance with 9 VAC 25-40-80 B 1 n. ]~~

~~A. B. The applicant shall be notified by letter of the staff's board's preliminary decision to recommend to the board denial of tentatively deny the VWP permit requested.~~

~~B. The staff shall provide sufficient information to the applicant regarding the rationale for denial, such that the applicant may, at his option, modify the application in order to achieve a favorable recommendation, withdraw his application, or proceed with the processing on the original application.~~

~~C. Should the applicant withdraw his application, no VWP permit will be issued.~~

~~D. Should the applicant elect to proceed with the original project as originally proposed, the staff shall make its recommendation of denial to the executive director for determination of the need for public notice of board may deny the application and advise the applicant pursuant to Procedural Rule No. 1 (9 VAC 25-230-10 et seq.) of the applicant's right to a formal public hearing to consider the denial as provided for in accordance with Procedural Rule No. 4 (9 VAC 25-230-10 et seq.).~~

#### **PART V. ENFORCEMENT.**

#### **9 VAC 25-210-240. Enforcement.**

The board may enforce the provisions of this chapter utilizing all applicable procedures under the law and § 10.1-1186 of the Code of Virginia.

#### **PART VI. MISCELLANEOUS.**

#### **9 VAC 25-210-250. Delegation of authority.**

The executive director, or a designee acting for him, 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 25-210-260. Transition.**

~~Upon the effective date of this chapter the following will occur:~~

~~1. Procedural Rule No. 3 (9 VAC 25-240-10 et seq.) will be superseded. A. All applications received after the effective date of the new regulation [ May 20, 1992 from VDOT on or after August 1, 2001, or all other applications received on or after October 1, 2001 ], will be processed in accordance with these new procedures.~~

~~2. B. Section 401 Water Quality Certificates issued prior to December 31, 1989, have the same effect as a [ Virginia Water Protection Permit VWP permit ]. Water Quality Certificates issued after this date will remain in effect until reissued as Virginia Water Protection Permits.~~

#### **DOCUMENTS INCORPORATED BY REFERENCE**

*Virginia Stormwater Management Handbook, First Edition, 1999, Volume I, Chapter 3, Department of Conservation and Recreation.*

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# Final Regulations

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*Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report.*

[~~Virginia~~] *Forestry Best Management Practices [ (BMP) Guide ] for [ Water Quality in ] Virginia [ Technical Guide ], Third Edition, 1997, Department of Forestry.*

*Virginia Agricultural Best Management Practices (BMP) Manual, Revised June 2000, Department of Conservation and Recreation.*

*Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.*

[ *Guideline for Specification of Disposal Sites for Dredged of Fill Material, 40 CFR Part 230 (Federal Register December 24, 1980).* ]

**NOTICE:** The forms used in administering 9 VAC 25-210-10 et seq., Virginia Water Protection Permit Program Regulation, are not being published due to the large number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

~~DEQ Department of Environmental Quality Water Division Permit Application Fee.~~

~~Local Government Ordinance Form (eff. 8/93).~~

~~Local, State, Federal Joint Permit Application NAOFM 1065 VMRC 30-300 (rev. 1/00).~~

~~Virginia Scoping Coordination Federal and State Agencies Joint General Permit, Form AES-03-1.1 (eff. 9/94).~~

*Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia.*

VA.R. Doc. No. R00-201; Filed June 13, 2001, 10:55 a.m.

\* \* \* \* \*

**Title of Regulation:** 9 VAC 25-680-10 et seq. **Virginia Water Protection General Permit for Linear Transportation Projects.**

**Statutory Authority:** §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

**Effective Date:** August 1, 2001.

### Summary:

*The regulations address a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for wetland impacts resulting from the activities of transportation projects.*

*Numerous changes have been made throughout the final regulation. Most of these involved clarification of definitions, the distinction between the general permit regulation and an authorization approved under the general permit, and that the permits do not apply to tidal waters.*

*The procedures for data searches pertaining to threatened and endangered species were modified. Certain exclusions and special conditions were added or modified to conform to the other general permits. The evaluation of compensatory mitigation options, including compensation ratios, was clarified. A notice of planned change section was added, and the section on general permit modification deleted, to establish the correct procedure for modifying general permit authorizations.*

**Summary of Public Comments and Agency's 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 Regulation.

**Agency Contact:** Copies of the regulation may be obtained from Elen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375.

## CHAPTER 680.

### VIRGINIA WATER PROTECTION GENERAL PERMIT FOR LINEAR TRANSPORTATION PROJECTS.

#### 9 VAC 25-680-10. Definitions.

*The words [ ; and ] terms [ ~~and provisions~~ ] used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise [ or unless otherwise indicated below ] .*

*[ "Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.*

*"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement. ]*

*"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.*

*"Cross-sectional [ ~~sketch~~ drawing ] means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.*

*"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and is usually dominated by perennial plants.*

*"FEMA" means Federal Emergency Management Agency.*

[ "Forebay" means a deeper area at the upstream end of a stormwater management facility that would be maintained through excavation. ]

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Impacts" means results caused by human-induced activities conducted in surface waters, [ ~~such as filling, dumping, dredging, excavating, permanent flooding or impounding or any other new activities on or after October 1, 2001, including draining, that significantly alter or degrade existing acreage or functions of the surface waters as specified in § 62.1-44.15:5 D of the Code of Virginia~~ ].

[ "Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility. ]

"Linear transportation project" means [ a project for ] the construction, expansion, modification or improvement of features such as, but not limited to, roadways, railways, trails, bicycle and pedestrians paths, and airport runways and taxiways, including all attendant features both temporary and permanent. Nonlinear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars are not included in this definition.

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this regulation, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

[ ~~"Registration statement" means a form of preconstruction application or notification.~~ ]

"Riprap" means a layer of material such as stone or chunks of concrete on an embankment slope for the purpose of preventing erosion.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation less than six meters (20 feet) tall. The species include tree shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Single and complete project" means the total project proposed or accomplished by one person [ and which has independent utility ]. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate [ surface ] water [ ~~of the United States~~ ] (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped

wetland, lake, etc. are not separate waterbodies. [ ~~A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.~~ ]

"State programmatic general permit" means a [ ~~type of~~ ] general permit issued by the Department of the Army [ and founded on an existing state, local or federal agency program that is designed to avoid duplication with another federal, state or local program provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs ].

[ "Temporary impact" means an impact caused by activities in surface waters, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland functions and values. ]

"Up to one tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

"Up to two acres" means 0.00 to 2.00 acres, rounded to the second decimal place.

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a [ ~~wetland surface water~~ ] to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

## **9 VAC 25-680-20. Purpose; delegation of authority; effective date of VWP general permit.**

A. The purpose of this regulation is to establish [ VWP ] General Permit Number WP3 under the [ ~~VWPP VWP permit~~ ] regulation to govern impacts related to the construction and [ ~~operation~~ maintenance ] of Virginia Department of Transportation [(VDOT)] or other linear transportation projects. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director or [ ~~an authorized representative~~ his designee ] may perform any act of the board provided under this chapter except as limited by § 62.1-44.14 of the Code of Virginia.

[ ~~C. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure(s).~~

~~D. C. ] This VWP general permit regulation will become effective on [ October 1, 2001, ] and will expire [ five years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-680-30 and the receipt of this VWP~~

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# Final Regulations

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~~general permit on October 1, 2006, for general linear transportation projects and will become effective August 1, 2001, and will expire August 1, 2006, for linear transportation projects of the Virginia Department of Transportation ].~~

~~[ E. For each individual activity requiring notification, coverage will continue for a maximum of five years from the date of authorization of coverage under this VWP general permit to an individual person or applicant.~~

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-680-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of five years. ]

## 9 VAC 25-680-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact up to two acres of [ nontidal ] surface waters [ ( ) including [ wetlands ], with a maximum of up to ] 500 linear feet of perennial stream [ channel ] and [ up to ] 1,500 linear feet of nonperennial stream [ channel ], for linear transportation projects provided that the applicant submits notification as required in 9 VAC 25-680-50 and 9 VAC 25-680-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limitations and other requirements of 9 VAC 25-680-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another [ applicable ] VWP [ general ] permit, in lieu of coverage under this VWP general permit.

2. Impacts [ result from a single and complete project ], including all attendant features, both temporary and permanent [ are part of a single and complete project.

~~a. Activities authorized include the construction, expansion, modification or improvement of linear transportation crossings (e.g., highways, railways, trails, and airport runways and taxiways).~~

~~b. a. ] Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of state waters (several single and complete projects), the board may at its discretion require [ an individual VWP a VWP individual permit ].~~

~~[ e. b. ] For the purposes of this chapter, when an interchange has multiple crossings of state waters, the entire interchange shall be considered the single and complete project.~~

~~[ 3. Impacts from a single and complete project do not exceed two acres of surface waters (including wetlands), with a maximum of 500 linear feet of perennial stream channel and 1,500 linear feet of nonperennial stream channel.~~

~~a. The linear feet of stream impact applies to all components of the project, including any structures and stream channel manipulations.~~

~~b. Stream channel manipulations (e.g., tie-ins or cleanout) may not exceed 100 linear feet on the upstream or downstream end of a crossing.~~

3. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations. Stream channel manipulations (e.g., tie-ins or cleanout) may not exceed 100 linear feet on the upstream or downstream end of a stream crossing. ]

4. Dredging does not exceed 5,000 cubic yards. [ Only mechanical dredging is authorized. Dredged areas shall not exceed the controlling depths for ingress or egress, whichever is less. ]

5. Compensatory mitigation for unavoidable impacts is provided in the form of any one or combination of the following: creation, restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. [ Compensation may incorporate ] preservation of wetlands or preservation or restoration of upland buffers adjacent to surface waters [ may be acceptable ] when utilized in conjunction with creation, restoration or mitigation bank credits.

~~[ 6. Compensatory mitigation for unavoidable impacts of one-tenth of an acre or greater is provided at the following compensation-to-loss ratios:~~

<del>Emergent Wetlands</del>	<del>1:1</del>
<del>Scrub/Shrub Wetlands</del>	<del>1.5:1</del>
<del>Forested Wetlands</del>	<del>2:1</del>
<del>[ Open water (ponds, lakes, etc.)</del>	<del>1:1 (in-kind or out-of-kind)</del>

~~7. Compensatory mitigation for unavoidable impacts to streams is provided at a 1:1 replacement to loss ratio via stream relocation, restoration or purchase of mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration.~~

B. Activities that may be authorized under this VWP general permit include the construction, expansion, modification or improvement of linear transportation crossings (e.g., highways, railways, trails, bicycle and pedestrian paths, and airport runways and taxiways, including all attendant features both temporary and permanent. ]

~~[ B. C. ] The board waives the requirement for coverage under a VWP permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9 VAC 25-210-10.~~

~~[ Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver. ]~~

~~[ C. D. ] Receipt of this VWP general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.~~

~~[ E. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures. ]~~

[ ~~D. F.~~ ] Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers [ USACE ], and for which the board has issued [ ~~or waived~~ ] § 401 certification existing as of the effective date of this regulation, shall constitute coverage under this VWP general permit [ ~~until such time as unless~~ ] a state programmatic general permit is approved for the covered activity or impact. [ Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. ]

**9 VAC 25-680-40. [ Prohibitions Exceptions to coverage ].**

A. [ Authorization for coverage under ] this VWP general permit will not apply in the following areas:

1. [ ~~Wetland areas~~ Wetlands ] composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thuyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages [ ~~may shall~~ ] be based upon [ ~~stem counts, either~~ ] basal area [ ~~;~~ ] or percent [ ~~aerial~~ areal ] cover.
2. [ ~~State Surface~~ ] waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. [ Authorization for coverage under ] this VWP general permit cannot be used in combination with [ authorizations for coverage under ] other VWP permits to impact greater than two acres of [ nontidal ] surface waters [ { } ] including [ ~~wetlands, with a maximum of more than~~ ] 500 linear feet of perennial stream [ channel ] [ ~~and or more than~~ ] 1,500 linear feet of nonperennial stream [ channel ]. [ ~~The use of~~ ] More than one [ authorization for coverage under this ] VWP [ ~~General Permit Number WP3~~ ] general permit ] for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the above-mentioned limits.

C. This VWP general permit may not be used to authorize nonlinear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

D. The activity to impact surface waters shall not have been prohibited by state law [ ; or ] regulations [ ~~or policies~~ ], nor shall it contravene [ ~~the applicable~~ ] Water Quality Standards (9 VAC 25-260-5 et seq.) [ ~~;~~ ] as amended or adopted by the board ].

E. The board shall deny coverage under this VWP general permit to any applicant conducting activities [ ~~which the board determines that~~ ] cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities [ ~~which the board determines~~ ] that together with other existing or proposed impacts to wetlands will cause or

contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the [ peak ] hydraulic flow characteristics, increase flooding, or cause more than minimal degradation of the water quality of any stream.

G. This VWP general permit may not be used for:

1. Any stormwater management facility that is located in perennial streams or in oxygen- or temperature-impaired waters;
2. The construction of an irrigation impoundment on a perennial stream;
3. Any water withdrawal activities;
4. The location of animal feeding operations or waste storage facilities in state waters;

[ ~~5. Restoration, creation or any fill in perennial streams in association with the establishment of a mitigation bank.~~

~~6.~~ 5. ] The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the [ ~~concrete or grout bags is contained within a cofferdam(s)~~ ] area is contained within a cofferdam or the work is performed in the dry; ]

[ ~~7.~~ 6. ] Return flow discharges from dredge disposal sites;

[ ~~8.~~ 7. ] Overboard disposal of dredge materials;

[ ~~9. Disposal of dredge materials in wetlands.~~

~~10.~~ 8. ] Dredging in marinas [ ~~or maintenance dredging of marine terminals.~~ ; ]

[ ~~11.~~ 9. ] Dredging of shellfish areas, submerged aquatic vegetation beds and other highly productive areas;

[ ~~12.~~ 10. ] Federal navigation projects;

[ ~~13.~~ 11. ] The taking of threatened or endangered species [ ~~;~~ ] in accordance with the following: ]

a. Pursuant to § 29.1-564 of the Code of Virginia: "[ ~~Taking, transportation, sale, etc., of endangered species is prohibited.~~ ] The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the [ U.S. United States ] Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568."

b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 B and C, the taking, transportation, processing, sale, or offer [ ~~of for~~ ] sale within the Commonwealth of any state-listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

**9 VAC 25-680-50. Notification.**

A. Notification to the board will be required prior to construction, as follows:

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# Final Regulations

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1. [ An application for ] proposed impacts greater than one-tenth of an acre of [ ~~wetlands surface waters~~ ] shall be [ ~~reported by the applicant to DEQ submitted~~ ] via [ the entire a ] registration statement [ ~~as described in 9 VAC 25-680-60~~ ] that includes all information pursuant to 9 VAC 25-680-60].

2. [ ~~For~~ ] Proposed impacts up to one-tenth of an acre [ shall be reported via a registration statement that includes only the following information: ] subdivisions [ ~~B~~ ] 1 through 9, 11, 17, 19 and [ ~~24 20~~ ] of [ ~~the registration statement (9 VAC 25-660-60)~~ ] shall be provided 9 VAC 25-680-60 B].

B. [ ~~All notifications shall include documentation from the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation's Division of Natural Heritage indicating that the project will not affect any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat or heritage resource areas. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may serve as the registration statement provided that all information required pursuant to 9 VAC 25-680-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit.~~ ]

C. The [ ~~DEQ board~~ ] will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation [ , the Virginia Department of Agriculture and Consumer Services ] and the Virginia Department of Game and Inland Fisheries [ regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit ].

## 9 VAC 25-680-60. Registration statement.

A. Registration statements shall be filed with the board as follows:

1. The applicant shall file a complete registration statement, as described in 9 VAC 25-680-50, for a VWP General Permit Number WP3 for [ impacts to ] surface water [ impacts ] from linear transportation projects which will serve as a notice of intent for coverage under this VWP general permit. [ ~~The Virginia Department of Transportation may use its monthly Interagency Coordination Meeting (IACM) process for submitting registration statements.~~ ]

2. Any [ ~~person applicant~~ ] proposing an activity under this VWP general permit [ ~~shall is advised to~~ ] file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit. [ ~~The VDOT may use its monthly IACM process for submitting registration statements.~~ ]

[ ~~3. Any person conducting an activity without a VWP permit, who qualifies for coverage under this VWP general permit, shall file the registration statement immediately upon discovery of the unpermitted activity.~~ ]

B. The required registration statement shall contain the following information:

1. The applicant's name, mailing address, telephone number and, if applicable, fax number;

2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number;

3. The existing VWP permit number (if applicable);

4. The name of the project, purpose of project, and a description of the activity;

5. The name of [ the ] water [ ~~body(ies)~~ ] body or water bodies ] or receiving stream, as applicable;

6. The hydrologic unit code (HUC) for the project area;

7. The name of the city or county where the project is located;

8. Latitude and longitude (to the nearest second) from a central location within the project limits;

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection;

10. The appropriate appendices from the [ ~~Joint Permit Application. JPA;~~ ]

11. Project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing and proposed contours (if available), limit of [ ~~jurisdictional surface water~~ ] areas, direction of flow, ordinary high water mark, impact limits, location and dimension of all proposed structures in impact areas. Cross-sectional sketches, with the above information, may be required for certain projects to demonstrate minimization of impacts;

12. Dredge material management plan (for dredging projects only) including plan and cross-section view drawings of the disposal [ ~~and/or or~~ ] dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal [ ~~and/or or~~ ] dewatering site;

[ ~~13. Wetland impact information for both temporary and permanent impacts, including a description of the impact, the impact area (in square feet or acres), and the wetland classification based on Cowardin classification system or similar terminology.~~ ]

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the impact area (in square feet, linear feet, or acres). Wetland impacts should be quantified according to their Cowardin classification or similar terminology; ]

14. Functional values [ ~~assessments~~ ] assessment ] for impacts to wetlands greater than one acre. The functional assessment shall consist of a narrative description of the existing wetland functions and values and the impact that the project will have on these functions and values;

15. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable as required by 9 VAC 25-210-115 A;

16. A description of the intended compensation for unavoidable impacts [ -, including: ]

a. A conceptual compensatory mitigation plan, at a minimum, must be submitted, and shall include the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical [ year, a ] dry [ year, ] and [ a ] wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect [ this these ] data; wetland delineation [ confirmation, data ] sheets, [ and ] maps [ and a jurisdictional determination from the Corps of Engineers ] for existing wetland areas on the proposed [ site(s) site or sites ]; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

b. Applicants proposing to [ mitigate compensate ] off-site, [ ~~to~~ including ] purchase [ or use of ] mitigation bank credits, or [ ~~to contribute~~ contribution ] to an in-lieu fee [ program fund ] shall [ first ] discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants must provide documentation as to why the proposed off-site compensatory mitigation [ , mitigation banking, or in-lieu fee fund contribution ] is ecologically preferable. The evaluation should include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, [ wetlands surface water ] functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.

c. Any [ applicant proposing ] compensation [ plan ] involving stream restoration shall submit a plan that includes goals and objectives in terms of water quality benefits; location map, including the latitude and longitude at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

d. Any wetland compensation plan proposing to include contributions to [ an ] in-lieu fee [ programs fund ] shall include proof of the willingness of the entity to accept the donation and [ the assumptions of ] documentation of how the amount of the contribution was calculated.

e. Any [ wetland ] compensation plan proposing the purchase of [ wetland mitigation ] banking credits shall include:

(1) The name of the proposed [ wetland ] mitigation bank [ within the same or adjacent hydrologic unit code within the same river watershed with available credits ];

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits.

[ f. A final compensatory mitigation plan may be submitted, if available.

~~(1) The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget (nontidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only), plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of panoramic photographic stations and ground water monitoring wells (or tide gages, for tidal sites). Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas approximately 200 miles from the project site.~~

~~(2) The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. Any restrictions, protections, or preservations, or any similar instrument provided as part of the compensatory mitigation plan, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of an VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval.~~



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# Final Regulations

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~~This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.~~

~~(3) If the final compensatory mitigation plan is submitted prior to authorization for coverage under this VWP general permit, however, it is not deemed complete until after the authorization, the board shall review the plan and approve, approve with modifications or disapprove within 45 days of the completeness determination.~~

~~17. An aerial photo or scale map which clearly shows the property boundaries, location of surface waters including all wetland boundaries, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review.~~

f. The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16 a of this subsection, as well as a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed restriction language for protecting the compensation site or sites in perpetuity. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary;

17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and nonimpacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should be shown on the map, as other state or local requirements may apply if the project is located within an RPA; ]

18. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site;

~~[ 19. Documentation from the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation's Division of Natural Heritage~~

~~regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.~~

20. 19. ] The appropriate application processing fee for a VWP permit (9 VAC 25-20-10 et seq.) [ ; and ]

[ 24. 20. ] 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."

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve [ ~~the use of~~ authorization under ] this VWP general permit. However, these conditions must be consistent with the [ ~~VWPP~~ VWP permit ] regulation and may not override or [ ~~conflict with~~ contradict ] the existing conditions of this VWP general permit related to impacts and [ ~~compensatory~~ ] mitigation.

E. Incomplete registration statement. Where a registration statement is [ ~~considered~~ ]-incomplete, the board [ ~~may~~ shall ] require the submission of additional information [ ~~after a registration statement has been filed,~~ ] and may suspend processing [ ~~of any registration statement~~ ] until such time as the applicant has supplied [ the ] missing or deficient information and [ ~~the board considers~~ ] the registration statement [ is ] complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

**9 VAC 25-680-70. Mitigation.**

A. For the purposes of this VWP general permit, the board [ shall may ] accept any one or combination of the following as compensation for unavoidable impacts: wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. [ Compensation may incorporate ] preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters [ is acceptable ] when utilized in conjunction with creation, restoration or mitigation bank credits.

B. Compensatory mitigation for unavoidable wetland impacts shall be provided at the following compensation to impact ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1.
2. Impacts to scrub shrub wetlands shall be mitigated at 1.5:1.
3. Impacts to emergent wetlands shall be mitigated at 1:1.

[ 4. Impacts to open water (ponds, lakes, etc.) shall be mitigated at 1:1.

C. ~~Credits or units of wetland mitigation shall be calculated according to the following ratios:~~

- ~~1. One acre of wetland creation equals one unit of wetland mitigation.~~
- ~~2. One acre of wetland restoration equals one unit wetland mitigation.~~
- ~~3. Ten acres of wetland preservation equals one unit of wetland mitigation.~~
- ~~4. Twenty acres of upland buffer preservation equals one unit of wetland mitigation.~~
- ~~5. One mitigation bank credit equals one unit of wetland mitigation.~~
- ~~6. The monetary equivalent of one acre of wetland creation or restoration in the form of a payment to a wetland trust fund equals one unit of wetland mitigation.~~

C. Compensatory mitigation for unavoidable impacts to streams shall be provided at a 1:1 replacement to loss ratio via stream relocation, restoration, riparian buffer establishment, or purchase of mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, when feasible.

D. Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment. ]

[ ~~D. E. ] In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.~~

[ ~~E. F. ] The use of mitigation banks for compensating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1- 44.15:5 E of the Code of Virginia and 9 VAC 25-210-115 [ F ] , and the~~

applicant provides verification to [ ~~DEQ the board~~ ] of purchase or debiting of the required amount of credits.

[ ~~F. Unavoidable impacts to streams shall be compensated on a one-to-one basis through the restoration or preservation of similar order streams, when practicable. ]~~

**9 VAC 25-680-80. [ Modification Notice of planned changes ].**

[ A. ] Authorization under this VWP general permit may be modified [ ~~provided the total impacts to nontidal surface waters for a single and complete project do not exceed two acres, 500 linear feet of perennial stream, or 1,500 linear feet of nonperennial stream when any of the following developments occur~~ subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. ]

[ ~~1. When additions or alterations have been made to the project which require the application of VWP permit conditions that differ from those of the existing VWP general permit or are absent from it;~~

~~2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at the time of VWP general permit coverage and would have justified the application of different VWP permit conditions at that time;~~

~~3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;~~

~~4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act; and~~

~~5. When changes occur that are subject to "reopener clauses" in the VWP general permit;~~

B. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation. ]

**9 VAC 25-680-90. Notice of termination.**

When all permitted activities requiring notification under 9 VAC 25-680-50 A 1 have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

1. Name, mailing address and telephone number of the [ applicant permittee ];
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. The following certification:

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# Final Regulations

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"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in [ ~~wetlands surface waters~~ ] in accordance with the VWP general permit, and that performing activities in [ ~~wetlands surface waters~~ ] is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

## 9 VAC 25-680-100. VWP general permit.

Any applicant whose registration statement [ ~~is has been~~ ] accepted by the board [ ~~will receive the following VWP general permit and shall comply with the requirements in it and be subject to all requirements of the VWP permit regulation, 9 VAC 25-210-10 et seq, shall be subject to the following requirements~~ ]:

VWP General Permit No. WP3

[ Authorization ] Effective date:

[ Authorization ] Expiration date:

### VWP GENERAL PERMIT FOR LINEAR TRANSPORTATION PROJECTS UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this [ VWP ] general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

[ ~~In compliance with~~ Subject to ] the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, [ ~~citizens of the Commonwealth of Virginia are the permittee is~~ ] authorized to impact up to two acres of [ nontidal ] surface waters [ ~~(including wetlands), with a maximum of including up to~~ ] 500 linear feet of perennial stream [ channel ] and [ up to ] 1,500 linear feet of nonperennial stream [ ~~channels within the boundaries of the Commonwealth of Virginia, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts~~ channel ].

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Mitigation, Monitoring and Reporting, and Part III - Conditions Applicable to All VWP Permits, as set forth herein.

\_\_\_\_\_  
Director, Department of Environmental Quality

\_\_\_\_\_  
Date

### Part I. Special Conditions.

#### A. Authorized activities.

[ ~~1. Any additional impacts to surface waters associated with this project may require modification of this VWP general permit and additional compensatory mitigation.~~

1. This permit authorizes impacts of up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-680-80 or another VWP permit application. ]

[ ~~2. 3.~~ ] The activities authorized [ ~~by~~ for coverage under ] this VWP general permit must commence and be completed within five years of the date of this authorization.

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including compensatory mitigation) has not been completed within five years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and [ ~~shall not require an~~ no ] application [ ~~processing~~ ] fee [ ~~will be changed~~ ].

#### C. Overall project conditions.

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body [ , including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions ]. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.

4. [ ~~No fill in surface waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt).~~ ] All fill

material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all [ ~~Department of Environmental Quality (DEQ)~~ applicable laws and ] regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia [ ~~Department of Conservation and Recreation (DCR)~~ Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the [ ~~current DCR~~ Virginia ] Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in [ ~~such~~ ] a manner that minimizes construction [ ~~and/or~~ or ] waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

10. All nonimpacted [ ~~wetlands~~ surface waters ] within the project or right-of-way limits that are within 50 feet of any clearing, grading, [ ~~and/or~~ or ] filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are [ ~~wetlands~~ surface waters ] where no [ ~~excavation or filling~~ activities are ] to occur.

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall [ ~~ensure that all temporarily disturbed wetland areas revegetate with wetland vegetation~~ ] take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation ] by the second year post-disturbance. All temporary fills [ ~~shall~~ must ] be removed in their entirety and the affected [ ~~area~~ areas ] returned to the pre-existing contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following

completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

[ ~~13. Flow downstream of the project area shall be maintained to protect all uses.~~ ]

44. 13. ] Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures [ ~~approved by DEQ~~ ].

[ ~~15. 14. ] The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.~~ ]

[ 15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission. ]

16. Immediately downstream of the construction area, water quality standards [ ~~(9 VAC 25-260-5 et seq.)~~ ] shall not be violated as a result of the construction activities.

[ 17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters. ]

#### D. Road crossings.

1. Access roads [ ~~must~~ shall ] be constructed [ ~~so that the length of the road minimizes~~ to minimize ] the adverse effects on surface waters to the maximum extent practicable and [ ~~is to follow~~ ] as near as possible [ ~~to~~ ] preconstruction contours and elevations. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows.

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the reestablishment of a natural stream bottom and a low flow channel. [ Countersinking is not required for existing pipes or culverts that are being maintained or extended. ]

3. Installation of [ ~~pipes and~~ ] road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, or other [ ~~means acceptable to DEQ~~ similar structures ].

4. All surface waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within

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# Final Regulations

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the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

## E. Utility lines.

1. All utility line work in surface waters shall be performed in ~~[ such ]~~ a manner ~~[ as to minimize that minimizes ]~~ disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast ~~[ (up to three months) ]~~ into wetlands ~~[ not to exceed a total of 90 days ],~~ provided the material is not placed in a manner such that it is dispersed by currents or other forces. ~~[ DEQ may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. ]~~

3. The trench for a utility line cannot be constructed in ~~[ such ]~~ a manner ~~[ as to drain that drains ]~~ wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect).

~~[ 4. Untreated stormwater runoff shall be prohibited from directly discharging into any state waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters. ]~~

## F. ~~[ Shoreline Bank ]~~ stabilization.

~~[ 1. Redistribution of existing stream substrate for the purpose of erosion control is prohibited. ]~~

~~2. All materials removed from the stream substrate shall be disposed of in an approved upland area.~~

~~3-1. ] Riprap bank stabilization shall be of an appropriate size and design in accordance with the [ most recent edition of the DCR's Virginia ] Erosion and Sediment Control Handbook [ , Third Edition, 1992 ].~~

~~[ 4. 2. ] Riprap aprons for all outfalls shall be designed in accordance with the [ most recent edition of the DCR's Virginia ] Erosion and Sediment Control Handbook [ , Third Edition, 1992 ].~~

~~[ 5. 3. ] For [ shoreline bank ] protection activities, the structure and backfill shall be placed as close to the [ shoreline bank ] as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.~~

~~[ 6. 4. ] All [ shoreline bank ] erosion [ control ] structures shall be located [ so as ] to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.~~

~~[ 7. 5. ] Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.~~

~~[ 6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.~~

7. All material removed from the stream substrate shall be disposed of in an approved upland area. ]

## G. Dredging.

[ 1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the Department of Environmental Quality (DEQ) shall be notified immediately. ]

~~[ 4. 4. ] Barges used for the transportation of dredge material shall be filled in such a manner to prevent any overflow of dredged materials.~~

~~[ 2. 5. ] Double handling of dredged material in state waters shall not be permitted. [ Utilization of the Craney Island Rehandling Basin is not considered double handling.~~

~~3. Over dredging to reduce the frequency of maintenance dredging should not exceed one foot deeper than adjacent natural water bodies and only as wide as necessary to avoid creating circulation and flushing problems.~~

6. For navigation channels the following shall apply: ]

~~[ 4. a. ] A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged and inspected prior to construction.~~

~~[ 5. b. ] A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.~~

~~[ c. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.~~

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity. ]

~~[ 6. 8. ] Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.~~

~~[ 7. Side slope cuts of the dredging area shall not exceed a two horizontal to one vertical slope to prevent slumping of material into the dredged area.~~

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and

shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

H. Stormwater management facilities.

1. Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensatory mitigation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance excavation shall not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the facility maintenance plan. ]

Part II. Mitigation, Monitoring and Reporting.

A. [ ~~Wetland~~ Compensatory ] mitigation: [ ~~In order to qualify for this VWP general permit, The permittee shall provide ] appropriate and practicable compensatory mitigation [ will be required ]-for all [ wetland ] impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. [ Compensation may incorporate ] preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters [ is acceptable ] when utilized in conjunction with creation, restoration or mitigation bank credits.~~

1. The [ ~~site(s)~~ site or sites ] depicted in the conceptual compensatory mitigation [ ~~package plan~~ ] submitted with the registration statement, shall constitute the compensatory mitigation [ ~~package plan~~ ] for the approved project [ ~~, unless otherwise authorized by a VWP general permit modification~~ ].

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the [ ~~Corps of Engineers~~ USACE ] has debited the required mitigation credits from the Mitigation Bank ledger. For projects proposing a contribution to an in-lieu fee [ ~~program fund~~ ], the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

3. All aspects of the compensatory mitigation plan shall be finalized, submitted and approved by [ ~~DEQ~~ the board ]

prior to any construction activity in permitted impact areas. [ ~~DEQ~~ The board ] shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensatory mitigation plan as approved by [ ~~DEQ~~ the board ] shall [ ~~become be~~ ] an [ ~~official component~~ enforceable requirement ] of this VWP general permit. [ Any deviations from the approved plan must be submitted and approved in advance by the board. ]

a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget [ ~~(nontidal sites only) for typical and driest years mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only),~~ a typical year, a dry year, and a wet year, ] plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of [ ~~panoramic~~ ] photographic stations and ground water monitoring wells [ ~~(or tide gages, for tidal sites)~~ ]. Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by [ ~~DEQ~~ the board ]. Unless specifically authorized by [ ~~DEQ~~ the board ] through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation [ ~~site(s)~~ site or sites ] shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation

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# Final Regulations

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~~plan. [ As a general rule, elevations shall be within 0.2 feet of the elevations proposed in the final compensatory mitigation plan. The final as-built grading plan shall be approved by DEQ prior to any planting and placement of ground water monitoring wells. ]~~

5. All work in [ ~~jurisdictional permitted impact~~ ] areas shall cease if compensatory mitigation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by [ ~~DEQ the board~~ ].

6. [ ~~The wetland creation portions of the site(s) shall be excavated 6-12 inches below final grade. Topdressing soil shall then be spread to bring the compensatory mitigation site to final grade. A wetland vegetation seed mix shall be applied within seven days of final grading for site stabilization. A site stabilization plan shall be provided for compensation sites involving land disturbance. ]~~

[ ~~7. For compensatory mitigation sites involving restoration, a wetland vegetation seed mix shall be applied for site stabilization within seven days of final grading or soil disturbance. ]~~

[ ~~8. 7. ] Planting of woody plants shall occur [ ~~outside the growing season, when the soil is not frozen, between November 1 and March 31~~ when vegetation is normally dormant unless otherwise approved in the final mitigation plan ].~~

[ ~~9. 8. ] Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.~~

[ ~~10. 9. ] The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.~~

[ ~~11. 10. ] Wetland hydrology shall be considered established if depths to the seasonal high water table [ ~~in a typical rainfall year,~~ ] are equal to or less than [ ~~one foot~~ 12 inches below ground surface ] for at least 12.5% of the growing season [ ~~for~~ , as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in ] all monitoring years [ ~~under normal rainfall conditions, as defined in the water budget of the final mitigation plan.~~ ]~~

[ ~~12. 11. ] The wetland plant community shall be considered established [ ~~if:~~ according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover. ]~~

[ ~~a. Greater than 50% of the woody plants, expressed either by plant stems or canopy coverage, shall be facultative (FAC) or wetter (FACW or OBL). A minimum plant stem count of 400/acre must be achieved in sample plots until canopy coverage is 30% or greater. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. A minimum of 65% of the planted trees and shrubs must be viable and show signs of growth for the life of the VWP general permit.~~

~~b. Greater than 50% of all herbaceous plants shall be FAC or wetter. Aerial coverage shall be a minimum of 60% after one full growing season and 80% after three growing seasons and remaining at or above 80% for the life of the VWP general permit. Scrub/shrub or sapling/forest vegetation is not included in coverage or stem count for herbaceous vegetation.~~

~~c. Species composition reflects the desired plant community types stated in the wetland compensatory mitigation plan by the end of the first growing season and is maintained through the last year of the VWP general permit.~~

~~d. Noxious weeds are identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the VWP staff of any invasive species occurrences, methods of removal, and successful control.~~

~~e. Deviations from this plan must be approved in advance by DEQ.~~

12. Noxious weeds shall be identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences, methods of removal, and successful control. ]

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to [ ~~DEQ the board~~ ] for approval prior to or with the next required monitoring report. [ ~~Replacement of dead plant stock in the wetland compensatory mitigation site shall occur, as necessary, to achieve a minimum of 400 stems/acre for the tree species (until canopy coverage is 30% or greater) and 65% of the original stocking density for the planted herb, shrub and tree species. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. ] All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.~~

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be

based on that boundary [ at the end of the monitoring cycle ].

15. Herbicides or ~~algicides~~ *algicides* shall not be used in or immediately adjacent to the compensatory mitigation [ site(s) site or sites ] without prior authorization by [ ~~DEQ the board~~ ]. All vegetation removal shall be done by [ ~~mechanical manual~~ ] means only, unless authorized by [ ~~DEQ the board in advance~~ ].

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for [ ~~renewal/extension~~ ] renewal or extension ] must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time [ ~~DEQ the board~~ ] will determine if renewal of the VWP general permit authorization is necessary.

## B. Compensatory mitigation site monitoring.

1. A post-grading survey, including spot elevations, of the [ site(s) site or sites ] for wetland compensatory mitigation [ may be required depending upon the type and size of the compensation site, and ] shall be conducted by a licensed land surveyor or a professional engineer [ and submitted to ~~DEQ for approval prior to placing the permanent groundwater monitoring wells and planting of the vegetation. Grading elevation plans shall be on a scale of 1" equals 50' (or 1:500 metric) with contour intervals of one (or two) feet accompanied by cross section views. The final as-built grading plan shall be submitted to DEQ for approval prior to any planting and placement of ground water monitoring wells~~ ].

2. [ ~~Panoramic~~ ] Photographs shall be taken at the compensatory mitigation [ site(s) site or sites ] from [ each of the monitoring well stations the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period ]. These photographs shall be taken after the initial planting and in August or September every [ monitoring ] year [ for the life of the VWP general permit ]. [ ~~Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.~~ ]

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year 1) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, [ and ] 5 [ ~~, 7 and 10, with years 7 and 10 only required if the site success criteria were not achieved during the previous monitoring event~~ ]. [ ~~If all success criteria have not been met in the fifth year, monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.~~ ]

4. The establishment of wetland hydrology shall be measured weekly during the growing season [ ~~The number of monitoring wells for each site will be determined by DEQ on a site-specific basis. The location of the wells must be approved by DEQ prior to placement. Adequate~~

~~hydrology shall be within 12 inches of the surface for 12.5% of the growing season. Monitoring shall include approximate acreage and average depth of any ponded water on the wetland compensatory mitigation site(s), with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site or from the closest weather station.~~ ] Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, [ ~~weekly~~ ] monitoring may be discontinued for the remainder of that monitoring year.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated [ ~~by digging soil pits at each monitoring station and evaluating the soil profile for hydric soil indicators using a documented method acceptable to DEQ in accordance with the final mitigation plan~~ ].

6. The establishment of wetland vegetation shall be [ ~~indicated by percent cover, percent survival, stem counts and species composition monitored in accordance with the final mitigation plan. Monitoring shall take place~~ ] in August or September during [ ~~each reportable the~~ ] growing season [ ~~in the life of the VWP general permit of each monitoring year, unless otherwise authorized in the monitoring plan~~ ]. [ ~~At each monitoring station, the following information shall be collected:~~

a. ~~Percent cover for all herbaceous species shall be estimated using a documented method accepted by DEQ. The approximate species composition of the herbaceous vegetation shall be indicated, including non-dominants. The number of stems per acre for woody species shall be provided. A quantitative measure for noxious species present shall also be provided.~~

b. ~~Percent survival of planted woody species, if applicable, shall be estimated using a documented method accepted by DEQ. The number of stems of all tree species within each sample plot and the density of all tree species (number of stems per acre) shall be provided.~~

c. ~~The presence of noxious species shall be documented.~~

7. ~~The presence of noxious species shall be documented.~~ ]

## C. Stream [ mitigation, ] restoration [ and ] monitoring [ (if applicable) ].

[ ~~1. Representative photographs shall be taken along the stream segment(s). These photographs shall be taken prior to restoration, after restoration work is complete, and in August or September for three years after completion. Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.~~

~~2. Monitoring for stream restoration success shall begin at the first complete growing season (year 1) following site restoration. Monitoring shall be required for years 1, 2, and 3. Monitoring shall consist of an evaluation of the stability and success of any instream structures, vegetative monitoring of any established riparian buffers, and a pre-~~



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# Final Regulations

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~~and post construction assessment of the benthic community of the stream.~~

1. Stream mitigation shall be performed in accordance with the final mitigation plan and subsequent submittals, as approved by the board.
2. Stream bank slopes shall be stabilized to reduce stream bank erosion, where practicable.
3. Stream mitigation monitoring shall be conducted in the manner prescribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30th of the monitoring year. Monitoring reports shall include:

- a. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period.
- b. Discussion of the establishment of vegetation, if applicable.
- c. Any alterations, maintenance, and corrective actions conducted at the stream mitigation site. ]

## D. Construction monitoring.

1. Photo stations shall be established to document the [ various ] construction aspects of [ the ] project [ activities ] within [ jurisdictional impact ] areas [ as authorized by this permit ]. [ ~~These stations shall be established to~~ Photographs should ] document the [ existing preconstruction conditions, activities during construction, ] and post-construction conditions [ ~~of the project site within one week after completion of construction~~ ]. [ ~~These stations shall be photographed prior to construction, during construction, and within one week after the completion of construction.~~ Photos Photographs ] shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project. [ Photographs are not necessary during periods of no activity within impact areas. ]

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured [ at the inlet and outlet of the proposed structure ] and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH and dissolved oxygen (D.O) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels.

c. After opening the new channel, temperature, pH and D.O. readings shall be taken once every half hour for at least three readings at each station within 24 hours of opening the new channel.

## E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate [ ~~Department of Environmental Quality~~ DEQ ] office. The VWP general permit authorization number shall be included on all correspondence.

2. [ ~~DEQ~~ The board ] shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to [ ~~DEQ~~ the board ] within 30 days of each monitoring event [ ~~as required in condition D-1 of Part II of this VWP general permit~~ ]. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, [ a brief description, ] and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.). [ ~~Photographs are not necessary during periods of no activity within jurisdictional areas.~~

4. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-680-90. ]

[ 4.6. ] The permittee shall notify [ ~~DEQ~~ the board ] in writing when unusual or potentially complex conditions are encountered which require debris removal or involve

potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by [ ~~DEQ the board~~ ].

[ ~~6. 7. ] The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, [ the appropriate ] DEQ [ regional office ] shall be notified [ at (Insert appropriate DEQ office phone number) ] ; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.~~

[ ~~6. 8. ] Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.~~

[ ~~7. The final plans of compensatory mitigation shall be submitted to and approved by DEQ prior to any construction in permitted impact areas.~~

~~8. An official copy of the instrument of restriction, protection, or preservation of wetlands and state waters provided as part of the compensatory mitigation plan shall be submitted to the DEQ within 60 days of recordation as outlined in the mitigation portion of this VWP general permit.~~

~~9. The mitigation bank account ledgers shall be submitted denoting the purchase of the required credits from the proposed bank(s).~~

~~10. All compensatory mitigation monitoring reports required by the special conditions in subsection B above shall be submitted annually by November 30 with the exception of the final report in the life of the VWP general permit which shall be submitted by November 30 of that monitoring year or 180 days prior to VWP general permit expiration, whichever occurs sooner. Alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to DEQ.~~

11. 9. ] All submittals required by this VWP general permit shall contain the following signed certification statement:

"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 violation."

#### Part III. Conditions Applicable to All VWP Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP [ general ] permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP [ general ] permit noncompliance is a violation of

the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP [ general ] permit [ authorization, ] termination, revocation, [ ~~modification~~ ], or denial of a [ ~~VWP permit~~ ] renewal application.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit [ authorization ] may be reopened to modify [ ~~the its~~ ] conditions [ ~~of the VWP general permit~~ ] when the circumstances on which the previous VWP general permit [ authorization ] was based have materially and substantially changed, or special studies conducted by the [ ~~department board~~ ] or the permittee show material and substantial change since the time the VWP general permit [ authorization ] was issued and thereby constitute cause for VWP general permit [ ~~modification or authorization~~ ] revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general 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 property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit [ authorization ] are severable.

G. Right of entry. The [ ~~applicant and/or~~ ] permittee shall allow [ ~~authorized state and federal representatives the board or its agents~~ ], upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;
2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;
3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

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# Final Regulations

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H. Transferability of VWP [ ~~permits~~ general permit authorization ]. This VWP general permit [ authorization ] may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the 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 ] permittee containing a specific date of transfer of VWP general permit [ authorization ] responsibility, coverage and liability [ ~~between them~~ to the new permittee ], or that the [ ~~seller~~ existing permittee ] will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not notify the existing and [ ~~proposed~~ new ] permittee of [ ~~the board's~~ its ] intent to modify or revoke and reissue the VWP general permit [ authorization ] within the 30-day time period.

On the date of the VWP general permit [ authorization ] transfer, the transferred VWP general permit shall be as fully effective as if it had been issued directly to the new permittee.

[ ~~1. VWP permit modification. The permittee shall notify DEQ of any modification of this activity and shall demonstrate in a written statement that said modification will not violate any conditions of this VWP general permit. If such demonstration cannot be made, the permittee shall apply for a modification of this VWP general permit. This VWP general permit may be modified when any of the following developments occur:~~

- ~~1. When additions or alterations have been made to the affected facility or activity which require the application of VWP general permit conditions that differ from those of the existing VWP general permit or are absent from it, provided the total project impacts for a single and complete project do not exceed two acres, including 500 linear feet of perennial stream or 1,500 linear feet of nonperennial stream and are fully mitigated;~~
- ~~2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at VWP general permit issuance and would have justified the application of different VWP general permit conditions at the time of VWP general permit issuance;~~
- ~~3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;~~
- ~~4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the CWA; and~~
- ~~5. When changes occur which are subject to "reopener clauses" in the VWP general permit;~~

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream

impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation. ]

J. VWP [ general ] permit [ authorization ] termination. This VWP general permit [ ~~, after public notice and opportunity for a hearing,~~ authorization ] is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit;
2. The permittee's failure in the application or during the VWP general permit [ authorization ] issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; [ ~~or~~ and ]
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit [ authorization ] modification or termination [ ~~or.~~ ]

[ ~~5. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.~~ ]

K. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the [ ~~applicant~~ permittee ] from civil and criminal penalties for noncompliance.

L. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of 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 State Water Control Law.

[ M. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

N. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

O. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation. ]

[ ~~4~~ P. ] Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after [ August 1, 2001, for linear transportation projects of the Virginia Department of Transportation, or on and after ] October 1, 2001 [ for all other projects ], conduct the following activities in a wetland:
  - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
  - b. Filling or dumping;
  - c. Permanent flooding or impounding; or
  - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

## DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

**NOTICE:** The forms used in administering 9 VAC 25-680-10 et seq., Virginia Water Protection General Permit for Linear Transportation Projects, are not being published due to the large number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

[ Department of Environmental Quality Water Division Permit Application Fee (eff. 8/01).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 8/01).

Virginia Water Protection General Permit Registration Statement (eff. 8/01). ]

VA.R. Doc. No. R00-197; Filed June 13, 2001, 10:55 a.m.

\* \* \* \* \*

**Title of Regulation: 9 VAC 25-690-10 et seq. Virginia Water Protection General Permit for Impacts from Development Activities.**

**Statutory Authority:** §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

**Effective Date:** October 1, 2001.

### Summary:

The regulations address a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for wetland impacts resulting from the activities of development projects. Numerous changes have been made throughout the final regulation. Most of the changes involve clarification of definitions, the distinction between the general permit regulation and an authorization approved under the general permit, and that the permits do not apply to tidal waters. The procedures for data searches pertaining to threatened and endangered species are modified. Certain exclusions and special conditions are added or modified to conform to the other general permits. The evaluation of compensatory mitigation options, including compensation ratios, is clarified. A notice of planned change section is added, and the section on general permit modification deleted, to establish the correct procedure for modifying general permit authorizations.

**Summary of Public Comment and Agency's 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 Ellen Gilinsky, Department of Environmental Quality,

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# Final Regulations

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P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375 or e-mail egilinsky@deq.state.va.us.

## CHAPTER 690.

### VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT ACTIVITIES.

#### 9 VAC 25-690-10. Definitions.

The words [ , and ] terms [ , and provisions ] used in this [ chapter regulation ] shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless [ otherwise ] indicated below.

[ "Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills. ]

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

"Cross-sectional [ ~~sketch~~ drawing ]" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and is usually dominated by perennial plants.

[ "~~Farm tract~~" means, as identified by the Farm Service Agency, a unit of contiguous land under one ownership which is operated as a farm or part of a farm. ]

"FEMA" means Federal Emergency Management Agency.

"Forebay" means a deeper area at the upstream end of a stormwater management facility that would be maintained through excavation.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas typically possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and

Rappahannock. Histosols are identified in the Hydric soils list generated by [ ~~USDA United States Department of Agriculture~~ ] Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in surface waters, [ ~~such as filling, dumping, dredging, excavating, permanent flooding or impounding or any other new activities on or after October 1, 2001, including draining, that significantly alter or degrade existing acreage or functions of the surface waters as specified in § 62.1-44.15:5 D of the Code of Virginia~~ ].

[ "Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single complete projects with independent utility. ]

[ "~~NRCS~~" means ~~Natural Resources Conservation Service~~. ]

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this chapter, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

"Real estate subdivision" means a tract of land [ ~~divided~~ subdivided after October 5, 1984, ] into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. The tract of land includes the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof.

"Recreational facility" means [ ~~an activity~~ a facility ] that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours.

[ "~~Registration statement~~" means a form of preconstruction application or notification. ]

"Riprap" means a layer of material such as stone or chunks of concrete on an embankment slope for the purpose of preventing erosion.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation less than six meters (20 feet) tall. The species include true shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

[ "~~Shoreline protection~~" means activities employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills. ]

"Single and complete project" means the total project proposed or accomplished by one person [ and which has independent utility ]. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will

apply to each crossing of a separate [ surface ] water [ ~~of the United States~~ ] (i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc., are not separate waterbodies. [ ~~A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.~~ ]

"State programmatic general permit" means a [ ~~type of~~ ] general permit issued by the Department of the Army [ ~~and founded on an existing state, local or federal agency program that is designed to avoid duplication with another federal, state or local program provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs.~~ ]

[ ~~"Temporary impact" means an impact caused by activities in surface waters, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland functions and values.~~ ]

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

"Up to two acres" means 0.00 to 2.00 acres, rounded to the second decimal place.

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a [ ~~wetland surface water~~ ] to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

**9 VAC 25-690-20. Purpose; delegation of authority; effective date of VWP general permit.**

A. The purpose of this [ ~~chapter~~ regulation ] is to establish VWP General Permit Number WP4 under the [ ~~VWPP~~ VWP permit ] regulation to govern impacts related to the construction and [ ~~operation~~ maintenance ] of development activities. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.

B. The director or [ ~~an authorized representative~~ his designee ] may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

[ ~~C. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure.~~

~~D. C. ] This VWP general permit regulation will become effective on [ October 1, 2001, ] and will expire [ five years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-690-30 and the receipt of this VWP general permit on October 1, 2006 ].~~

[ ~~E. For each individual activity requiring notification, coverage will continue for a maximum of five years from the date of authorization of coverage under this VWP general permit to an individual person or applicant.~~

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-690-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of five years. ]

**9 VAC 25-690-30. Authorization to impact surface waters.**

A. Any person governed by this VWP general permit is authorized to impact up to two acres of [ nontidal ] surface waters, including [ up to ] 500 linear feet of perennial stream channel and [ up to ] 1,500 linear feet of nonperennial stream channel for general development activities, provided that the applicant submits notification as required in 9 VAC 25-690-50 and 9 VAC 25-690-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limitations and other requirements of 9 VAC 25-690-100, receives approval from the board, and provided that:

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit [ program ] regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another [ applicable ] VWP general permit, in lieu of coverage under this VWP general permit.

2. Impacts [ ~~, including all attendant features both temporary and permanent, are part of result from~~ ] a single and complete project [ including all attendant features, both temporary and permanent ].

[ ~~a. Activities authorized include residential, commercial, institutional, agricultural, recreational, and stormwater management facilities as described in 9 VAC 25-690-50.~~

~~b. a. ] Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require [ ~~an individual VWPP~~ a VWP individual permit ].~~

[ ~~b. ] For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.~~

[ ~~3. Impacts from a single and complete project do not exceed two acres of surface waters, 500 linear feet of perennial stream, or 1,500 linear feet of nonperennial stream.~~

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# Final Regulations

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~~a. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations.~~

~~b. Stream channel manipulations (e.g., tie-ins or cleanout) may not exceed 100 linear feet on the upstream or downstream end of a stream crossing.~~

3. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations. Stream channel manipulations (e.g., tie-ins or cleanout may not exceed 100 linear feet on the upstream or downstream end of a stream crossing. ]

4. Dredging does not exceed 5,000 cubic yards. [ ~~Only mechanical dredging is authorized. Dredged areas shall not exceed the controlling depths for ingress or egress, whichever is less.~~ ]

5. Compensatory mitigation for unavoidable impacts is provided in the form of any one or combination of the following: creation, restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. [ Compensation may incorporate ] preservation of wetlands or preservation or restoration of upland buffers adjacent to state waters may be acceptable when utilized in conjunction with creation, restoration or mitigation bank credits.

[ ~~6. Compensatory mitigation for unavoidable impacts of one-tenth of an acre or greater is provided at the following compensation to loss ratios:~~

<del>Emergent wetlands</del>	<del>1:1</del>
<del>Scrub/shrub wetlands</del>	<del>1.5:1</del>
<del>Forested wetlands</del>	<del>2:1</del>
<del>Open water (ponds, lakes, etc.)</del>	<del>1:1 (in-kind or out-of-kind)</del>

~~7. Compensatory mitigation for unavoidable impacts to streams is provided at a 1:1 replacement to loss ratio via stream relocation, restoration, purchase of mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration.~~

B. Activities that may be authorized under this VWP general permit include the following:

1. Residential, commercial, institutional. The construction or expansion of building foundations, building pads and attendant features for residential, commercial and institutional development activities.

a. Residential developments include both single and multiple units.

b. Commercial developments include, but are not limited to, retail stores, industrial facilities, restaurants, business parks, office buildings and shopping centers.

c. Institutional developments include, but are not limited to, schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

d. Attendant features include, but are not limited to, roads, parking lots, garages, yards, utility lines,

stormwater management facilities, and recreation facilities (such as playgrounds, playing fields and golf courses). Attendant features must be necessary for the use and maintenance of the structures.

2. Recreational facilities. The construction or expansion of recreational facilities and small support facilities.

a. Recreational facilities include, but are not limited to, hiking trails, bike paths, horse paths, nature centers, and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber), boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels (wooden floats serving as fenders alongside piers), and open-pile piers (including floating piers, travel-lift piers, etc.) associated with recreational facilities are also included.

b. Recreational facilities do not include as a primary function the use of motor vehicles, buildings or impervious surfaces.

c. Golf courses and ski area expansions may qualify as recreational facilities provided the construction of the proposed facility does not result in a substantial deviation from the natural contours and the facility is designed to minimize adverse effects on state waters and riparian areas. Measures that may be used to minimize adverse effects on waters and riparian areas include the implementation of integrated pest management plans, adequate stormwater management, vegetated buffers, and fertilizer management plans.

d. Small support facilities are authorized provided they are directly related to the recreational activity. Small support facilities include, but are not limited to, maintenance storage buildings and stables.

e. The following do not qualify as recreational facilities: hotels, restaurants, playing fields (e.g., baseball, soccer or football fields), basketball and tennis courts, racetracks, stadiums, arenas or new ski areas.

f. The recreational facility must have an adequate water quality management plan, such as a stormwater management plan, to ensure that the recreational facility results in no substantial adverse effects to water quality.

3. Stormwater management facilities. The construction, maintenance, and excavation of stormwater management facilities; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and the maintenance dredging of existing stormwater management facilities.

a. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention basins, and other facilities designed to reduce pollutants in stormwater runoff.

b. The stormwater management facility must:

(1) To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity and flow rates);

(2) Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters;

(3) Withstand expected high flows;

(4) To the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and not increase water flows from the project site, relocate water, or redirect flow beyond preconstruction conditions;

(5) To the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the facility is part of a larger system designed to manage water flows; and

(6) Be designed using best management practices (BMPs) and watershed protection techniques. Examples include forebays, vegetated buffers, bioengineering methods, and siting considerations to minimize adverse effects to aquatic resources.

c. Maintenance excavation shall be in accordance with the facility maintenance plan and shall not exceed the original contours of the facility as approved and constructed.]

[ ~~B. C.~~ ] The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9 VAC 25-210-10. [ Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver. ]

[ ~~C. D.~~ ] Receipt of this VWP general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

[ ~~E.~~ ] In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure of structures. ]

[ ~~D. F.~~ ] Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers [ (USACE)], and for which the board has issued [ ~~or waived~~ ] § 401 certification existing as of [ ~~the effective date of this chapter~~ October 1, 2001 ], shall constitute coverage under this VWP general permit [ ~~until such time as unless~~ ] a state programmatic general permit is approved for the covered activity or impact. [ Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact. ]

**9 VAC 25-690-40. [ ~~Prohibitions-Exceptions to coverage~~ ].**

A. [ Authorization for coverage under ] this VWP general permit will not apply in the following areas:

1. [ ~~Wetland areas~~ Wetlands ] composed of 10% or more of the following species (singly or in combination) in any

stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages [ ~~may shall~~ ] be based upon [ ~~stem counts, either~~ ] basal area [ ; ] or percent [ ~~aerial areal~~ ] cover.

2. [ ~~Wetland areas~~ Wetlands ] underlain by histosols.

3. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. [ Authorization for coverage under ] this VWP general permit cannot be used in combination with [ authorization for coverage under ] other VWP permits to impact greater than two acres of [ nontidal ] surface waters, [ more than ] 500 linear feet of perennial stream [ channel ], or [ more than ] 1,500 linear feet of nonperennial stream [ channel ]. [ ~~The use of~~ ] More than one [ authorization for coverage under this ] VWP [ ~~General Permit WP4~~ general permit ] for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the above-mentioned limits.

C. This VWP general permit cannot be used for any activity in any real estate subdivision which would cause the aggregate total loss of [ nontidal ] surface waters in the subdivision to exceed two acres [ ~~of nontidal state waters~~ ], [ or more than ] 500 linear feet of perennial stream [ channel ], or [ more than ] 1,500 linear feet of nonperennial stream [ channel ].

D. The activity to impact surface waters shall not have been prohibited by state law [ ; or ] regulations [ ~~or policies~~ ], nor shall it contravene [ ~~the applicable~~ ] Water Quality Standards (9 VAC 25-260-5 et seq.) [ ; ~~as amended or adopted by the board~~ ].

E. The board shall deny coverage under this VWP general permit to any [ ~~person conducting~~ applicant for ] activities [ ~~which the board determines that~~ ] cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities [ ~~which the board determines~~ ] that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, increase flooding, or cause more than minimal degradation of the water quality of any stream.

G. This VWP general permit may not be used for:

1. Any stormwater management facility that is located in perennial streams or in waters designated as oxygen- or temperature-impaired [ ; ; ]
2. The construction of an irrigation impoundment on a perennial stream [ ; ; ]
3. Any water withdrawal activities [ ; ; ]
4. The location of animal feeding operations or waste storage facilities in state waters [ ; ; ]



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# Final Regulations

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~~5. Restoration, creation or any fill in wetlands or perennial streams in association with the establishment of a mitigation bank.~~

~~6. 5.] The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam and the work is performed in the dry [ - ; ]~~

~~7. 6.] Return flow discharges from dredge disposal sites [ - ; ]~~

~~8. 7.] Overboard disposal of dredge materials [ - ; ]~~

~~9. Disposal of dredge materials in wetlands. ]~~

~~10. 8.] Dredging in marinas [ - ; ]~~

~~11. Maintenance dredging of marine terminals. ]~~

~~12. 9.] Dredging of shellfish areas, submerged aquatic vegetation beds or other highly productive areas [ - ; ]~~

~~13. 10.] Federal navigation projects [ - ; ]~~

~~14. 11.] The construction of new ski areas or oil and gas wells [ - ; and ]~~

~~15. The construction of marine railways. ]~~

~~16. 12.] The taking of threatened or endangered species [ in accordance with the following [ - : ]~~

~~a. Pursuant to § 29.1-564 of the Code of Virginia [ : "Taking, transportation, sale, etc., of endangered species is prohibited. ] the taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the [ U.S. United States ] Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in [ § ] 29.1-568 [ of the Code of Virginia ]. [ " ]~~

~~b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 B and C, the taking, [ - ] processing, sale or offer for sale within the Commonwealth of any state-listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.~~

## **[ 9 VAC 25-690-50. Activities covered.**

~~A. Residential, commercial, institutional. This chapter authorizes the construction or expansion of building foundations, building pads and attendant features for residential, commercial and institutional development activities.~~

~~1. Residential developments include both single and multiple units.~~

~~2. Commercial developments include, but are not limited to, retail stores, industrial facilities, restaurants, business parks, office buildings and shopping centers.~~

~~3. Institutional developments include, but are not limited to, schools, fire stations, government office buildings, judicial~~

~~buildings, public works buildings, libraries, hospitals, and places of worship.~~

~~4. Attendant features include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities (such as playgrounds, playing fields and golf courses). Attendant features must be necessary for the use and maintenance of the structures.~~

~~B. Agricultural. This chapter authorizes activities related to the improvement of agricultural production and the construction of building pads for farm buildings.~~

~~1. The following activities are authorized:~~

~~a. The installation, placement, or construction of drainage tiles, ditches or levees;~~

~~b. Mechanized land clearing;~~

~~c. Land leveling; and~~

~~d. The relocation of existing serviceable ditches constructed in state waters.~~

~~2. Activities that qualify for an exemption under § 404(f) of the Clean Water Act are exempt, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985 (16 USC § 3801 et seq.), as amended, may be required.~~

~~3. Activities authorized by this VWP general permit may not exceed a total of two acres for a farm tract.~~

~~4. For the improvement of agricultural production, USDA program participants must:~~

~~a. Obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended;~~

~~b. Have an NRCS-certified wetland delineation;~~

~~c. If required, implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses; and~~

~~d. Not cause the loss of greater than two acres of state waters on a farm tract.~~

~~5. For the improvement of agricultural production, non-USDA program participants (or USDA program participants for which the proposed work does not qualify for authorization under subdivision 3 of this subsection) must:~~

~~a. Provide a delineation of the affected wetlands;~~

~~b. Provide a compensatory mitigation proposal to offset losses of state waters;~~

~~c. Not cause the loss of greater than two acres of state waters on a farm tract.~~

~~6. For the construction of building pads for farm buildings, the activity must not cause the loss of greater than two acres of wetlands that were in agricultural production prior to December 23, 1985 (i.e., farmed wetlands).~~

7. Activities in other state waters is limited to the relocation of existing serviceable drainage ditches constructed in nontidal streams.

~~C. Recreational facilities. This chapter authorizes activities related to the construction or expansion of recreational facilities and small support facilities.~~

~~1. Recreational facilities include, but are not limited to, hiking trails, bike paths, horse paths, nature centers, and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber), boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels (wooden floats serving as fenders alongside piers), and open-pile piers (including floating piers, travel lift piers, etc.) associated with recreational facilities are also included.~~

~~2. Recreational facilities do not include as a primary function the use of motor vehicles, buildings or impervious surfaces.~~

~~3. Golf courses and ski area expansions may qualify as recreational facilities provided the construction of the proposed facility does not result in a substantial deviation from the natural contours and the facility is designed to minimize adverse effects on state waters and riparian areas. Measures that may be used to minimize adverse effects on waters and riparian areas include the implementation of integrated post management plans, adequate stormwater management, vegetated buffers, and fertilizer management plans.~~

~~4. Small support facilities are authorized provided they are directly related to the recreational activity. Small support facilities include, but are not limited to, maintenance storage buildings and stables.~~

~~5. The following do not qualify as recreational facilities: hotels, restaurants, playing fields (e.g., baseball, soccer or football fields), basketball and tennis courts, racetracks, stadiums, arenas or new ski areas.~~

~~6. The recreational facility must have an adequate water quality management plan, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality.~~

~~D. Stormwater management facilities. This chapter authorizes activities related to the construction, maintenance, and excavation of stormwater management facilities; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and the maintenance dredging of existing stormwater management facilities.~~

~~1. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention basins, and other facilities designed to reduce pollutants in stormwater runoff.~~

~~2. The stormwater management facility must:~~

~~a. To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity and flow rates);~~

~~b. Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters;~~

~~c. Withstand expected high flows;~~

~~d. To the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and not increase water flows from the project site, relocate water, or redirect flow beyond preconstruction conditions;~~

~~e. To the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the facility is part of a larger system designed to manage water flows; and~~

~~f. Be designed using best management practices (BMPs) and watershed protection techniques. Examples include forebays, vegetated buffers, bioengineering methods, and siting considerations to minimize adverse effects to aquatic resources.~~

~~3. Maintenance excavation shall be in accordance with an approved maintenance plan and shall not exceed the original contours of the facility as approved and constructed.]~~

~~[ 9 VAC 25-690-60. 9 VAC 25-690-50. ] Notification.~~

~~A. Notification to the board will be required prior to construction as follows:~~

~~1. [ Impacts equal to or greater than one-tenth of an acre of surface waters shall be reported by the applicant to DEQ via the entire registration statement in 9 VAC 25-690-70. For any real estate subdivision created or subdivided after October 5, 1984, a notification is required for any activity which would cause the aggregate total loss of state waters for the entire subdivision to exceed one-tenth of an acre. An application for proposed impacts greater than one-tenth of an acre of surface waters shall be submitted via a registration statement that includes all information pursuant to 9 VAC 25-690-60. ]~~

~~2. [ For Proposed ] impacts up to one-tenth of an acre [ , shall be reported via a registration statement that includes only the following information: ] subdivisions 1 through [ 9, 11, 17, 18, 19 8, 13, 15 ] and [ 24 20 ] of [ the registration statement (9 VAC 25-690-70) shall be provided 9 VAC 25-690-60 B].~~

~~[ B. All notifications shall include documentation from the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation's Division of Natural Heritage indicating the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat or heritage resource areas. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may serve as the registration statement provided that all information required pursuant to 9 VAC 25-690-60 is included and that the first page of the form is clearly marked indicating~~

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# Final Regulations

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the intent to have the form serve as the registration statement for this VWP general permit. ]

C. The [ ~~DEQ board~~ ] will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation [ , the Virginia Department of Agriculture and Consumer Services ] and the Virginia Department of Game and Inland Fisheries [ regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit ].

[ ~~9 VAC 25-690-70. 9 VAC 25-690-60. ] **Registration statement.**~~

A. Registration statements shall be filed with the board as follows:

1. The applicant shall file a complete registration statement, as described in [ ~~9 VAC 25-690-60 9 VAC 25-690-50~~ ] for a VWP general permit [ number ] WP4 for [ impacts to ] surface [ ~~water impacts~~ waters ] from development activities, which will serve as a notice of intent for coverage under this VWP general permit.

2. Any applicant proposing an activity under this VWP general permit [ shall is advised to ] file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit. [ The VDOT may use its monthly IACM process for submitting registration statements. ]

[ ~~3. Any person conducting an activity without a VWP permit, who qualifies for coverage under this VWP general permit, shall file the registration statement immediately upon discovery of the unpermitted activity. ]~~

B. The required registration statement shall contain the following information:

1. The applicant's name, mailing address, telephone number and, if applicable, fax number [ - ; ]

2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number [ - ; ]

3. The existing VWP permit number (if applicable) [ - ; ]

4. The name of the project, purpose of project, and a description of the activity [ - ; ]

5. The name of [ ~~water body(ies)~~ the water body or water bodies ] or receiving stream, as applicable [ - ; ]

6. The hydrologic unit code (HUC) for the project area [ - ; ]

7. The name of the city or county where the project is located [ - ; ]

8. Latitude and longitude (to the nearest second) from a central location within the project limits [ - ; ]

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the [ ~~impact~~

project ] area. The map should be of sufficient detail such that the site may be easily located for site inspection [ - ; ]

10. The appropriate appendices from the [ ~~Joint Permit Application. JPA; ]~~

11. Project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of [ ~~jurisdictional~~ surface water ] areas, direction of flow, ordinary high water, impact limits, [ and ] location and dimension of all proposed structures in impact areas. Cross-sectional sketches, with the above information, may be required for certain projects to demonstrate minimization of impacts [ - ; ]

12. Dredge material management plan (for dredging projects only) including plan and cross-section view drawings of the disposal [ ~~and/or~~ or ] dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal [ ~~and/or~~ or ] dewatering site [ - ; ]

[ ~~13. Wetland Impact Information for both temporary and permanent impacts, including a description of the impact, the impact area (in square feet or acres), and the wetland classification based on Cowardin classification system or similar terminology. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the impact area (in square feet, linear feet or acres). Wetland impacts should be quantified according to their Cowardin classification or similar terminology; ]~~

14. Functional values [ ~~assessments~~ assessment ] for impacts to wetlands greater than one acre. The functional assessment shall consist of a narrative description of the existing wetland functions and values and the impact that the project will have on these functions and values [ - ; ]

15. A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable, as required by 9 VAC 25-210-115 A [ - ; ]

16. A description of the intended compensation for unavoidable impacts [ - , including: ]

a. A conceptual compensatory mitigation plan, at a minimum, must be submitted, and shall include: the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a [ ~~typical, dry and wet year~~ typical year, a dry year, and a wet year ]; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect [ ~~this~~ these ] data; wetland delineation [ confirmation and data ] sheets, maps [ ~~and a jurisdictional determination from the Corps of Engineers~~ ] for existing wetland areas on the proposed [ ~~site(s)~~ site or sites ]; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and

acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.

b. Applicants proposing to [ ~~mitigate~~ compensate ] off-site, [ ~~to including~~ ] purchase [ or use of ] mitigation bank credits, or [ ~~to contribute~~ contribution ] to an in-lieu fee [ ~~program fund~~ ] shall [ first ] discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants must provide documentation as to why the proposed off-site compensatory mitigation [ ~~, mitigation banking, or in-lieu fee fund contribution~~ ] is ecologically preferable. The evaluation should include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, [ ~~wetlands surface water~~ ] functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation [ ~~vs.~~ versus ] impacts, acquisition, constructability, and cost.

c. Any [ applicant proposing ] compensation [ plan ] involving stream restoration shall submit a plan that includes: goals and objectives in terms of water quality benefits; location map, including the latitude and longitude at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.

d. Any [ ~~wetland~~ ] compensation plan proposing to include contributions to in-lieu fee programs shall include proof of the willingness of the entity to accept the donation and [ ~~the assumptions or~~ ] documentation of how the amount of the contribution was calculated.

e. Any [ ~~wetland~~ ] compensation plan proposing the purchase of [ ~~wetland mitigation~~ ] banking credits shall include:

(1) The name of the proposed [ ~~wetland~~ ] mitigation bank [ ~~within the same or adjacent hydrologic unit code within the same river watershed with available credits~~ ];

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits.

[ ~~f. A final compensatory mitigation plan may be submitted, if available.~~

(1) ~~The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensation site construction, source of hydrology and a water budget (nontidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only), plant species, planting scheme indicating expected zonation,~~

~~planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of panoramic photographic stations and ground water monitoring wells (or tide gages, for tidal sites). Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas approximately 200 miles from the project site.~~

(2) ~~The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. Any restrictions, protections, or preservations, or any similar instrument provided as part of the compensatory mitigation plan, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.~~

(3) ~~If the final compensatory mitigation plan is submitted prior to authorization for coverage under this VWP general permit, however it is not deemed complete until after the authorization, the board shall review the plan and approve, approve with modifications or disapprove within 45 days of the completeness determination.~~

17. ~~An aerial photo or scale map which clearly shows the property boundaries, location of surface waters including all wetland boundaries, limits of Chesapeake Bay Resource Protection Area(s) (RPAs) if applicable, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review. Additional state or local requirements may apply if the project is located within an RPA.~~

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# Final Regulations

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f. The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16 a of this subsection, as well as a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed restriction language for protecting the compensation site or sites in perpetuity. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary;

17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and nonimpacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should be shown on the map, as other state or local requirements may apply if the project is located within an RPA; ]

18. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site [ - ; ]

~~[ 19. Documentation from the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation's Division of Natural Heritage regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.~~

~~20. 19. ] The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.) [ - ; and ]~~

~~[ 24. 20. ] 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."~~

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP [ permit ] general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve [ ~~the use of~~ authorization under ] this VWP general permit. However, these conditions must be consistent with the VWP [ permit ] regulation and may not override or contradict the existing conditions of this VWP general permit related to impacts and mitigation.

E. Incomplete registration statement. Where a registration statement is [ ~~considered~~ ]-incomplete, the board [ ~~may~~ shall ] require the submission of additional information [ ~~after the registration statement has been filed,~~ ] and may suspend processing [ ~~of any registration statement~~ ] until such time as the applicant has supplied [ the ] missing or deficient information and [ ~~the board considers~~ ] the registration statement [ is ] complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.

## **[ 9 VAC 25-690-80. 9 VAC 25-690-70. ] Mitigation.**

A. For the purposes of this VWP general permit, the board [ ~~shall~~ may ] accept any one or combination of the following as compensation for unavoidable impacts: wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. [ Compensation may incorporate ] preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters [ ~~may be acceptable~~ ] when utilized in conjunction with creation, restoration or mitigation bank credits.

B. Compensatory mitigation for unavoidable wetland impacts shall be provided at the following compensation to impact ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1.
2. Impacts to scrub shrub wetlands shall be mitigated at 1.5:1.
3. Impacts to emergent wetlands shall be mitigated at 1:1.

~~[ C. Credits or units of wetland compensation shall be calculated according to the following ratios:~~

- ~~1. One acre of wetland creation equals one unit of wetland compensation.~~
- ~~2. One acre of wetland restoration equals one unit wetland compensation.~~
- ~~3. Ten acres of wetland preservation equals one unit of wetland compensation.~~
- ~~4. Twenty acres of upland buffer preservation equals one unit of wetland compensation.~~
- ~~5. One mitigation bank credit equals one unit of wetland compensation.~~
- ~~6. The monetary equivalent of one acre of wetland creation or restoration in the form of a payment to a wetland trust fund equals one unit of wetland compensation.~~

C. Compensatory mitigation for unavoidable impacts to streams shall be provided at a 1:1 replacement to loss ratio via stream relocation, restoration, riparian buffer establishment, or purchase of mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, when feasible.

D. Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment. ]

~~[ D. E. ] In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.~~

~~[ E. F. ] The use of mitigation banks for compensating project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1- 44.15:5 E of the Code of Virginia and 9 VAC 25-210-115, and the applicant provides verification to [ ~~DEQ~~ the board ] of purchase or debiting of the required amount of credits.~~

~~[ F. Unavoidable impacts to streams shall be compensated on a one-to-one basis through the restoration or preservation of similar order streams, when practicable.~~

**9 VAC 25-690-90. Modification. 9 VAC 25-690-80. Notice of planned changes. ]**

[ A. ] Authorization under this VWP general permit may be modified ~~[ provided the total impacts to surface waters for a single and complete project do not exceed two acres of nontidal state waters, 500 linear feet of perennial stream, or 1,500 linear feet of nonperennial stream when any of the following developments occur:~~ subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. ]

~~[ 1. When additions or alterations have been made to the project which require the application of VWP permit~~

~~conditions that differ from those of the existing VWP general permit or are absent from it;~~

~~2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at the time of VWP general permit coverage and would have justified the application of different VWP permit conditions at that time;~~

~~3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;~~

~~4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act; and~~

~~5. When changes occur which are subject to "reopener clauses" in the VWP general permit.~~

B. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation. ]

**[ ~~9 VAC 25-690-100.~~ 9 VAC 25-690-90. ] Notice of termination.**

When all permitted activities requiring notification under ~~[ ~~9 VAC 25-690-60~~ 9 VAC 25-690-50 ] A 1~~ have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

1. Name, mailing address and telephone number of the ~~[ applicant~~ permittee ];
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in ~~[ wetlands surface waters ]~~ in accordance with the VWP general permit, and that performing activities in ~~[ wetlands surface waters ]~~ is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."

**[ ~~9 VAC 25-690-110.~~ 9 VAC 25-690-100. ] VWP general permit.**

Any applicant whose registration statement ~~[ is has been ]~~ accepted by the board ~~[ will receive the following VWP general permit and shall comply with the requirements in it and be subject to all requirements of the VWP permit regulation, 9 VAC 25-240-10 et seq. ]~~ shall be subject to the following requirements ]:

VWP General Permit No. WP4

[ Authorization ] effective date:

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# Final Regulations

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[ Authorization ] expiration date:

**VWP GENERAL PERMIT FOR IMPACTS FROM  
DEVELOPMENT ACTIVITIES UNDER THE VIRGINIA  
WATER PROTECTION PERMIT AND THE VIRGINIA STATE  
WATER CONTROL LAW**

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

[ ~~In compliance with~~ Subject to ] the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, [ ~~citizens of the Commonwealth of Virginia are the permittee is~~ ] authorized to impact up to [ ~~2.0 two~~ ] acres of [ nontidal ] surface waters [ ~~(including wetlands), with a maximum of~~ , including up to ] 500 linear feet of perennial stream channel and [ up to ] 1,500 linear feet of nonperennial stream channel [ ~~, within the boundaries of the Commonwealth of Virginia, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts~~ ].

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Mitigation, Monitoring and Reporting, and Part III - Conditions Applicable to All VWP Permits, as set forth herein.

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\_\_\_\_\_  
Director, Department of Environmental Quality

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\_\_\_\_\_  
Date

**Part I. Special Conditions.**

**A. Authorized activities.**

[ ~~1. Any additional impacts to surface waters associated with this project may require modification of this VWP general permit and additional compensatory mitigation.~~

[ ~~2. The activities authorized by this VWP general permit must commence and be completed within five years of the date of this authorization.~~

1. This permit authorizes impacts of up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-690-80 or another VWP permit application.

3. The activities authorized for coverage under this VWP general permit must commence and be completed within five years of the date of this authorization. ]

**B. Reapplication.** Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement (including compensatory mitigation) has not been completed within five years of the date of authorization. Application consists of an updated or new registration statement. Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.

**C. Overall project conditions.**

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body [ , including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions ]. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.

[ ~~4. No fill in surface waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt).~~ ] All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all [ ~~Department of Environmental Quality (DEQ) applicable laws and~~ ] regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the [ ~~current~~ ] Virginia [ ~~Department of Conservation and Recreation (DGR)~~ ] Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the [ ~~current~~ DGR Virginia ] Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in ~~[ such ]~~ a manner that minimizes construction ~~[ and/or ]~~ waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.

10. All nonimpacted ~~[ wetlands surface waters ]~~ within the project or right-of-way limits that are within 50 feet of any clearing, grading, ~~[ and/or ]~~ filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are ~~[ wetlands surface waters ]~~ where no ~~[ excavation or filling ]~~ activities are ] to occur.

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall ~~[ ensure that all temporarily disturbed wetland areas revegetate with wetland vegetation ]~~ take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation ] by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to the preexisting contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures ~~[ approved by DEQ ]~~.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. [ The permittee shall conduct his activities in accordance with any ] time-of-year restrictions ~~[ imposed recommended ]~~ by the Department of Game and Inland Fisheries ~~[ of or ]~~ the Virginia Marine Resources Commission ~~[ shall be strictly adhered to ]~~.

16. Immediately downstream of the construction area, water quality standards ~~[ (9-VAC-25-260-5 et seq.) ]~~ shall not be violated as a result of the construction activities.

[ 17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters. ]

D. Road crossings.

1. Access roads ~~[ must ]~~ shall ] be constructed ~~[ so that the length of the road minimizes ]~~ to minimize ] the adverse effects on surface waters to the maximum extent practicable and ~~[ is to follow ]~~ as near as possible ~~[ to ]~~ preconstruction contours and elevations. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows.

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the reestablishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

3. Installation of ~~[ pipes and ]~~ road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or ~~[ other means acceptable to DEQ similar structures ]~~.

4. All ~~[ state surface ]~~ waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in ~~[ such ]~~ a manner ~~[ as to minimize ]~~ that minimizes ] disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast ~~[ (up to three months) ]~~ into wetlands ~~[ not to exceed a total of 90 days ]~~, provided the material is not placed in a manner such that it is dispersed by currents



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# Final Regulations

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~~or other forces. [ DEQ may extend the period of temporary sidocasting not to exceed a total of 180 days, where appropriate. ]~~

3. The trench for a utility line cannot be constructed in ~~[ such ]~~ a manner ~~[ as to drain that drains ]~~ wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.).

~~[ 4. Untreated stormwater runoff shall be prohibited from directly discharging into any state waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters. ]~~

## F. [ Shoreline Bank ] stabilization.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the ~~[ most recent edition of the ]~~ Virginia ~~[ Department of Conservation and Recreation's Sediment and Erosion Erosion and Sediment ]~~ Control Handbook ~~[ , Third Edition, 1992 ].~~

2. Riprap apron for all outfalls shall be designed in accordance with the ~~[ most recent edition of the ]~~ Virginia ~~[ Department of Conservation and Recreation's Sediment and Erosion Erosion and Sediment ]~~ Control Handbook ~~[ , Third Edition, 1992 ].~~

~~[ 3. For shoreline protection activities, the area (in square feet) of surface water impact may not exceed four times the length (in linear feet) of the activity (e.g., a maximum of 400 square feet in surface waters for a 100-foot long bulkhead).~~

~~4. Bulkhead repair and replacement shall not exceed four feet channelward of existing functional bulkheads. The filling of wetlands behind freestanding bulkheads is prohibited.~~

~~5. 3. ]~~ For ~~[ shoreline bank ]~~ protection activities, the structure and backfill shall be placed as close to the shoreline as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

~~[ 6. 4. ]~~ All ~~[ shoreline bank ]~~ erosion structures shall be located ~~[ so as ]~~ to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

~~[ 7. 5. ]~~ Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

~~[ 6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.~~

7. All material removed from the stream substrate shall be disposed of in an approved upland area. ]

## G. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in ~~[ such ]~~ a manner ~~[ as to minimize that minimizes ]~~ disturbance of the bottom and ~~[ minimize minimizes ]~~ turbidity levels in the water column. ~~[ Recommendations outlined in the Corps 1984 research~~

~~document, "Sediment Resuspension Characteristics of Selected Dredges," shall be followed when applicable. ]~~

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the DEQ shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent any overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted. ~~[ Utilization of the Craney Island Rehhandling Basin is not considered double handling.~~

~~6. Overdredging to reduce the frequency of maintenance dredging should not exceed one foot deeper than adjacent natural water bodies and only as wide as necessary to avoid creating circulation and flushing problems.~~

~~7. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged and inspected prior to construction.~~

~~8. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.~~

~~9. Side slope cuts of the dredging area shall not exceed a two horizontal to one vertical slope to prevent slumping of material into the dredged area.~~

6. For navigation channels the following shall apply:

a. A minimum of 15 feet shall be maintained between the top of the dredge cut and the toe of the bank. This landward limit of encroachment shall be flagged and inspected prior to construction.

b. A buffer of four times the depth of the dredge cut shall be maintained between the top of the dredge cut and the channelward limit of wetlands or mean low water.

c. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area. ]

~~[ 10. 7. ]~~ A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

~~[ 14. 8. ]~~ Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

~~[ 42. 9. ]~~ The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

~~[ 43. 10. ]~~ The dredge material dewatering area shall utilize an earthen berm ~~[ and/or or ]~~ straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.

[ 44. 11. ] Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

H. Stormwater management facilities.

1. [ ~~The~~ ] Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensatory mitigation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance excavation [ ~~shall be in accordance with an approved maintenance plan and~~ ] shall not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the [ facility ] maintenance plan.

Part II. Mitigation, Monitoring and Reporting.

A. [ ~~Wetland~~ Compensatory ] mitigation. [ ~~In order to qualify for this VWP general permit, The permittee shall provide~~ ] appropriate and practicable compensatory mitigation [ ~~will be required~~ ] for all [ ~~wetland~~ ] impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. [ ~~Compensation may incorporate~~ ] preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters [ ~~is acceptable~~ ] when utilized in conjunction with creation, restoration or mitigation bank credits.

1. The [ ~~site(s)~~ site or sites ] depicted in the conceptual compensatory mitigation [ ~~package plan~~ ] submitted with the registration statement, shall constitute the compensatory mitigation [ ~~package plan~~ ] for the approved project [ ~~, unless otherwise authorized by a VWP general permit modification~~ ].

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the [ ~~Corps of Engineers~~ USACE ] has debited the required mitigation credits from the Mitigation Bank ledger. For projects proposing a contribution to an in-lieu fee [ ~~program~~ fund ], the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.

3. All aspects of the compensatory mitigation plan shall be finalized, submitted and approved by [ ~~DEQ~~ the board ] prior to any construction activity in permitted impact areas.

[ ~~DEQ~~ The board ] shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensatory mitigation plan as approved by [ ~~DEQ~~ the board ] shall [ ~~become an official component~~ ] be an enforceable requirement ] of this VWP general permit. [ Any deviations from the approved plan must be submitted and approved in advance by the board. ]

a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget [ ~~(nontidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only),~~ a typical year, a wet year and a dry year ] plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of [ ~~panoramic~~ ] photographic stations and ground water monitoring wells [ ~~(or tide gages, for tidal sites)~~ ]. Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas [ within ] approximately 200 miles from the project site.

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or reservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by [ ~~DEQ~~ the board ]. Unless specifically authorized by [ ~~DEQ~~ the board ] through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation [ ~~site(s)~~ site or sites ] shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan. [ ~~As a general rule, elevations shall be within 0.2 feet~~ ]

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# Final Regulations

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~~of the elevations proposed in the final compensatory mitigation plan. The final as-built grading plan shall be approved by DEQ prior to any planting and placement of ground water monitoring wells. ]~~

5. All work in [ jurisdictional impact ] areas shall cease if compensatory mitigation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by [ DEQ the board ].

~~[ 6. The wetland creation portions of the site(s) shall be excavated 6-12 inches below final grade. Topdressing soil shall then be spread to bring the compensatory mitigation site to final grade. A wetland vegetation seed mix shall be applied within seven days of final grading for site stabilization.~~

~~7. For compensatory mitigation sites involving restoration, a wetland vegetation seed mix shall be applied for site stabilization within seven days of final grading or soil disturbance.~~

6. A site stabilization plan shall be provided for compensation sites involving land disturbance. ]

~~[ 8. 7. ] Planting of woody plants shall occur [ outside the growing season, when the soil is not frozen, between November 1 and March 31 when vegetation is normally dormant unless otherwise approved in the final mitigation plan ].~~

[ 9. 8. ] Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.

~~[ 10. 9. ] The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.~~

~~[ 11. 10. ] Wetland hydrology shall be considered established if depths to the seasonal high water table [ ~~in a typical rainfall year,~~ ] are equal to or less than [ ~~one foot~~ 12 inches below ground surface ] for at least 12.5% of the growing season [ ~~for~~ , as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in ] all monitoring years [ under normal rainfall conditions, as defined in the water budget of the final mitigation plan ].~~

[ 12. 11. ] The wetland plant community shall be considered established [ ~~if~~: according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover. ]

~~[ a. Greater than 50% of the woody plants, expressed either by plant stems or canopy coverage, shall be facultative (FAC) or wetter (FACW or OBL). A minimum plant stem count of 400/acre must be achieved in sample plots until canopy coverage is 30% or greater. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. A minimum of 65% of the planted trees and shrubs must be viable and show signs of growth for the life of the VWP general permit.~~

~~b. Greater than 50% of all herbaceous plants shall be FAC or wetter. Aerial coverage shall be a minimum of 60% after one full growing season and 80% after three growing seasons and remaining at or above 80% for the life of the VWP general permit. Scrub/shrub or sapling/forest vegetation is not included in coverage or stem count for herbaceous vegetation.~~

~~c. Species composition reflects the desired plant community types stated in the wetland compensatory mitigation plan by the end of the first growing season and is maintained through the last year of the VWP general permit.~~

~~d. Noxious weeds are identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the VWP staff of any invasive species occurrences, methods of removal, and successful control.~~

~~e. Deviations from this plan must be approved in advance by DEQ.~~

12. Noxious weeds shall be identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences, methods of removal, and successful control. ]

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to [ DEQ the board ] for approval prior to or with the next required monitoring report. [ ~~Replacement of dead plant stock in the wetland compensatory mitigation site shall occur, as necessary, to achieve a minimum of 400 stems/acre for the tree species (until canopy coverage is 30% or greater) and 65% of the original stocking density for the planted herb, shrub and tree species. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan.~~ ] All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be

based on that boundary [ at the end of the monitoring cycle ].

15. Herbicides or [ ~~algicides~~ ~~algicides~~ ] shall not be used in or immediately adjacent to the compensatory mitigation [ ~~site(s) site or sites~~ ] without prior authorization by [ ~~DEQ the board~~ ]. All vegetation removal shall be done by [ ~~mechanical manual~~ ] means [ ~~only~~ ], unless authorized by [ ~~DEQ the board in advance~~ ].

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for [ ~~renewal/extension~~ renewal or extension ] must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time [ ~~DEQ the board~~ ] will determine if renewal of the VWP general permit authorization is necessary.

B. Compensatory mitigation site monitoring.

1. A post-grading survey, including spot elevations, of the [ ~~site(s) site or sites~~ ] for wetland compensatory mitigation [ ~~may be required depending upon the type and size of the compensation site, and~~ ] shall be conducted by a licensed land surveyor or a professional engineer [ ~~and submitted to DEQ for approval prior to placing the permanent groundwater monitoring wells and planting of the vegetation. Grading elevation plans shall be on a scale of 1 inch equals 50 feet (or 1:500 metric) with contour intervals of one (or two) feet accompanied by cross section views. The final as-built grading plan shall be submitted to DEQ for approval prior to any planting and placement of ground water monitoring wells~~ ].

2. [ ~~Panoramic~~ ] Photographs shall be taken at the compensatory mitigation [ ~~site(s) site or sites~~ ] from [ ~~each of the monitoring well stations the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period~~ ]. These photographs shall be taken after the initial planting and in August or September every [ ~~monitoring~~ ] year [ ~~for the life of the VWP general permit. Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period~~ ].

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year 1) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, 3, [ and ] 5 [ ~~, 7 and 10, with years 7 and 10 only required if the site success criteria were not achieved during the previous monitoring event~~ ] . [ ~~If all success criteria have not been met in the fifth year, monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.~~ ]

4. [ ~~The establishment of wetland hydrology shall be measured weekly during the growing season. The number of monitoring wells for each site will be determined by DEQ on a site-specific basis. The location of the wells must be approved by DEQ prior to placement. Adequate hydrology~~

~~shall be within 12 inches of the surface for 12.5% of the growing season. Monitoring shall include approximate acreage and average depth of any ponded water on the wetland compensatory mitigation site(s). Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year.~~ ]

5. The presence of hydric soils or soils under hydric conditions shall be evaluated [ ~~by digging soil pits at each monitoring station and evaluating the soil profile for hydric soil indicators using a documented method acceptable to DEQ in accordance with the final mitigation plan~~ ].

6. The establishment of wetland vegetation shall be [ ~~indicated by percent cover, percent survival, stem counts and species composition monitored in accordance with the final mitigation plan. Monitoring shall take place~~ ] in August or September during [ ~~each reportable the~~ ] growing season [ ~~in the life of the VWP general permit. At each monitoring station, the following information shall be collected of each monitoring year, unless otherwise authorized in the monitoring plan~~ ]:

[ ~~a. Percent cover for all herbaceous species shall be estimated using a documented method accepted by DEQ. The approximate species composition of the herbaceous vegetation shall be indicated, including nondominants. The number of stems per acre for woody species shall be provided. A quantitative measure for noxious species present shall also be provided.~~

~~b. Percent survival of planted woody species, if applicable, shall be estimated using a documented method accepted by DEQ. The number of stems of all tree species within each sample plot and the density of all tree species (number of stems per acre) shall be provided.~~

~~c. The presence of noxious species shall be documented.~~

7. The presence of noxious species shall be documented. ]

C. Stream [ mitigation, ] restoration [ and ] monitoring.

[ ~~1. Representative photographs shall be taken along the stream segment(s). These photographs shall be taken prior to restoration, after restoration work is complete, and in August or September for three years after completion. Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.~~

2. Monitoring for stream restoration success shall begin at the first complete growing season (year 1) following site restoration. Monitoring shall be required for years 1, 2, and

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# Final Regulations

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~~3. Monitoring shall consist of an evaluation of the stability and success of any instream structures, vegetative monitoring of any established riparian buffers, and a pre- and post-construction assessment of the benthic community of the stream.~~

1. Stream mitigation shall be performed in accordance with the final mitigation plan and subsequent submittals, as approved by the board.

2. Stream bank slopes shall be stabilized to reduce stream bank erosion, where practicable.

3. Stream mitigation monitoring shall be conducted in the manner proscribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30 of the monitoring year. Monitoring reports shall include:

a. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period.

b. Discussion of the establishment of vegetation, if applicable.

c. Any alterations, maintenance, and corrective actions conducted at the stream mitigation site. ]

## D. Construction monitoring.

1. Photo stations shall be established to document the [ various ] construction aspects of [ the ] project [ activities ] within [ jurisdictional impact ] areas. [ ~~These stations shall be established to as authorized by this permit. Photographs should ] document the [ existing pre-construction conditions, activities during construction, ] and post-construction conditions [ of the project site. ~~These stations shall be photographed prior to construction, during construction, and within one week after the completion of construction. Photos within one week after completion of construction. Photographs ] shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project. [ Photographs are not necessary during periods of no activity within impact areas. ]~~~~

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured [ at the inlet and outlet of the proposed structure ] and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels;

c. After opening the new channel, temperature, pH and D.O. readings shall be taken once every half hour for at least three readings at each station within 24 hours of opening the new channel.

## E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate [ ~~Department of Environmental Quality~~ DEQ ] office. The VWP general permit authorization number shall be included on all correspondence.

2. [ ~~DEQ~~ The board ] shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to [ ~~DEQ~~ the board ] within 30 days of each monitoring event [ ~~as required in condition D-1 of Part II of this VWP general permit~~ ]. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, [ a brief description ] and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.). [ ~~Photographs are not necessary during periods of no activity within jurisdictional areas.~~

4. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-690-90. ]

[ 4. 6. ] ~~The permittee shall notify [ DEQ the board ] in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by [ DEQ the board ].~~

[ 5. 7. ] ~~The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, [ the appropriate ] DEQ [ regional office ] shall be notified [ at (insert appropriate DEQ office phone number) ]; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.~~

[ 6. 8. ] ~~Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.~~

~~[ 7. The final plans of compensatory mitigation shall be submitted to and approved by DEQ prior to any construction in permitted impact areas.~~

~~8. An official copy of the instrument of restriction, protection, or preservation of wetlands and State waters provided as part of the compensatory mitigation plan shall be submitted to the DEQ within 60 days of recordation as outlined in the mitigation portion of this VWP general permit.~~

~~9. The mitigation bank account ledgers shall be submitted denoting the purchase of the required credits from the proposed bank(s).~~

~~10. All compensatory mitigation monitoring reports required by the special conditions in subsection B above shall be submitted annually by November 30 with the exception of the final report in the life of the VWP general permit which shall be submitted by November 30 of that monitoring year or 180 days prior to VWP general permit expiration, whichever occurs sooner. Alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to DEQ.~~

44. 9. ] All submittals required by this VWP general permit shall contain the following signed certification statement:

"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 violation."

### Part III. Conditions Applicable to All VWP [ General ] Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP [ general ] permit. Nothing in this VWP general permit shall be construed to relieve the permittee of

the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP [ general ] permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP [ general ] permit authorization ] termination, revocation, [ ~~modification~~ ], or denial of a [ ~~VWP permit~~ ] renewal application.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit [ authorization ] may be reopened to modify [ ~~the its~~ ] conditions [ ~~of the VWP general permit~~ ] when the circumstances on which the previous VWP general permit [ authorization ] was based have materially and substantially changed, or special studies conducted by the [ ~~department~~ board ] or the permittee show material and substantial change since the time the VWP general permit [ authorization ] was issued and thereby constitute cause for VWP general permit [ ~~modification or~~ authorization ] revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general 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 property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit [ authorization ] are severable.

G. Right of entry. The [ ~~applicant and/or~~ ] permittee shall allow [ ~~authorized state and federal representatives~~ the board or its agents ], upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;
2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;
3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

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# Final Regulations

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H. Transferability of VWP [ ~~permits~~ general permit authorization ]. This VWP general permit [ authorization ] may be transferred to another person by a permittee if:

1. The current permittee notifies the board within 30 days of the 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 ] permittee containing a specific date of transfer of VWP general permit authorization ] responsibility, coverage and liability [ ~~between them~~ to the new permittee ], or that the [ ~~seller~~ existing permittee ] will retain such responsibility, coverage or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not notify the existing and [ ~~proposed~~ new ] permittee of [ ~~the board's~~ its ] intent to modify or revoke and reissue the VWP general permit [ authorization ] within the 30-day time period.

On the date of the VWP general permit [ authorization ] transfer, the transferred VWP general permit [ authorization ] shall be as fully effective as if it had been issued directly to the new permittee.

[ ~~1. VWP permit modification. The permittee shall notify the Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the department that said modification will not violate any conditions of this VWP general permit. If such demonstration cannot be made, the permittee shall apply for a modification of this VWP general permit. This VWP general permit may be modified when any of the following developments occur:~~

- ~~1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP general permit or are absent from it, provided the total project impacts for a single and complete project do not exceed two acres, including 500 linear feet of perennial stream or 1,500 linear feet of nonperennial stream and are fully mitigated;~~
- ~~2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at VWP general permit issuance and would have justified the application of different VWP permit conditions at the time of VWP general permit issuance;~~
- ~~3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;~~
- ~~4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Clean Water Act; and~~
- ~~5. When changes occur which are subject to "reopener clauses" in the VWP general permit.~~

I. Notice of planned change. Authorization under the VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than ¼ acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation. ]

J. VWP [ general ] permit termination. This VWP general permit, after public notice and opportunity for a hearing, is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit;
2. The permittee's failure in the application or during the VWP general permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; [ and ]
4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit [ authorization ] modification or termination [ ~~or~~ . ]

[ ~~5. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.~~

K. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

L. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of 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 State Water Control Law.

[ M. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VSP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

N. Duty to provide information.

1. the permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

## O. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. the name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation. ]

[ ~~M~~ P ]. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
  - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
  - b. Filling or dumping;
  - c. Permanent flooding or impounding; or
  - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

## DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

**NOTICE:** The forms used in administering 9 VAC 25-690-10 et seq., Virginia Water Protection General Permit for Impacts from Development Activities, are not being published due to the large number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

[ Department of Environmental Quality Water Division Permit Application Fee (eff. 10/01).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 10/01).

Virginia Water Protection General Permit Registration Statement (eff. 10/01). ]

VA.R. Doc. No. R00-196; Filed June 13, 2001, 10:55 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR CONTRACTORS

**Title of Regulation:** 18 VAC 50-22-10 et seq. Board for Contractors Regulations (amending 18 VAC 50-22-10 through 18 VAC 50-22-60, 18 VAC 50-22-80, and 18 VAC 50-22-100 through 18 VAC 50-22-270).

**Statutory Authority:** §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

**Effective Date:** September 1, 2001.

#### Summary:

The amendments reflect statutory changes and respond to changes in the industry. The regulations have not been significantly revised, except for a fee reduction, since 1995. The text of the regulations is also revised for clarity and ease of use. The amendments (i) add new specialties for licensure; (ii) clarify that examinations may be required for certain classifications or specialty licenses; (iii) clarify that applicants shall submit information regarding ability, character and financial responsibility when applying for licensure; (iv) permit certain classifications to install backflow prevention devices upon passage of a board-approved training program; (v) create separate business and technical exams for building contractors; and (vi) clarify and expand the prohibited acts section to provide additional public protection.

Changes to the proposed regulation include amendments to the definitions section and language added to 18 VAC



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# Final Regulations

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50-22-200 that allows the board to require remedial education for violations of Chapter 11 of Title 54.1 of the Code of Virginia, or any regulation of the board.

Summary of Public Comments and Agency's 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 David E. Dick, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2785.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 17:8 VA.R. 1152-1167 with the additional changes shown below. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.

## 18 VAC 50-22-10. General definitions.

The following words and terms, when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"*Affidavit*" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"*Business entity*" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

~~"Certificate holder" means a firm holding a Class C contractor certificate issued by the Board for Contractors to act as a contractor as defined in § 54.1-1100 of the Code of Virginia.~~

"*Controlling financial interest*" means the direct or indirect ownership or control of more than 50% ~~or more of the applicable indicia~~ of ownership of a firm.

~~"Firm" means any sole proprietorship, partnership, association, limited liability company, or corporation which is required by § 54.1-1100 of the Code of Virginia to obtain a license/certificate business entity recognized under the laws of the Commonwealth of Virginia.~~

[ "*Formal vocational training*" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools or other similar training organizations. ]

"*Full-time employee*" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed [ ~~certified~~ ] contracting business.

"*Licensee*" means a firm holding a license issued by the Board for Contractors to act as a contractor, as defined in § 54.1-1100 of the Code of Virginia.

"*Net worth*" means assets minus liabilities. For purposes of this chapter, assets shall not include any property owned as tenants by the entirety.

"*Reciprocity*" means an arrangement by which the licensees of two states are allowed to practice within each other's boundaries by mutual agreement.

~~"Reinstatement" means having a license or certificate restored to effectiveness after the expiration date has passed.~~

~~"Renewal" means continuing the effectiveness of a license or certificate for another period of time.~~

"*Responsible management*" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company; ~~and~~
6. The officers or directors of an association or both; ~~and~~
7. *Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.*

"*Sole proprietor*" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of § 59.1-69 through 59.1-76 of the Code of Virginia.

"*Tenants by the entirety*" means a tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon death of either, ~~the~~ other takes whole to exclusion of ~~deceased the deceased's~~ remaining heirs.

## 18 VAC 50-22-20. Definitions of license/certificate classifications.

The following words and terms, when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"*Building contractors*" (Abbr: BLD) means those individuals whose contracts include construction on real property owned, controlled or leased by another person of commercial, industrial, institutional, governmental, residential (single-family, two-family or multifamily) and accessory use buildings or structures. This classification also provides for remodeling, repair, improvement or demolition of these buildings and structures. A holder of this license/certificate can do general contracting ~~but his scope of work cannot include any work covered under the following trade or specialty licenses:~~

alarm security  
asbestos  
billboard/sign  
blasting  
electrical  
electronic communication  
elevator/escalator  
environmental systems

fire alarm  
 fire sprinkler  
 fire suppression  
 gas fitting  
 HVAC  
 irrigation  
 passive energy  
 plumbing

If the BLD contractor performs specialty services, all required specialty designations shall be obtained. The building classification ~~does include~~ includes but is not limited to the functions carried out by the following specialties:

billboard/sign contracting  
 commercial improvement contracting  
~~home improvement~~  
 farm improvement contracting  
 home improvement contracting  
 landscape services service contracting  
~~miscellaneous~~  
 marine facility contracting  
 modular/mobile manufactured building contracting  
 recreational facilities facility contracting

The above specialties are not inclusive of all of the functions covered by the building classification.

"Electrical contractors" (Abbr: ELE) means those individuals whose contracts include the construction, repair, maintenance, alteration, or removal of electrical systems under the National Electrical Code. This classification provides for all work covered by the National Electrical Code including electrical work covered by ~~ALS, ESC, and FAS~~ classifications the alarm/security systems contracting (ALS), electronic/communication service contracting (ESC) and fire alarm systems contracting (FAS) specialties. A firm holding an electrical license is responsible for meeting all applicable tradesman certification licensing standards adopted by each locality.

"Highway/heavy contractors" (Abbr: H/H) means those individuals whose contracts include construction, repair, improvement, or demolition of the following:

bridges  
 dams  
~~foundations~~  
 drainage systems  
 foundations  
 parking lots  
 public transit systems  
 rail roads  
 roads  
 runways  
 streets  
 structural signs & lights  
 tanks

The functions carried out by these contractors include but are not limited to the following:

building demolition  
 clearing  
 concrete work

excavating  
 grading  
 nonwater well drilling  
 paving  
 pile driving  
 road marking

These contractors also install, maintain, or dismantle the following:

1. Power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter;
2. Pumping stations and treatment plants;
3. Telephone, telegraph, or signal systems for public utilities; and
4. Water, gas, and sewer lines ~~up to five feet from any building or structure~~ connections to residential, commercial, and industrial sites, subject to local ordinances.

This classification may also install backflow prevention devices incidental to work in this classification [ ~~upon passage of an installation competency and training program approved by the board~~ when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices ].

"HVAC contractors" (Abbr: HVA) means those individuals whose work includes the installation, alteration, repair, or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heaters, heating systems, boilers, process piping, and mechanical refrigeration systems, including tanks incidental to the system. This classification does not provide for fire suppression installations, sprinkler system installations, or gas piping. A firm holding a HVAC license is responsible for meeting all applicable tradesman certification licensure standards adopted by each locality. This classification may [ ~~also~~ ] install backflow prevention devices incidental to work in this classification [ ~~upon passage of an installation competency and training program approved by the board~~ ].

"Plumbing contractors" (Abbr: PLB) means those individuals whose contracts include the installation, maintenance, extension, or alteration, or removal of all piping, fixtures, appliances, and appurtenances in connection with any of the following:

backflow prevention devices  
 boilers  
~~domestic sprinklers~~  
 hot water baseboard heating systems  
 hot water heaters  
 hydronic heating systems  
 limited area sprinklers (as defined by BOCA)  
 process piping  
 public/private water supply systems within or adjacent to any building, structure or conveyance  
 sanitary or storm drainage facilities  
 steam heating systems  
 storage tanks incidental to the installation of related systems  
 venting systems related to plumbing

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# Final Regulations

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These contractors also install, maintain, extend or alter the following:

- liquid waste systems
- sewerage systems
- storm water systems
- water supply systems

This classification does not provide for gas piping or the function of fire sprinkler contracting as noted above. A firm holding a plumbing license is responsible for meeting all applicable tradesman ~~certification licensure~~ standards adopted by each locality.

"Specialty contractors" means those individuals whose contracts are for specialty services which do not generally fall within the scope of any other classification within this chapter.

## 18 VAC 50-22-30. Definitions of specialty services.

The following words and terms, when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Alarm/security systems contracting" (Abbr: ALS) means that service which provides for the installation, repair, improvement, or removal of alarm systems or security systems annexed to real property. This classification covers only burglar and security alarm installations. A firm holding an ALS license/certificate is responsible for meeting all applicable tradesman ~~certification standards rules and regulations~~ adopted by each locality. The electrical ELE classification also provides for this function.

"Alternative energy system contracting" (Abbr: AES) means that service which provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Asbestos contracting" (Abbr: ASB) means that service which provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means that service which provides for the installation of asphalt paving and/or sealcoating on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means that service which provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H is and BLD are the only other ~~classification~~ classifications that can perform this work except that a contractor in this specialty may connect or disconnect

signs to existing electrical circuits. ~~A building contractor may install signs incidental to work covered under their classification.~~ No trade related plumbing, electrical, or HVAC work is included in this ~~classification~~ function.

"Blast/explosive contracting" (Abbr: BEC) means that service which provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means that service which provides for ~~additions, repairs, repair or improvements~~ improvement to nonresidential property and multifamily property as defined in the Virginia Uniform Statewide Building Code. The BLD classification also ~~covers this work~~ provides for this function. The CIC classification does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means that service which provides for all work in connection with the processing, proportioning, batching, mixing, conveying and placing of concrete composed of materials common to the concrete industry. This includes but is not limited to finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing and waterproofing. Construction and assembling of forms, molds, slipforms, pans, centering, and the use of rebar is also included. The BLD and H/H classifications also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means that service which provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license/certificate is responsible for meeting all applicable tradesman ~~certification licensure~~ standards adopted by each locality. The electrical ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means that service which provides for the installation, repair, improvement or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license/certificate is responsible for meeting all applicable tradesman ~~certification licensure~~ standards adopted by each locality. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means that service which provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means that service which provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means that service which provides for the installation or removal of equipment or machinery ~~such as~~ including but not limited to

conveyors or heavy machinery. ~~This specialty~~ does not provide for any electrical, plumbing, process piping or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means that service which provides for the installation, repair or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The BLD classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Fire alarm systems contracting" (Abbr: FAS) means that service which provides for the installation, repair, or improvement of fire alarm systems which operate at 50 volts or less. The electrical ELE classification also provides for this function. A firm with an FAS license/certificate is responsible for meeting all applicable tradesman certification licensure standards adopted by each locality.

"Fire sprinkler contracting" (Abbr: SPR) means that service which provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of limited area sprinklers as defined by BOCA. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and sprinkler system [ ~~upon passage of an installation competency and training program approved by the board when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices~~ ].

"Fire suppression contracting" (Abbr: FSP) means that service which provides for the installation, repair, improvement, or removal of fire suppression systems including but not limited to halon and other gas systems; dry chemical systems; and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Gas fitting contracting" (Abbr: GFC) means that service which provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm with a GFC license is responsible for meeting all applicable tradesman licensure standards.

"Home improvement contracting" (Abbr: HIC) means that service which provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property. The BLD classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include high rise buildings, buildings with more than two dwelling units, or new construction functions beyond the existing building structure other than decks, patios, driveways and utility out buildings.

"Landscape irrigation contracting" (Abbr: ISC) means that service which provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or

outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. ~~However, only the PLB classification provides for the installation of backflow devices. This specialty may install backflow prevention devices incidental to work in this specialty [ upon passage of an installation competency and training program approved by the board when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices ].~~

"Landscape service contracting" (Abbr: LSC) means that service which provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. The BLD classification also provides for this function.

"Lead abatement contracting" (Abbr: LAC) means that service which provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function. A plumber, except that the PLB classification may provide this service incidental to work embraced in that classification.

"Liquefied petroleum gas contracting" (Abbr: LPG) means that service which includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require a HVA or PLB license. No other classification or specialty service provides for this function. A firm holding a LPG license is responsible for meeting all applicable tradesman licensure standards.

"Marine facility contracting" (Abbr: MCC) means that service which provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The BLD and H/H classification classifications also provides provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC or plumbing functions.

~~"Miscellaneous contracting" (Abbr: MSC) means that service which may fall under another classification or specialty service but is more limited than the functions provided by the other classification.~~

"Masonry contracting" (Abbr: BRK) means that service which includes the installation of brick, concrete block, stone, marble, slate or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging and cleaning and welding of reinforcement steel related to masonry construction. The BLD classification and HIC and CIC specialties also provide for this function.

"Modular/mobile/manufactured building contracting" (Abbr: MBC) means that service which provides for the installation or removal of a modular, mobile, or manufactured building manufactured under ANSI standards. This classification does not cover foundation work; however, it does allow installation of

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# Final Regulations

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piers covered under HUD regulations. It does allow a licensee/certificate holder to do internal tie ins of plumbing, gas and electrical or HVAC equipment. It does not allow for installing additional plumbing, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The H/H and BLD classifications also provide for this function.

~~"Passive energy systems contracting" (Abbr: PES) means that service which provides for the installation, repair, or improvement, from the customer's meter, of passive energy generation systems or passive supplemental energy systems annexed to real property. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.~~

"Natural gas fitting provider contracting" (Abbr: NGF) means that service which provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment which requires a HVA or PLB license. No other classification or specialty service provides for this function. A firm holding a NGF license is responsible for meeting all applicable tradesman licensure standards.

"Painting and wallcovering contracting" (Abbr: PTC) means that service which provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The BLD classification and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means that service which provides for additions, repairs or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. This function can only be performed by a firm holding the BLD classification or CIC (for other than one-family and two-family dwellings), FIC (for nonresidential farm buildings) or HIC (for one-family and two-family dwellings) specialty services. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means that service which provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The building BLD classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means that service which provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, *drinking fountains*, cold room equipment, and similar hermetic refrigeration equipment. ~~This function is also provided by~~ The HVAC classification *also provides for this function.*

"Roofing contracting" (Abbr: ROC) means that service which provides for the installation, repair, removal or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The BLD classification and the HIC and CIC specialties also provide for this function.

"Sewage disposal systems contracting" (Abbr: SDS) means that service which provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other on-site sewage disposal systems annexed to real property.

"Swimming pool construction contracting" (Abbr: POL) means that service which provides for the construction, repair, improvement or removal of in-ground swimming pools. The BLD classification and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow or HVAC work is included in this specialty.

"Vessel construction contracting" (Abbr: VCC) means that service which provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this ~~service~~ function.

"Water well/pump contracting" (Abbr: WWP) means that service which provides for the installation of a water well system, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to *and including* the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude PLB, ELE or HVAC from installation of pumps and tanks.

Note: Specialty contractors engaging in construction which involves the following activities or items or similar activities or items may fall under the ~~specialty service of commercial improvement, home improvement, or farm improvement~~ CIC, HIC and/or FIC specialty services, or they may fall under the ~~building~~ BLD classification.

- Appliances
- Awnings
- Blinds
- Bricks
- Bulkheads
- Cabinetry
- Carpentry
- Carpeting
- Casework
- ~~Caulking~~
- Ceilings
- Chimneys
- Chutes
- Concrete
- Conduit Rodding

Curtains  
 Curtain Walls  
 Decks  
 Doors  
 Drapes  
 Drywall  
 Epoxy  
 Exterior Decoration  
 Facings  
 Fences  
 Fiberglass  
 Fireplaces  
 Fireproofing  
 Fixtures  
 Floor Coverings  
 Flooring  
 Floors  
 Glass  
 Glazing  
 Grouting  
 Grubbing  
 Guttering  
 Insulation  
 Interior Decorating  
 Lubrication  
~~Marble~~  
~~Masonry~~  
 Metal Work  
 Millwrighting  
 Mirrors  
 Miscellaneous Iron  
 Ornamental Iron  
~~Painting~~  
 Partitions  
~~Plastic Wall Coverings~~  
 Protective Coatings  
 Railings  
 Rigging  
~~Roofing~~  
 Rubber Linings  
 Sandblasting  
 Scaffolding  
 Screens  
 Sheet Metal  
~~Shingles~~  
 Shutters  
 Siding  
 Skylights  
~~Special Coatings~~  
~~Stone~~  
 Storage Bins & Lockers  
 Stucco  
 Temperature Controls  
 Terrazzo  
 Tile  
 Vaults  
 Vinyl Flooring  
~~Wall Coverings~~  
 Wall Panels  
 Wall Tile  
 Waterproofing  
 Weatherstripping

Welding  
 Windows  
 Wood Floors

**18 VAC 50-22-40 through 18 VAC 50-22-120. [ No change from proposed. ]**

**18 VAC 50-22-130. Qualifications for renewal.**

*A. The license holder's completed renewal form and appropriate fees must be received within 30 days of the license expiration date in order to renew the license. Applications and fees received after the 30-day period will be processed in accordance with Part IV (18 VAC 50-22-160 et seq.) of this chapter.*

*B. Applicants for renewal of a Class C ~~certificate~~ license shall continue to meet all of the qualifications for ~~certification~~ [ ~~license licensure~~ ] set forth in 18 VAC 50-22-40. Applicants for renewal of a Class B license shall continue to meet all of the qualifications for licensure set forth in 18 VAC 50-22-50. Applicants for renewal of a Class A license shall continue to meet all of the qualifications for licensure set forth in 18 VAC 50-22-60.*

**18 VAC 50-22-140 through 18 VAC 50-22-190. [ No change from proposed. ]**

**18 VAC 50-22-200. [ Remedial education, ] revocation or suspension; fines.**

The board may [ *require remedial education,* ] revoke or suspend a license/~~certificate~~ or fine a licensee/~~certificate holder~~ when a licensee/~~certificate holder~~ has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

**18 VAC 50-22-210. [ No change from proposed. ]**

**18 VAC 50-22-220. Change of responsible management, designated employee, or qualified individual.**

*A. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 90 days of the change.*

*B. Any change of designated employee shall be reported on a form provided by the board within ~~45~~ 90 days of the change. The new designated employee for a Class B licensee shall meet the requirements of 18 VAC 50-22-50 B. The new designated employee for a Class A licensee shall meet the requirements of 18 VAC 50-22-60 B.*

*C. Any change of qualified individual shall be reported on a form provided by the board within 45 days of the change. The new qualified individual for a Class C [ ~~certificate holder~~ licensee ] shall meet the requirements of 18 VAC 50-22-40 B. The new qualified individual for a Class B licensee shall meet the requirements of 18 VAC 50-22-50 C. The new qualified individual for a Class A licensee shall meet the requirements of 18 VAC 50-22-60 C.*

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# Final Regulations

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**18 VAC 50-22-230 through 18 VAC 50-22-250. [ No change from proposed. ]**

**18 VAC 50-22-260. Filing of charges; prohibited acts.**

A. All complaints against contractors may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license/certificate.

3. ~~Where~~ Failure of the responsible management, designated employee, or qualified individual ~~has failed~~ to report to the board, in writing, the suspension or revocation of a contractor license by another state or his conviction in a court of competent jurisdiction of a building code violation.

4. Publishing or causing to be published any advertisement relating to contracting which contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.

5. ~~Gross~~ Negligence and/or incompetence in the practice of contracting.

6. Misconduct in the practice of contracting.

7. A finding of improper or dishonest conduct in the practice of ~~his profession~~ contracting by a court of competent jurisdiction.

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee/certificate holder or his agent. ~~At a minimum the contract shall specify or disclose the following:~~

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

a. When work is to begin and the estimated completion date;

b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;

c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;

d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;

e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;

f. Disclosure of the cancellation rights of the parties;

g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;

h. Contractor's name, address, license/certificate number, expiration date, class of license/certificate, and classifications or specialty services; and

i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

~~9-~~ 10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in ~~subdivision~~ subdivisions 8 and 9 of this ~~section~~ subsection for construction or contracting work.

~~40-~~ 11. Failure of the contractor to maintain for a period of ~~three~~ five years from the date of contract a complete and legible copy of all documents relating to that contract, including, but not limited to, the contract and any addenda or change orders.

~~44-~~ 12. Refusing or failing, upon request or demand, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's/certificate holder's possession concerning a transaction covered by this chapter or for which the licensee/certificate holder is required to maintain records, ~~or~~.

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

~~42-~~ 14. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part. (*defined as the unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment.*)

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

~~16.~~ *The retention or misapplication of funds paid, for which work is either not performed or performed only in part.*

~~13-~~ *17. Making any misrepresentation or making a false promise of a character likely to that might influence, persuade, or induce.*

~~14-~~ *18. Assisting an unlicensed/uncertified contractor another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed/uncertified contractor another.*

~~15-~~ *19. Allowing a firm's license/certificate to be used by an unlicensed/uncertified contractor another.*

~~16-~~ *20. Acting as or being an ostensible licensee/certificate holder for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's/certificate holder's business.*

~~17-Where~~ *21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual have offered to offer, given give, or promised promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.*

~~18-~~ *22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure/certification, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.*

~~19. Having failed~~ *23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.*

~~20-~~ *24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.*

~~21-~~ *25. Failure to comply with abate a violation of the Virginia Uniform Statewide Building Code, as amended.*

~~22-~~ *26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).*

~~23-~~ *27. Practicing in a classification [ or , ] specialty service [ , or class of license ] for which the contractor is not licensed/certified.*

~~24. After January 1, 1996, failure to include the contractor's license/certificate number and class on all business cards and flyers and in all classified and display advertisements in newspapers and in telephone directories and in written contracts.~~

~~25. Failure to satisfy any judgments.~~

~~26. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.~~

~~27. Failure to honor the terms and conditions of a warranty.~~

~~28. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.~~

**18 VAC 50-22-270. [No change from proposed.]**

**FORMS**

**[No change from proposed.]**

VA.R. Doc. No. R00-70; Filed June 13, 2001, 11:56 a.m.

**BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

Title of Regulation: **18 VAC 65-10-10 et seq. Public Participation Guidelines (amending 18 VAC 65-10-10, 18 VAC 65-10-20, 18 VAC 65-10-30, 18 VAC 65-10-40, 18 VAC 65-10-60, 18 VAC 65-10-70, 18 VAC 65-10-80, and 18 VAC 65-10-100).**

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Effective Date: August 1, 2001.

Summary:

*The regulations set forth provisions for (i) a mailing list to receive documents related to the promulgation of regulations, (ii) procedures to be followed in a petition for rulemaking, (iii) notices, (iv) public hearings, (v) a periodic review of regulations, and (vi) advisory committees in the development of regulations.*

*The amendments clarify existing requirements and provide for electronic submissions by the agency and the affected parties.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Elizabeth Young Tisdale, Department of Health Professions, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907.



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# Final Regulations

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**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 17:12 VA.R. 2020-2023 February 26, 2001, without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R00-258; Filed June 13, 2001, 12:06 p.m.

## BOARD OF MEDICINE

**Title of Regulation:** 18 VAC 85-10-10 et seq. **Public Participation Guidelines (amending 18 VAC 85-10-10, 18 VAC 85-10-20, 18 VAC 85-10-30, 18 VAC 85-10-40, 18 VAC 85-10-60, 18 VAC 85-10-70, 18 VAC 85-10-80, and 18 VAC 85-10-100).**

**Statutory Authority:** § 9-6.14:7.1 of the Code of Virginia.

**Effective Date:** August 1, 2001.

**Summary:**

*The regulations set forth provisions for (i) a mailing list to receive documents related to the promulgation of regulations, (ii) procedures to be followed in a petition for rulemaking, (iii) notices, (iv) public hearings, (v) a periodic review of regulations, and (vi) advisory committees in the development of regulations.*

*The amendments clarify existing requirements and provide for electronic submissions by the agency and the affected parties.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

**Agency Contact:** William L. Harp, M.D., Department of Health Professions, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 17:12 VA.R. 2020-2023 February 26, 2001, without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R00-260; Filed June 13, 2001, 12:06 p.m.

\* \* \* \* \*

**REGISTRAR'S NOTICE:** The Board of Medicine is claiming an exclusion 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 where no agency discretion is involved. The Board of Medicine will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18 VAC 85-50-10 et seq. **Regulations Governing the Practice of Physician Assistants (amending 18 VAC 85-50-10, 18 VAC 85-50-101, 18 VAC 85-50-130, 18 VAC 85-50-140, and 18 VAC 85-50-150.)**

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

**Effective Date:** August 1, 2001.

**Summary:**

*Pursuant to Chapter 465 of the 2001 Acts of Assembly, the board has amended the regulations for physician assistants to eliminate current requirements for a formulary of approved drugs and conform its requirements to provisions of law on expanded prescriptive authority.*

**Agency Contact:** Copies of the regulation may be obtained from William L. Harp, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

**18 VAC 85-50-10. Definitions.**

A. The following words and terms shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

*Board*

*Physician assistant*

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

*"Committee"* means the Advisory Committee on Physician Assistants as specified in § 54.1-2950.1 of the Code of Virginia.

~~*"Formulary"* means the listing of categories of drugs which may be prescribed by the physician assistant according to this chapter.~~

*"Group practice"* means the practice of a group of two or more doctors of medicine, osteopathy, or podiatry licensed by the board who practice as a partnership or professional corporation.

*"Institution"* means a hospital, nursing home or other health care facility, community health center, public health center, industrial medicine or corporation clinic, a medical service facility, student health center, or other setting approved by the board.

*"NCCPA"* means the National Commission on Certification of Physician Assistants.

*"Protocol"* means a set of directions developed by the supervising physician that defines the supervisory relationship between the physician assistant and the physician and the circumstances under which the physician will see and evaluate the patient.

*"Supervision"* means:

1. "Alternate supervising physician" means a member of the same group or professional corporation or partnership of any licensee, any hospital or any commercial enterprise with the supervising physician. Such alternating supervising physician shall be a physician licensed in the Commonwealth who has registered with the board and who has accepted responsibility for the supervision of the service that a physician assistant renders.

2. "Direct supervision" means the physician is in the room in which a procedure is being performed.
3. "General supervision" means the supervising physician is easily available and can be physically present within one hour.
4. "Personal supervision" means the supervising physician is within the facility in which the physician's assistant is functioning.
5. "Supervising physician" means the doctor of medicine, osteopathy, or podiatry licensed in the Commonwealth who has accepted responsibility for the supervision of the service that a physician assistant renders.

**18 VAC 85-50-101. Requirements for a protocol.**

A. Prior to initiation of practice, a physician assistant and his supervising physician shall submit a written protocol which spells out the roles and functions of the assistant. Any such protocol shall take into account such factors as the number of patients, the types of illness treated by the physician, the nature of the treatment, special procedures, and the nature of the physician availability in ensuring direct physician involvement at an early stage and regularly thereafter.

B. The board may require information regarding the level of supervision, i.e. "direct," "personal" or "general," with which the supervising physician plans to supervise the physician assistant for selected tasks. The board may also require the supervising physician to document the assistant's competence in performing such tasks.

C. If the role of the assistant includes prescribing for ~~Schedule V~~ drugs and devices, the written protocol shall include those ~~schedules and~~ categories of drugs and devices that are ~~within the approved formulary of this chapter and~~ within the scope of practice and proficiency of the supervising physician.

**18 VAC 85-50-130. Qualifications for approval of prescriptive authority.**

An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as a physician assistant in the Commonwealth;
2. Submit a protocol acceptable to the board ~~as defined in 18 VAC 85-50-50 B-2 prescribed in 18 VAC 85-50-101.~~ This protocol must be approved by the board prior to issuance of prescriptive authority;
3. Submit evidence of successful passing of the NCCPA exam; and
4. Submit evidence of successful completion of a minimum of 35 hours of acceptable training to the board in pharmacology.

**18 VAC 85-50-140. Approved ~~formulary~~ drugs and devices.**

A. The approved ~~formulary~~ of drugs and devices which the physician assistant with prescriptive authority may prescribe, administer, or dispense *manufacturer's professional samples*

shall ~~include~~ *be in accordance with provisions of § 54.1-2952.1 of the Code of Virginia:*

~~1. Schedule VI drugs and devices with exception of the following:~~

- ~~Radioactive drugs;~~
- ~~Ophthalmic aminoglycosides;~~
- ~~Ophthalmic steroids;~~
- ~~Any compound containing barbiturates;~~

~~2. No controlled substances defined by the state and federal Controlled Substances Acts as Schedule I through V.~~

B. The physician assistant may prescribe only those categories of drugs and devices included ~~in the approved formulary and~~ in the practice agreement as submitted for authorization. The supervising physician retains the authority to restrict certain drugs within these approved categories.

C. The physician assistant, pursuant to § 54.1-2952.1 of the Code of Virginia, shall only dispense *manufacturer's professional samples* or administer controlled substances in good faith for medical or therapeutic purposes within the course of his professional practice.

**18 VAC 85-50-150. Protocol regarding prescriptive authority.**

A. A physician assistant with prescriptive authority may prescribe only within the scope of the written protocol as ~~specified in 18 VAC 85-50-50 B-2 prescribed in 18 VAC 85-50-101.~~

B. A new protocol must be submitted with the initial application for prescriptive authority and with the application for each biennial renewal, if there have been any changes in supervision, authorization or scope of practice.

VA.R. Doc. No. R01-228; Filed June 13, 2001, 12:05 p.m.

**BOARD OF PHARMACY**

Title of Regulation: **18 VAC 110-10-10 et seq. Public Participation Guidelines (amending 18 VAC 110-10-10, 18 VAC 110-10-20, 18 VAC 110-10-30, 18 VAC 110-10-40, 18 VAC 110-10-60, 18 VAC 110-10-70, 18 VAC 110-10-80, and 18 VAC 110-10-100).**

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Effective Date: August 1, 2001.

Summary:

*The regulations set forth provisions for (i) a mailing list to receive documents related to the promulgation of regulations, (ii) procedures to be followed in a petition for rulemaking, (iii) notices, (iv) public hearings, (v) a periodic review of regulations, and (vi) advisory committees in the development of regulations.*

*The amendments clarify existing requirements and provide for electronic submissions by the agency and the affected parties.*

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# Final Regulations

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Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Elizabeth Scott Russell, Department of Health Professions, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 17:12 VA.R. 2020-2023 February 26, 2001, without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R00-266; Filed June 13, 2001, 12:06 p.m.

## BOARD OF SOCIAL WORK

Title of Regulation: **18 VAC 140-10-10 et seq. Public Participation Guidelines (amending 18 VAC 140-10-10, 18 VAC 140-10-20, 18 VAC 140-10-30, 18 VAC 140-10-40, 18 VAC 140-10-60, 18 VAC 140-10-70, 18 VAC 140-10-80, and 18 VAC 140-10-100).**

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Effective Date: August 1, 2001.

Summary:

*The regulations set forth provisions for (i) a mailing list to receive documents related to the promulgation of regulations, (ii) procedures to be followed in a petition for rulemaking, (iii) notices, (iv) public hearings, (v) a periodic review of regulations, and (vi) advisory committees in the development of regulations.*

*The amendments clarify existing requirements and provide for electronic submissions by the agency and the affected parties.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Evelyn B. Brown, Department of Health Professions, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9914.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 17:12 VA.R. 2020-2023 February 26, 2001, without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R00-254; Filed June 13, 2001, 12:06 p.m.



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# FORMS

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF MINES, MINERALS AND ENERGY

**EDITOR'S NOTICE:** The following forms have been added by the Department of Mines, Minerals and Energy. The forms are not being published due to the number of pages. The forms are available for public inspection at the Department of Mines, Minerals and Energy, Ninth Street Office Building, 202 North 9th Street, Richmond, VA 23219, or at the department's Abingdon, Big Stone Gap, or Charlottesville offices. Copies of the forms may be obtained from Cheryl Cashman, Department of Mines, Minerals and Energy, Ninth Street Office Building, 202 North 9th Street, Richmond, VA 23219, telephone (804) 692-3213.

**Title of Regulation: 4 VAC 25-90-10 et seq. Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines.**

#### FORMS

*Diesel Equipment Approval Form, DM-DE-01-S (rev. 4/01).*

**Title of Regulation: 4 VAC 25-101-10 et seq. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells.**

#### FORMS

*Application for a Permit to Drill a Vertical Ventilation Hole, DM-VVH-1 (rev. 9/00).*

*Drilling Report, DM-DR-1 (eff. 3/01).*

*Drillers Log, DM-DR-2 (eff. 3/01).*

*Plugging Affidavit, DM-PLG-1 (eff. 3/01).*



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# GOVERNOR

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## GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

### TITLE 8. EDUCATION

#### DEPARTMENT OF EDUCATION

Title of Regulation: **8 VAC 20-630-10 et seq. Standards for State-Funded Remedial Programs.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III  
Governor

Date: May 29, 2001

VA.R. Doc. No. R00-151; Filed June 1, 2001, 10:12 a.m.

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### TITLE 18. PROFESSIONAL AND OCCUPATIONAL REGULATION

#### BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Title of Regulation: **18 VAC 10-20-10 et seq. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Rules and Regulations.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III  
Governor

Date: May 29, 2001

VA.R. Doc. No. R00-175; Filed June 1, 2001, 10:12 a.m.

#### VIRGINIA BOARD FOR ASBESTOS AND LEAD

Title of Regulation: **18 VAC 15-20-10 et seq. Virginia Asbestos Licensing Regulations.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I

have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III  
Governor

Date: May 29, 2001

VA.R. Doc. No. R00-185; Filed June 1, 2001, 10:12 a.m.

#### AUCTIONEERS BOARD

Title of Regulation: **18 VAC 25-21-10 et seq. Rules and Regulations of the Virginia Auctioneers Board.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III  
Governor

Date: May 29, 2001

VA.R. Doc. No. R00-46; Filed June 1, 2001, 10:12 a.m.

#### BOARD FOR CONTRACTORS

Title of Regulation: **18 VAC 50-30-10 et seq. Tradesman Rules and Regulations.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III  
Governor

Date: May 29, 2001

VA.R. Doc. No. R01-11; Filed June 1, 2001, 10:12 a.m.

# GENERAL NOTICES/ERRATA

## DEPARTMENT OF CRIMINAL JUSTICE SERVICES

### Fee Schedule for Approved Laboratory Analyses of Blood for Alcohol and Drugs

#### ALLOWED FEES

Level I	Alcohol Testing	\$50
Level II	Drug Screening	\$50
	Drug Identification/ Quantitation	\$75 / Drug Class *
Level III	Drug Screening	\$50
	Drug Identification/ Quantitation	\$75 / Drug Class *

\* - Includes results for all drugs in a class

#### ANALYTICAL SCHEME

All analyses shall be for the unconjugated (free) form of drugs.

1. Analyze all samples for ethanol (Alcohol screening may be performed, if desired, using immunoassay.)

- a. If ethanol is < 0.09%, include it in the report, and go to 2.
- b. If ethanol is 0.09%, stop; report results.

2. Perform Level II Drug Screening:

- a. If no drug classes are detected, go to 4.

b. If any drug classes are tentatively present above their detection limit, go to 3.

3. Perform Level II Identification/Quantitation:

- a. If no drugs are present, or are identified as present but at a concentration below the reporting limit, go to 4.
- b. If drugs are identified as present at a concentration at or above the reporting limit, but below the stop analysis limit, include them in the report, and go to 4.
- c. If drugs are identified as present at a concentration at or above the stop analysis limit, stop; report results.

4. Perform Level III Screening:

- a. If any drug is tentatively identified as present, go to 5.
- b. If no drugs are present, stop; report results.

5. Perform Level III Identification/Quantitation:

- a. Report results.

#### ANALYTICAL LIMITS

Level I - Alcohol Testing (Limits are in units of % by weight by volume)

	REPORTING LIMIT	STOP ANALYSIS LIMIT***
Ethanol	0.01	0.09

\*\*\* - Do not proceed further in the analytical scheme when results at or above this concentration are obtained.

Level II - Drug Screening and Identification/Quantitation (Limits are in units of mg/L)

SCREENING		IDENTIFICATION/QUANTITATION		
DRUG CLASS	DETECTION LIMIT	DRUG	REPORTING LIMIT	STOP ANALYSIS LIMIT ***
Amphetamine	0.02 (20 ng/mL)	Amphetamine	0.01	0.1
		Methamphetamine	0.01	0.2
		3,4-Methylenedioxymethamphetamine	0.01	0.02
		Methylenedioxyamphetamine	0.01	0.02
Barbiturate	0.5 (500 ng/mL)	Amobarbital	0.5	2
		Butobarbital	0.5	2
		Butalbital	0.5	10
		Pentobarbital	0.5	2
		Phenobarbital	0.5	30
		Secobarbital	0.5	2
Cocaine/Benzoyllecgonine	0.075 (75 ng/mL)	Cocaine	0.01	0.1
		Benzoyllecgonine	0.1	-
		Cocaethylene	0.01	0.1

# General Notices/Errata

Benzodiazepine	0.03 (30 ng/mL)	Alprazolam	0.02	0.1
		Chlordiazepoxide	0.2	4
		Clonazepam	0.01	0.1
		Diazepam	0.1	2
		Lorazepam	0.01	0.5
		n-Desalkylflurazepam	0.01	-
		Nordiazepam	0.1	2
		Oxazepam	0.1	2
		Temazepam	0.02	1
Cannabinoid	0.02 (20 ng/mL)	Tetrahydrocannabinol	0.001	0.003
		THC carboxylic acid	0.005	-
Opiate	0.075 (75 ng/mL)	Codeine	0.02	0.5
		Hydrocodone	0.02	0.1
		Morphine	0.02	0.1
		6-Acetylmorphine	0.01	0.01
		Oxycodone	0.02	0.1

\*\*\* - Do not proceed further in the analytical scheme when results at or above this concentration are obtained.

Level III - Drug Identification/Quantitation (Limits are in units of mg/L)

DRUG CLASS	DRUG	REPORTING LIMIT
Antihistamine	Chlorpheniramine	0.02
	Brompheniramine	0.02
	Dextromethorphan	0.1
	Diphenhydramine	0.02
Antidepressant/ Antipsychotic	Amitriptyline	0.05
	Bupropion	0.05
	Clomipramine	0.05
	Clozapine	0.05
	Desipramine	0.05
	Doxepin	0.05
	Haloperidol	0.02
	Imipramine	0.05
	Mirtazapine	0.02
	Nortriptyline	0.05
	Nordoxepin	0.05
Trazodone	0.05	
Hypnotic	Zolpidem	0.02
	Zopiclone	0.02
Muscle Relaxant	Carisoprodol	1
	Meprobamate	1
	Methocarbamol	1
	Cyclobenzaprine	0.02
Opiate/Opiate-like	Dihydrocodeine	0.02
	Hydromorphone	0.02
	Oxymorphone	0.02
	Meperidine	0.02
	Methadone	0.02
	Pentazocine	0.02
	Propoxyphene	0.02
	Tramadol	0.02
Ketamine	Ketamine	0.05
Phencyclidine	Phencyclidine	0.01

\*\*\* - Do not proceed further in the analytical scheme when results at or above this concentration are obtained.

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

### Periodic Review of Regulations

The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) invites comments from the public on the following regulations. The department intends to review these regulations in accordance with Executive Order 25 (98).

12 VAC 35-11-10 et seq., Public Participation Guidelines. Written comments are requested regarding the performance and effectiveness of these regulations in achieving the following goal:

To clearly articulate opportunities and procedures for public participation in DMHMRSAS regulatory actions.

12 VAC 35-40-10 et seq., Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children. Written comments are requested regarding the performance and effectiveness of these regulations in achieving the following goals:

1. To clearly articulate standards for health, safety and treatment, to ensure that sufficient protections are provided for the welfare of children who receive mental health, mental retardation and substance abuse services from providers of residential services for children.

2. To clearly articulate the procedures and actions necessary to implement regulatory requirements with the least possible cost and intrusiveness to consumers, families and provider organizations.

12 VAC 35-180-10 et seq., Regulations to Assure the Protection of Participants in Human Research. Written comments are requested regarding the performance and effectiveness of these regulations in achieving the following goals:

1. To protect the rights and health of the participants in human research conducted in the public mental health system.
2. To ensure that participation in human research is voluntary and entered into with adequate knowledge of the research procedures, risks, and benefits.
3. To minimize the costs and intrusiveness of the administrative procedures to research organizations and the citizens of Virginia.

The department also requests suggestions to improve the content and organization of the regulations to make them more useful and understandable for citizens and provider organizations.

Written comments may be submitted through 5 p.m. Friday, July 27, 2001. Please identify the regulation by the full name and the Virginia Administrative Code number. Copies of the regulation may be obtained from the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Contact: Wendy V. Brown, Office of Planning and Development, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252, FAX (804) 371-0092 or e-mail [wbrown@dmhmrsas.state.va.us](mailto:wbrown@dmhmrsas.state.va.us).

## DEPARTMENT OF SOCIAL SERVICES

### Periodic Review of Regulations

Pursuant to Executive Order Number 25 (98), the Department of Social Services is currently reviewing the below listed regulations to determine if they should be terminated, amended, or retained in their current form. The review will be guided by the principles listed in Executive Order Number 25 (98) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulations' interference in private enterprise and life, essential need of the regulations, less burdensome and intrusive alternatives to the regulations, specific and measurable goals that the regulations are intended to achieve, and whether the regulations are clearly written and easily understandable.

The regulations are:

22 VAC 40-100-10 et seq., Minimum Standards for Licensed Child-Caring Institutions.

Contact: Doris Jenkins, Program Manager, Child Welfare Licensing Unit, telephone (804) 692-1773, FAX (804) 692-2429 or e-mail [dtj7@dss.state.va.us](mailto:dtj7@dss.state.va.us).

22 VAC 40-220-10 et seq., Agency Placement Adoptions – Guiding Principles.

22 VAC 40-250-10 et seq., Agency Placement Adoptions – AREVA.

22 VAC 40-260-10 et seq., Agency Placement Adoptions – Subsidy.

22 VAC 40-270-10 et seq., Agency Placement Adoptions – Appeals.

22 VAC 40-780-10 et seq., Elimination of Financial Eligibility Criteria for Direct Social Services.

Contact: Karin Clark, Program Consultant, Adoptions Unit, telephone (804) 692-1251, FAX (804) 692-1284 or e-mail [kac900@dss.state.va.us](mailto:kac900@dss.state.va.us).

Written comments may be submitted until July 22, 2001, in care of the above listed contacts at 730 East Broad Street, Richmond, Virginia 23219-1849, by facsimile to the above listed numbers, or by e-mail to the above listed addresses.

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order The Four Winds Club, Inc.

#### Four Winds Campground Sewage Treatment Plant

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to The Four Winds Club, Inc. (permittee) regarding the Four Winds Campground Sewage Treatment Plant (facility) located in Caroline County, Virginia.

Four Winds Campground Sewage Treatment Plant is subject to VPDES Permit No. VA0060429. The order requires that the permittee upgrade the sewage treatment plant to comply with its ammonia limits and provides interim limits for ammonia until the upgrade is complete. The permittee has agreed 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 August 1, 2001. Please address comments to Susan A. Oakes, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please address comments sent via e-mail to [saoakes@deq.state.va.us](mailto:saoakes@deq.state.va.us). In order to be considered, comments provided by e-mail must include the commenter's name, address, and telephone number. Please write or visit the Woodbridge address, or call (703) 583-3863, in order to examine or to obtain a copy of the order.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.



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# General Notices/Errata

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## Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material 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/register/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

## ERRATA

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-40-10 et seq. Eligibility Conditions and Requirements.**

Publication: 17:18 VA.R. 2592-2595 May 21, 2001

Correction to Final Regulation:

Page 2593, in 12 VAC 30-40-220 A 1, Standards of Assistance, Group I, Family of 2 at 90% of income, change "254.24" to "214.24"

Title of Regulation: **12 VAC 30-40-10 et seq. Eligibility Conditions and Requirements.**

Publication: 17:18 VA.R. 2589-2592 May 21, 2001 and 17 VA.R. 2592-2595 May 21, 2001

Correction to Final Regulation:

Pages 2591 and 2594, in net income level chart, Group I, Family of 3, change "4306.50" to "4036.50"

Title of Regulation: **12 VAC 30-120-10 et seq. Waivered Services.**

Publication: 17:18 VA.R. 2595-2622 May 21, 2001

Correction to Final Regulation:

Page 2615, in 12 VAC 30-120-770 A 1 a, second line at the top of the page, insert "*or cognitive*" after "*physical*"

Page 2620, in the catchline of 12 VAC 30-120-776, insert "*agency-directed model of care*" after "*Companion care*"

### STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-690-10 et seq. Virginia Child Care Provider Scholarship Program.**

Publication: 17:18 VA.R. 2661-2670 May 21, 2001

Correction to Final Regulation:



Page 2664, in 22 VAC 40-690-55, first line, insert "*For those institutions that have an agreement with the department,*" before "*Funds*"

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# CALENDAR OF EVENTS


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## Symbol Key

-  Location accessible to persons with disabilities  
 Teletype (TTY)/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. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at [www.vipnet.org](http://www.vipnet.org) or contact the organization directly.

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/TTY , 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

### COMMONWEALTH COUNCIL ON AGING

† **July 27, 2001 - 10 a.m.** -- Open Meeting  
Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia  (Interpreter for the deaf provided upon request)

A meeting of the Legislative Committee.

**Contact:** Bill Peterson, Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, VA 23229, telephone (804) 662-9325, e-mail [whpeterson@vdh.state.va.us](mailto:whpeterson@vdh.state.va.us).

† **August 3, 2001 - 10 a.m.** -- Open Meeting  
Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia  (Interpreter for the deaf provided upon request)

A meeting of the Public Relations Committee.

**Contact:** Bill Peterson, Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, VA 23229, telephone (804) 662-9325, e-mail [whpeterson@vdh.state.va.us](mailto:whpeterson@vdh.state.va.us).

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Virginia State Apple Board


**July 17, 2001 - 9:30 a.m.** -- Open Meeting  
Rowe's Restaurant, 74 Rowe Road (Intersection of I-81 and Rte. 250), Staunton, Virginia 

A meeting to approve the minutes of the last meeting and discuss any old business arising from the board meeting of May 1, 2001, and to discuss any new business to be brought 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 any accommodation in order to participate at the meeting

should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** David Robishaw, Regional Marketing Development Manager, Virginia State Apple Board, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (804) 984-0573, FAX (804) 984-4156.


#### Virginia Cattle Industry Board

**July 31, 2001 - 10:30 a.m.** -- Open Meeting  
Holiday Inn, Woodrow Wilson Parkway, Staunton, Virginia 

A regular business meeting to approve minutes from the April 2001 meeting, and review the financial statement for the period April 1 through July 1. Staff will give program updates for the state and national level. Committees will convene to review project proposals submitted by staff and other organizations for FY 01-02 Marketing Plan. Prior to the full board meeting, a new board orientation will be held beginning at 9 a.m. For directions please call 540-248-6020. 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Reginald B. Reynolds, Executive Director, Virginia Cattle Industry Board, P.O. Box 9, Daleville, VA 24083, telephone (540) 992-1992, FAX (540) 992-4632.

#### Virginia Corn Board

† **July 11, 2001 - 1 p.m.** -- Open Meeting  
† **July 12, 2001 - 1 p.m.** -- Open Meeting  
Wintergreen Resort, Wintergreen, Virginia 

A strategic planning meeting to enable the board to evaluate current activities, establish a direction that will best benefit Virginia corn producers, and provide for the best utilization of checkoff dollars. 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

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## Calendar of Events

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any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.


### Virginia Peanut Board

† **July 10, 2001 - 11 a.m.** -- Open Meeting  
Virginia Peanut Growers Association Office, 2320 Main Street, Capron, Virginia. 

A meeting to hear the chairman's report, elect officers for 2001-02, and approve the 2001-02 budget. The board's financial statement will be reviewed. 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Russell C. Schools, Program Director, Department of Agriculture and Consumer Services, P.O. Box 356, Capron, VA 23829, telephone (804) 658-4573, FAX (804) 658-4531.


### Pesticide Control Board

† **July 19, 2001 - 9 a.m.** -- Open Meeting  
Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Second Floor Board Room, Richmond, Virginia. 

A general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda beginning at 9 a.m. 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Room 401, Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, toll-free (800) 552-9963, e-mail jknight@vdacs.state.va.us.

### Virginia Pork Industry Board


† **July 13, 2001 - 3:30 p.m.** -- Open Meeting  
Clarion Hotel, 2727 Ferndale Drive, N.W., Roanoke, Virginia. 

A meeting to select the National Pork Board delegates, elect officers, approve projects, receive committee reports, formulate an annual budget, and address current industry issues. In addition, the board will review its financial

statement. 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** John H. Parker, Program Director, Department of Agriculture and Consumer Services, 1100 Bank Street, Suite 1012, Richmond, VA 23219, telephone (804) 786-7092, FAX (804) 371-7786.


### Virginia Small Grains Board

**July 26, 2001 - 8 a.m.** -- Open Meeting  
Radisson Fort Magruder Hotel and Conference Center, 6945 Pocahontas Trail, Williamsburg, Virginia. 

A meeting to review FY 2000-01 project reports and receive 2001-02 project proposals. Minutes from the last board meeting and a current financial statement will be heard and approved. Additionally, action will be taken on any other new business that comes before the group. 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.


### Virginia Soybean Board

† **August 15, 2001 - 3 p.m.** -- Open Meeting  
Engel Farms, 13267 Wickerton Lane, Hanover, Virginia. 

A meeting to discuss checkoff revenues and the financial status of the board following the end of the fiscal year ending June 30, 2001. Reports will be heard from the chairman, United Soybean representatives, and other 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.

### STATE AIR POLLUTION CONTROL BOARD

† **August 16, 2001 - 9 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street, First Floor Conference Room, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

† **September 6, 2001** - 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 (Rev. B00): 9 VAC 5-10-10 et seq. General Definitions, 9 VAC 5-20-10 et seq. General Provisions, 9 VAC 5-40-10 et seq. Existing Stationary Sources, 9 VAC 5-80-10 et seq. Permits for Stationary Sources.** The purpose of the proposed amendments is to incorporate by reference the newest editions of technical documents that are required by federal law or regulation. They are included in order to ensure that the air pollution control regulations are properly implemented. The proposed amendments are being made to ensure that the most up-to-date and technically accurate documents are used, thus ensuring the proper implementation of the air pollution control regulations, and thereby protecting the public health and welfare.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until September 6, 2001, to Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

**Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, (804) 698-4021/TTY ☎, e-mail kgsabastea@deq.state.va.us.

## **BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS**

† **July 17, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia. ♿

A meeting of a committee of the board to discuss changes to the board's regulations and statutes regarding photogrammetrists.

**Contact:** Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St. Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSLA@dpor.state.va.us.

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**July 20, 2001** - 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 for Architects, Professional Engineers, Land Surveyors, Certified Interior

Designers and Landscape Architects intends to amend regulations entitled: **18 VAC 10-20-10 et seq. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations.** The board has clarified language, consolidated provisions, and modified wording to accord with the Code of Virginia. Substantive changes include requiring that regulants notify the board office when they leave as the responsible professional of a professional corporation, permitting use of electronic seals, signatures and dates, and adding various requirements and standards regarding land boundary surveying.

Statutory Authority: §§ 54.1-201, 54.1-404 and 54.1-411 of the Code of Virginia.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

† **July 24, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia. ♿

A meeting to review board regulations and statutes including, but not limited to, 18 VAC 10-20-780 and to conduct any and all board business.

**Contact:** Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St. Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSLA@dpor.state.va.us.

† **September 12, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia. ♿

A meeting to conduct any and all board business.

**Contact:** Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSLA@dpor.state.va.us.

## **Architect Section**

† **August 8, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West

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# Calendar of Events

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Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

## Certified Interior Designer Section

† **September 5, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia.🗣️ (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

## Land Surveyor Section

† **August 22, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia.🗣️ (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

## Landscape Architect Section

† **August 29, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia.🗣️ (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-

8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

## Professional Engineer Section

† **August 15, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia.🗣️ (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

## ART AND ARCHITECTURAL REVIEW BOARD

**July 6, 2001 - 10 a.m.** -- Open Meeting  
**August 3, 2001 - 10 a.m.** -- Open Meeting  
**September 7, 2001 - 10 a.m.** -- Open Meeting  
Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia.🗣️ (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies.

**Contact:** Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 1011 E. Main St., Room 221, Richmond, VA 23219, telephone (804) 643-1977, FAX (804) 643-1981, (804) 786-6152/TTY ☎

## VIRGINIA BOARD FOR ASBESTOS AND LEAD

**July 9, 2001 - 2 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

**July 20, 2001** - 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 Virginia Board for Asbestos and Lead intends to amend regulations entitled: **18 VAC 15-20-10 et seq. Virginia Asbestos Licensing Regulations.** The proposed regulation will revise definitions; delete roofing, flooring and siding provisions, which were abolished by House Bill 951, effective July 1, 1996; clarify fees for initial approval of accredited asbestos training programs; and create a biennial renewal requirement and fee for accredited asbestos training programs. Project monitors who also hold a valid supervisor or project designer license may renew their project monitor license by completing the supervisor or project designer refresher training. Language has been

added to make clear that a refresher training certificate may be used only once to renew a license. The entry standards for inspectors, management planners and project designers have been changed to allow applicants to present evidence of specific minimal competence. Project monitors will be required on projects involving more than 260 linear feet or 160 square feet of asbestos containing materials. An additional option to qualify for an asbestos and analytical laboratory license has been added and performance standards for laboratory operation have been added.


Statutory Authority: § 54.1-501 of the Code of Virginia.

**Contact:** Joseph Kossan, Regulatory Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648.

**August 15, 2001 - 10 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4W, Richmond, Virginia. 

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail [asbestos@dpor.state.va.us](mailto:asbestos@dpor.state.va.us).


## COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

### State Executive Council

**July 25, 2001 - 9 a.m.** -- Open Meeting

**August 29, 2001 - 9 a.m.** -- Open Meeting

**September 26, 2001 - 9 a.m.** -- Open Meeting


Department of Social Services, 730 East Broad Street, Lower Level, Training Room 1, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. An agenda will be posted on the web (<http://www.csa.state.va.us>) a week prior to the meeting.

**Contact:** Alan G. Saunders, Director, Comprehensive Services for At-Risk Youth and Families, 1604 Santa Rosa Rd., Suite 137, Richmond, VA 23229, telephone (804) 662-9815, FAX (804) 62-9831, e-mail [AGS992@central.dss.state.va.us](mailto:AGS992@central.dss.state.va.us).


## AUCTIONEERS BOARD

† **July 12, 2001 - 10 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to

this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [auctioneers@dpor.state.va.us](mailto:auctioneers@dpor.state.va.us).

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**July 12, 2001 - 10 a.m.** -- Public Hearing

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

**July 20, 2001** - 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 Auctioneers Board intends to amend regulations entitled: **18 VAC 25-21-10 et seq. Rules and Regulations of the Auctioneers Board.** The Auctioneers Board has clarified language, deleted duplicate and unutilized definitions, removed unnecessary requirements, and modified certain requirements in this chapter. Substantive changes include the following: the board has clarified that disciplinary action in another jurisdiction relating to auctioneering may prevent licensure in Virginia, has removed the option of substituting 25 auctions in lieu of educational requirements, has modified reinstatement requirements, and has modified compliance requirements for schools.

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 

## DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

**July 17, 2001 - 10 a.m.** -- Open Meeting

Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The board for the blind and vision impaired is an advisory board responsible for advising the governor, the secretary of health and human resources, the commissioner, and the general assembly in the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budget and request for appropriations for the department. At this regular meeting, the board will review information regarding department activities and operations, review expenditures from the board's endowment fund, and discuss other issues raised for the board members.

**Contact:** Katherine C. Proffitt, Administrative Staff Assistant, Department for the Blind and Vision Impaired, 397 Azalea

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# Calendar of Events

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Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail proffikc@dbvi.state.va.us.

## BOARD FOR BRANCH PILOTS

† **August 1, 2001 - 9:30 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct examinations.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

† **August 2, 2001 - 9:30 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

## CEMETERY BOARD

**July 18, 2001 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general meeting of the Regulatory Review Committee.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039, FAX (804) 367-2475, e-mail cemetery@dpor.state.va.us.

**July 18, 2001 - 9:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general meeting.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039, FAX (804) 367-2475, e-mail cemetery@dpor.state.va.us.

## CHILD DAY-CARE COUNCIL

† **July 12, 2001 - 9 a.m.** -- Open Meeting  
† **July 13, 2001 - 9 a.m.** -- Open Meeting  
Theater Row Building, 730 East Broad Street, Conference Room 1, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss issues and concerns that impact child day centers, camps, school age programs and preschool/nursery schools. A public comment period will begin at noon. Please call ahead for possible changes in meeting time.

**Contact:** Arlene Kasper, Program Development Consultant, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1791, FAX (804) 692-2370.

## STATE BOARD FOR COMMUNITY COLLEGES

† **July 18, 2001 - 2:30 p.m.** -- Open Meeting  
Virginia Community College System, James Monroe Building, 101 N. 14th Street, 15th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Academic and Student Affairs Committee, the Audit Committee, and the Budget and Finance Committee will meet at 2:30 p.m. The Facilities Committee and the Personnel Committee will meet at 3:30 p.m.

**Contact:** D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, 101 N. 14th Street, 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

† **July 19, 2001 - 9 a.m.** -- Open Meeting  
Virginia Community College System, James Monroe Building, 101 N. 14th Street, 15th Floor, Godwin-Hamel Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Public comment will be received at the beginning of the meeting.

**Contact:** D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th Street, 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

## COMPENSATION BOARD


**July 24, 2001 - 11 a.m.** -- Open Meeting  
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. ♿

A monthly board meeting.

**Contact:** Cindy Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

## DEPARTMENT OF CONSERVATION AND RECREATION


### Board on Conservation and Development of Public Beaches

† **July 12, 2001 - 10 a.m.** -- Open Meeting  
College of William and Mary, University Center, York Room, Williamsburg, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss beach issues and funding needs. Request for interpreter for the deaf should be filed two weeks prior to the meeting.

**Contact:** Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail [leonapp@dcr.state.va.us](mailto:leonapp@dcr.state.va.us).


### Falls of the James Scenic River Advisory Board

**July 12, 2001 - Noon** -- Open Meeting  
City Hall, Planning Commission Conference Room, 900 East Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss river issues. Request for interpreter for the deaf should be filed two weeks prior to the meeting.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, e-mail [rgibbons@dcr.state.va.us](mailto:rgibbons@dcr.state.va.us).

### Goose Creek Scenic River Advisory Board

**July 10, 2001 - 1:30 p.m.** -- Open Meeting  
Loudoun County Administration Building, 4th Floor Conference Room, Leesburg, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss river issues. Requests for interpreter for the deaf should be filed two weeks prior to the meeting.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, e-mail [rgibbons@dcr.state.va.us](mailto:rgibbons@dcr.state.va.us).

## BOARD FOR CONTRACTORS

**July 18, 2001 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A regular meeting of the Tradesman Committee to consider items of interest relating to the tradesmen/backflow workers and other appropriate matters pertaining to the tradesman section of the board for contractors.

**Contact:** David Dick, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230,

telephone (804) 367-6166, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail [dick@dpor.state.va.us](mailto:dick@dpor.state.va.us).


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**July 18, 2001 - 1 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.


**July 20, 2001** - 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 for Contractors intends to amend regulations entitled: **18 VAC 50-30-10 et seq. Tradesman Rules and Regulations**. The Board for Contractors seeks to amend its current tradesman regulations to reflect statutory changes that respond to industry changes. The regulations have not been revised since July 7, 1999. Parts of the regulation text may be revised for clarity and ease of use.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.


**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/TTY 

## STATE BOARD OF CORRECTIONS

† **July 10, 2001 - 10 a.m.** -- Open Meeting  
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional services and regulations matters for possible presentation before the full board.


**Contact:** Barbara Reyes, Executive Secretary, Board of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3288, FAX (804) 674-3509, e-mail [reyesbb@vadoc.state.va.us](mailto:reyesbb@vadoc.state.va.us).

† **July 11, 2001 - 10 a.m.** -- Open Meeting  
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A regular meeting. Public comment will be received.

**Contact:** Barbara Reyes, Executive Secretary, Board of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3288, FAX (804) 674-3509, e-mail [reyesbb@vadoc.state.va.us](mailto:reyesbb@vadoc.state.va.us).

## BOARD OF EDUCATION

**July 26, 2001 - 9 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.  (Interpreter for the deaf provided upon request)



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# Calendar of Events

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A regular meeting. Public comment will be received at this meeting.

**Contact:** Dr. Margaret N. Roberts, Office of Policy, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

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**July 20, 2001** - Public comment 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 Education intends to adopt regulations entitled: **8 VAC 20-630-10 et seq. Standards for State-Funded Remedial Programs.** The proposed regulations will require the collection of the minimum data necessary to comply with the intent of the Code of Virginia.

Statutory Authority: § 22.1-199.2 of the Code of Virginia.

**Contact:** Dr. Kathleen Smith, Specialist, Elementary Education, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 786-5819 or (804) 225-2524.

**September 20, 2001 - 9:30 a.m.** -- Open Meeting  
Henrico County School Board Office, 3820 Nine Mile Road, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A working session of the Accountability Advisory Committee. Public comment will not be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

**Contact:** Cam Harris, Board of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2102, FAX (804) 225-2524.

**† September 27, 2001 - 9 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting. Public comment will be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

**Contact:** Dr. Margaret N. Roberts, Office of Policy, Board of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

**July 10, 2001 - 8 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Ground Water Protection Steering Committee to conduct a field trip to the Department of Environmental Quality and the U.S. Geological Survey

research station in Mathews County, Virginia. Meeting minutes and agenda are available from the contact person.

**Contact:** Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, FAX (804) 698-4032, e-mail mamassie@deq.state.va.us.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**† July 17, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting, including discussions of the recommendations from the periodic review of regulations. Public comment will be received at the beginning of the meeting.

**Contact:** Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY, e-mail etisdale@dhp.state.va.us.

## Special Conference Committee

**† July 31, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 W. Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to hold informal hearings. There will not be a public comment period.

**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY, e-mail CEmma-Leigh@dhp.state.va.us.

## BOARD OF GAME AND INLAND FISHERIES

**July 19, 2001 - 9 a.m.** -- Open Meeting  
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to adopt webless migratory game bird and September Canada goose seasons and bag limits based on frameworks provided by the U.S. Fish and Wildlife Service. The board will solicit the public's comments in a public hearing offered during this portion of the meeting, at which time any interested citizen present shall be heard. Pursuant to §§ 29.1-103 and 105 of the Code of Virginia, the board will also hold a public hearing on a proposed memorandum of agreement between the Department of Game and Inland Fisheries and Dogwood Development Group, LLC, regarding a proposed exchange of land in Frederick County, Virginia intended to provide continued and improved public recreational access to Lake Frederick within the context of planned commercial development of surrounding adjacent real estate. The proposed

memorandum of agreement is available from the Department of Game and Inland Fisheries; requests for copies, inquiries, or written comments addressing the proposed memorandum should be directed to Jane Powell, 4010 West Broad Street, Richmond, Virginia 23230; phone 804-367-0811. Such written comments prior to the Board meeting will be accepted until 5 p.m. Thursday, July 12, 2001. The board may also discuss general and administrative issues. The board may elect to hold a dinner Wednesday evening, July 18, at a location and time to be determined; and it may hold a closed session before or after the open session on July 19.

**Contact:** Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail phil\_smith@dgif.state.va.us.

## BOARD FOR GEOLOGY

† **July 12, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☎

A general board meeting.

**Contact:** William H. Ferguson, II, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail geology@dpor.state.va.us.

## STATE BOARD OF HEALTH

† **July 18, 2001 - 1 p.m.** -- Open Meeting  
The Virginia Farm Bureau, 12580 West Creek Parkway,  
Richmond, Virginia. ☎

A meeting of the Biosolids Fee Regulation Ad Hoc Committee to begin development of the draft regulations to be presented to the State Board of Health for acceptance as proposed regulations, concerning payment of fees in accordance with the provisions of House Bill 2827 (2001), from land appliers of sewage sludge (biosolids) that is land applied in the Commonwealth in accordance with the provisions of the Biosolids Use Regulations.

**Contact:** Calmet M. Sawyer, PhD, P.E., Division Director, Division of Wastewater Engineering, Department of Health, 1500 East Main Street, Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567.

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† **August 13, 2001 - 7 p.m.** -- Public Hearing  
Holbert Building, 9104 Courthouse Road, Board of Supervisors Meeting Room, Spotsylvania, Virginia.

† **August 15, 2001 - 7 p.m.** -- Public Hearing  
James City County Administration Center, Board of Supervisors Meeting Room, 101-C Mounts Bay Road, Williamsburg, Virginia.

† **August 16, 2001 - 7 p.m.** -- Public Hearing  
Roanoke County Administration Center, Board of Supervisors Meeting Room, 5204 Bernard Drive, Roanoke, Virginia.

† **September 10, 2001** - 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 State Board of Health intends to adopt regulations entitled: **12 VAC 5-581-10 et seq. Sewage Collection and Treatment Regulations.** The purpose of the proposed action is to provide uniform statewide standards governing the design, construction, and operation of the sewage collection systems and sewage treatment works.

Statutory Authority: §§ 32.1-164 and 62.1-44.19 of the Code of Virginia.

**Contact:** Calmet M. Sawyer, PhD, P.E., Division Director, Division of Wastewater Engineering, Department of Health, 1500 East Main Street, Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567.

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**August 20, 2001 - 7 p.m.** -- Public Hearing  
Henrico County Board of Supervisors Room, 4301 East Parham Road, Henrico County Complex, Richmond, Virginia.

**August 23, 2001 - 7 p.m.** -- Public Hearing  
Roanoke County Administration Building, 5204 Bernard Drive, Roanoke, Virginia.

**August 27, 2001 - 7 p.m.** -- Public Hearing  
1 County Complex, McCoart Building, Prince William County Board Chambers, Prince William, Virginia.

**August 29, 2001 - 7 p.m.** -- Public Hearing  
Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Auditorium, Virginia Beach, Virginia.

**August 31, 2001** - 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 State Board of Health intends to **repeal** regulations entitled: **12 VAC 5-420-10 et seq. Rules and Regulations Governing Restaurants** and **adopt** regulations entitled: **12 VAC 5-421-10 et seq. Regulations Governing Restaurants.** The purpose of the proposed action is to repeal the existing regulations and adopt new regulations that comply with the 1997 FDA Model Food Code. The proposed regulations address the emergence of new strains of bacteria and other organisms and incorporate new control measures for the prevention of food borne disease.

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of Virginia.


**Contact:** Gary L. Hagy, Director, Division of Food and Environmental Services, Department of Health, P.O. Box 2448, Richmond, VA 23218-2448, telephone (804) 225-4022.

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# Calendar of Events

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## DEPARTMENT OF HEALTH PROFESSIONS

† **August 17, 2001 - 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 of the Health Practitioners' Intervention Program Committee to meet with its contractor and representatives to review reports, policies, and procedures for the Health Practitioners' Intervention Program. The committee will meet in open session for general discussion of the program and may meet in executive session to consider specific requests from applicants or participants in the program.

**Contact:** John W. Hasty, Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9424, FAX (804) 662-9114, (804) 662-9197/TTY 


## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**July 17, 2001 - 9 a.m.** -- Open Meeting  
State Council of Higher Education, James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia.

A regular meeting. Agenda materials will be available on the website approximately one week prior to the meeting at [www.schev.edu](http://www.schev.edu).

**Contact:** Lee Ann Rung, State Council of Higher Education for Virginia, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail [lrung@schev.edu](mailto:lrung@schev.edu).

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**July 3, 2001 - 9 a.m.** -- Open Meeting  
Hopewell Community Center, 100 West City Point Road, Hopewell, Virginia.  (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee meeting as required by SARA Title III.


**Contact:** Robert Brown, Emergency Services Coordinator, 300 N. Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY


† **July 17, 2001 - 9 a.m.** -- Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. 

Annual meeting of the Board of Commissioners. The board will review and, if appropriate, approve the minutes from the prior monthly meeting; elect a Chairman and Vice Chairman; consider for approval and ratification mortgage loan commitments under its various programs; review the authority's operations for the prior month; and consider such other matters and take such other actions as they may deem appropriate. Various committees of the Board of

Commissioners may also meet before or after the regular meeting and consider topics 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. The annual meetings of the shareholders and board of directors of Housing for Virginia, Inc., a corporation wholly owned by the authority, will be held following the meeting of the authority's Board of Commissioners.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY 

## INNOVATIVE TECHNOLOGY AUTHORITY


† **July 10, 2001 - 10 a.m.** -- Open Meeting  
Center for Innovative Technology, 2214 Rock Hill Road, Herndon, Virginia. 

A meeting of the Board of Directors to elect officers.

**Contact:** Linda Gentry, Secretary/Treasurer, Innovative Technology Authority, 2214 Rock Hill Road, Herndon, VA 20170, telephone (703) 689-3035, FAX (703) 464-1706, e-mail [Linda@cit.org](mailto:Linda@cit.org).

## DEPARTMENT OF LABOR AND INDUSTRY

### Virginia Migrant and Seasonal Farmworkers Board

**July 11, 2001 - 10 a.m.** -- Open Meeting  
Museum Auditorium, A. T. Johnson Human Services Bldg., 18849 Kings Highway (Rt. 3), Montross, Virginia.  (Interpreter for the deaf provided upon request)

A regular quarterly meeting of the board.

**Contact:** Betty B. Jenkins, Board Administrator, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2391, FAX (804) 371-6524, (804) 786-2376/TTY , e-mail [bbj@doli.state.va.us](mailto:bbj@doli.state.va.us).

## STATE LAND EVALUATION ADVISORY COUNCIL

† **August 14, 2001 - 10 a.m.** -- Open Meeting  
Department of Taxation, Richmond District Office, 1708 Commonwealth Avenue, Richmond, Virginia.

A meeting to consider suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.


**Contact:** H. Keith Mawyer, Property Tax Manager, Department of Taxation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8020.

† **September 20, 2001 - 10 a.m.** -- Open Meeting  
Department of Taxation, Richmond District Office, 1708 Commonwealth Avenue, Richmond, Virginia.


A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.


**Contact:** H. Keith Mawyer, Property Tax Manager, Department of Taxation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8020.

## COMMISSION ON LOCAL GOVERNMENT


† **July 16, 2001 - 10:30 a.m.** -- Open Meeting  
Tripplett Technical School Cafeteria, 6375 Main Street (Route 11), Mount Jackson, Virginia.  (Interpreter for the deaf provided upon request)


Oral presentations regarding the Town of Mount Jackson/Shenandoah County agreement defining annexation rights.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY , e-mail [bbingham@clg.state.va.us](mailto:bbingham@clg.state.va.us).


† **July 16, 2001 - 2 p.m.** -- Open Meeting  
Tripplett Technical School Cafeteria, 6375 Main Street (Route 11), Mount Jackson, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting to consider such matters as may be presented.


**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY , e-mail [bbingham@clg.state.va.us](mailto:bbingham@clg.state.va.us).

† **July 16, 2001 - 7 p.m.** -- Public Hearing  
Tripplett Technical School Cafeteria, 6375 Main Street (Route 11), Mount Jackson, Virginia.  (Interpreter for the deaf provided upon request)


A public hearing regarding the Town of Mount Jackson/Shenandoah County agreement defining annexation rights.

**Contact:** Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY , e-mail [bbingham@clg.state.va.us](mailto:bbingham@clg.state.va.us).

## MARINE RESOURCES COMMISSION

**July 24, 2001 - 9:30 a.m.** -- Open Meeting  
**August 28, 2001 - 9:30 a.m.** -- Open Meeting  
† **September 25, 2001 - 9:30 a.m.** -- Open Meeting  
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. 

A monthly meeting.

**Contact:** LaVerne Lewis, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., Newport News, VA 23607, telephone (757) 247-2261, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY , e-mail [llewis@mrc.state.va.us](mailto:llewis@mrc.state.va.us).

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**July 21, 2001** - 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 30-20-10 et seq. Administration of Medical Assistance Services.** The purpose of the proposed amendment is to increase the amount of the copayment that Medicaid recipients are required to pay when their prescriptions are filled with brand name drugs instead of generics.

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


Public comments may be submitted until July 21, 2001, to Marianne Rollings, R.Ph., Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

## BOARD OF MEDICINE

**July 9, 2001 - 9:30 a.m.** -- Open Meeting  
Wyndham Roanoke Airport Hotel, 2801 Hershberger Road, Roanoke, Virginia.

A panel of the board will convene a formal hearing to inquire into allegations that a practitioner may have violated laws governing the practice of medicine. The panel will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

**Contact:** Peggy Sadler or Renee Dixson, Staff, Board of Medicine, 6606 W. Broad St., Richmond VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY , e-mail [PSadler@dhp.state.va.us](mailto:PSadler@dhp.state.va.us).

**July 11, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

**July 12, 2001 - 9:30 a.m.** -- Open Meeting  
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

**July 26, 2001 - 9:30 a.m.** -- Open Meeting  
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

A meeting of the Informal Conference Committee to inquire into allegations that certain practitioners may have violated

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## Calendar of Events

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laws and regulations governing the practice of medicine and other healing arts in Virginia. Public comment will not be received.

**Contact:** Peggy Sadler or Renee Dixon, Board of Medicine, 6606 West Broad Street, Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail PSadler@dhp.state.va.us.

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

† **August 17, 2001 - 10 a.m.** -- Public Hearing  
Jefferson Building, 1220 Bank Street, 9th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public hearing to receive comments of the Virginia Community Mental Health Services Performance Block Grant Application for federal fiscal year 2002. Copies of the application are available for review at the Office of Mental Health Services, Jefferson Building, 1220 Bank Street, 10th Floor, or at each Community Services Board office. Comments may be made at the hearing or in writing no later than August 17, 2001, to the Office of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. Anyone wishing to make a presentation at the meeting should contact Sterling Deal. Copies of oral presentations should be filed in writing at the time of the hearing.

**Contact:** Sterling G. Deal, Ph.D., Resource Analyst, P.O. Box 1797, State Mental Health, Mental Retardation and Substance Abuse Services Board, Richmond, VA 23218, telephone (804) 371-2148, FAX (804) 786-1836, (804) 371-8977/TTY ☎

### STATE MILK COMMISSION

**August 15, 2001 - 10 a.m.** -- Public Hearing  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

A public hearing to receive evidence and testimony related to Order 21 that was implemented on March 1, 2001, and terminates on August 31, 2001. The hearing will assist the commission in determining if the order should be terminated or extended and if existing regulations should be terminated, amended or retained in its current form. Written comments may be submitted until August 1, 2001, to Edward C. Wilson, Jr.

**Contact:** Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth Street Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

**August 15, 2001 - 1 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

A regular meeting of commissioners to consider industry issues, distributor licensing, base transfers, baseholder license amendment, fiscal matters, and to review reports from staff of the agency. Any persons requiring special 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, Ninth Street Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

### MOTOR VEHICLE DEALER BOARD

† **July 9, 2001 - 8:30 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

Committees will meet as follows:

Dealer Practices Committee - 8:30 a.m.  
Franchise Law Committee - 5 Minutes After Dealer Practices Committee  
Licensing Committee - 10 a.m.  
Advertising Committee - 5 Minutes After Licensing  
Personnel Committee - 5 Minutes After Advertising  
Transaction Recovery Fund Committee - 1 p.m.  
Finance Committee - 5 Minutes After Transaction Recovery Fund Committee  
Full Board Meeting - 1:45 p.m.

NOTE: Meetings may begin later but not earlier than scheduled. Meeting end times are approximate. Any person who needs any accommodation in order to participate in the meeting should contact the board at least 10 days before the meeting so that suitable arrangements can be made.

**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, toll-free (877) 270-0203, e-mail dboard@mvb.state.va.us.

### BOARD OF NURSING

**July 16, 2001 - 8:30 a.m.** -- Open Meeting  
**July 18, 2001 - 8:30 a.m.** -- Open Meeting  
**July 19, 2001 - 8:30 a.m.** -- Open Meeting  
**September 24, 2001 - 8:30 a.m.** -- Open Meeting  
**September 26, 2001 - 8:30 a.m.** -- Open Meeting  
**September 27, 2001 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

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 Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

† **July 17, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A general business meeting to include discussion of regulatory and disciplinary matters. Public comment will be received at 11 a.m.

**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) 662-9512, (804) 662-7197/TTY ☎, e-mail ndurrett@dhp.state.va.us.

## Special Conference Committee

**August 2, 2001 - 8:30 a.m.** -- Open Meeting

**August 7, 2001 - 8:30 a.m.** -- Open Meeting

**August 13, 2001 - 8:30 a.m.** -- Open Meeting

**August 16, 2001 - 8:30 a.m.** -- Open Meeting

**August 28, 2001 - 8:30 a.m.** -- Open Meeting

**October 2, 2001 - 8:30 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Rooms 3 and 4, Richmond, Virginia. ♿

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will conduct informal conferences with licensees or certificate holders. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

## BOARD OF NURSING HOME ADMINISTRATORS

† **July 23, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A general business meeting. Public comment will be received at the beginning of the meeting.

**Contact:** Sandra Reen, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor Richmond, VA 23230-1717, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail sandra\_reen@dhp.state.va.us.

## BOARD FOR OPTICIANS

† **August 3, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

An open meeting to discuss matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are

subject to cancellation. The time of the meeting is subject to change. Any persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at 804-367-8590 or TTY 804-367-9753 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:** Susan Luebehusen, Board Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail opticians@dpor.state.va.us.

## BOARD OF OPTOMETRY

**July 13, 2001 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad St., 5th Floor, Conference Room 1, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

An informal conference hearing. This is a public meeting; however, public comment will not be received.

**Contact:** Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail cstamey@dhp.state.va.us.

**July 13, 2001 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Formal Hearings - 10 a.m., 11:30 a.m., and 1:30 p.m. This is a public meeting; however, public comment will not be received.

**Contact:** Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail cstamey@dhp.state.va.us.

† **July 13, 2001 - 3 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A meeting to consider regulatory and disciplinary issues as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**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, FAX (804) 662-9504, (804) 662-7197/TTY ☎, e-mail ecarte@dhp.state.va.us.

## BOARD OF PHYSICAL THERAPY

† **July 13, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

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## Calendar of Events

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A general business meeting, including the adoption of regulations for continuing competency. Public comment will be received at the beginning of the meeting.

**Contact:** Elizabeth Young Tisdale, Executive Director, Board of Physical Therapy, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail etisdale@dhp.state.va.us

### POLYGRAPH EXAMINERS ADVISORY BOARD

† **September 19, 2001 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail polygraph@dpor.state.va.us.

### BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

† **July 11, 2001 - 2 p.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting of the Property Registration Committee.

**Contact:** Eric Olson, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475, e-mail proreg@dpor.state.va.us.

† **August 6, 2001 - 2 p.m.** -- Public Hearing  
Fairfax County Government Center, 12000 Government Center Parkway, Conference Rooms 4 and 5, Fairfax, Virginia. ♿

A public hearing to accept comments regarding the need for state regulation of foresters and the need for state regulation of arborists. Interested parties are encouraged to attend and provide testimony and/or written comments. The board will receive written comments until 5 p.m. on September 6, 2001. Comments may be mailed to Debra Vought at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230, emailed to vought@dpor.state.va.us, or faxed to 804-367-9537. Please call 804-367-8519 if you have questions regarding the public hearing.

**Contact:** Judy Spiller, Administrative Staff Assistant, Board for Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-

8519, FAX (804) 367-9537, (804) 367-9753/TTY ☎, e-mail spiller@dpor.state.va.us.

### BOARD OF PSYCHOLOGY

† **July 17, 2001 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A general business meeting. Public comment will be received at the beginning of the meeting.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

### VIRGINIA RACING COMMISSION

† **July 18, 2001 - 9:30 a.m.** -- Open Meeting  
Tyler Building, 1300 East Main Street, Richmond, Virginia. ♿

A monthly meeting, including a segment for public participation. The commission will hear a report on the Thoroughbred race meeting at Colonial Downs.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418, e-mail Anderson@vrc.state.va.us.

### REAL ESTATE APPRAISER BOARD

**July 17, 2001 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039, FAX (804) 367-2475, e-mail reappraiser@dpor.state.va.us.

### REAL ESTATE BOARD

**July 11, 2001 - 4 p.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting of the Real Estate Education Committee.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, e-mail reboard@dpor.state.va.us.

**July 12, 2001 - 8 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting of the Fair Housing Committee.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, e-mail reboard@dpor.state.va.us.

**July 12, 2001 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

A general business meeting.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, e-mail reboard@dpor.state.va.us.


## VIRGINIA RESOURCES AUTHORITY

† **August 14, 2001 - 9 a.m.** -- Open Meeting  
† **September 11, 2001 - 9 a.m.** -- Open Meeting  
Virginia Resources Authority, 707 East Main Street, 2nd Floor  
Conference Room, Richmond, Virginia.

A regular meeting of the Board of Directors to (i) review and, if appropriate, approve the minutes from the most recent monthly meeting; (ii) review the authority's operations for the prior month; (iii) review applications for loans submitted to the authority for approval; (iv) consider loan commitments for approval and ratification under its various programs; (v) approve the issuance of any bonds; (vi) review the results of any bond sales; and (vii) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Directors may also meet immediately before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting and any committee meetings will be available at the offices of the authority one week prior to the date of the meeting. Any person who needs any accommodation in order to participate in the meeting should contact the authority at least 10 days before the meeting so that suitable arrangements can be made.

**Contact:** Benjamin Hoyle, Executive Assistant, Virginia Resources Authority, 707 East Main Street, Suite 1350, Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bhoyle@vra.state.va.us.

## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **July 24, 2001 - 10 a.m.** -- Open Meeting  
Department of Business Assistance, 707 E. Main Street, 3rd  
Floor, Board Room, Richmond, Virginia. 

A meeting of the Board of Directors to review applications for loans submitted to the authority for approval and handle general business of the board. The time is subject to change depending upon the agenda of the board.

**Contact:** Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8254, FAX (804) 225-3384, e-mail sparsons@dba.state.va.us.

## STATE BOARD OF SOCIAL SERVICES

**August 3, 2001** - 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 State Board of Social Services intends to repeal regulations entitled: **22 VAC 40-790-10 et seq. Minimum Standards for Local Agency Operated Volunteer Respite Child Care Programs.** The purpose of the proposed action is to repeal this regulation, which was originally promulgated to provide standards for local departments of social services that chose to operate volunteer respite child care programs. The Department of Social Services has not received any requests to operate this type of program since the regulation became effective in 1998 and does not anticipate receiving any such requests in the future.

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of Virginia.

**Contact:** Phyllis S. Parrish, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1895.

\* \* \* \* \*


† **August 31, 2001** - 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 State Board of Social Services intends to repeal regulations entitled: **22 VAC 40-560-10. Monthly Reporting in the Food Stamp Program.** The purpose of the proposed action is to repeal this regulation, which identified which households were required to file monthly reports as a condition of eligibility for the Food Stamp Program.

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

**Contact:** Celestine Jackson, Human Services Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1716, FAX (804) 692-1704.

## COUNCIL ON TECHNOLOGY SERVICES

**July 12, 2001 - 9 a.m.** -- Open Meeting  
Department of Transportation, 1221 East Broad Street,  
Auditorium, Richmond, Virginia.  (Interpreter for the deaf  
provided upon request)

**September 24, 2001 - 9 a.m.** -- Open Meeting  
VMI, Lexington, Virginia.

A group meeting of the Council on Technology Services.

**Contact:** Jenny Wootton, Council on Technology Services, Washington Bldg., 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 786-0744, FAX (804) 371-7952, e-mail jwootton@egov.state.va.us.




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# Calendar of Events

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## DEPARTMENT OF TECHNOLOGY PLANNING

### Virginia Geographic Information Network Advisory Board

**September 6, 2001 - 1:30 p.m.** -- Open Meeting  
Location to be announced. 

A regular quarterly meeting.

**Contact:** William Shinar, VGIN Coordinator, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-8175, FAX (804) 371-2795, e-mail bshinar@vgin.state.va.us.

## COMMONWEALTH TRANSPORTATION BOARD


**July 16, 2001 - 10 a.m.** -- Public Hearing  
Department of Transportation, 1221 East Broad Street, 1st Floor, Front Auditorium, Richmond, Virginia.

**August 20, 2001** - 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 Commonwealth Transportation Board intends to **repeal** regulations entitled: **24 VAC 30-40-10 et seq. Rules and Regulations Governing Relocation Assistance** and **adopt** regulations entitled: **24 VAC 30-41-10 et seq. Rules and Regulations Governing Relocation Assistance**. The purpose of the proposed regulatory action is to ensure adequate relocation services and provide moving, replacement housing, and other expense payments so that individuals will not suffer disproportionate injuries as a result of the highway improvement program. VDOT is repealing the existing regulation and promulgating a replacement regulation, which is intended to streamline procedures to improve operational efficiency and effectiveness. The text is revised and reformatted to make the policies and procedures more understandable to both displacees eligible for these services, as well as the VDOT personnel who will implement and interpret the regulation.


Statutory Authority: §§ 25-253 and 33.1-12 of the Code of Virginia, 42 USC § 4601 et seq.

**Contact:** Beverly D. Fulwider, Relocation Program Manager, Department of Transportation, Right of Way and Utilities Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-4366 or (804) 786-1706.

**† July 18, 2001 - 2 p.m.** -- Open Meeting  
Department of Transportation Auditorium, 1221 E. Broad St., Richmond, Virginia. 

Work session of the Commonwealth Transportation Board and the Department of Transportation staff.


**Contact:** Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti\_cm@vdot.state.va.us.

**† July 19, 2001 - 10 a.m.** -- Open Meeting  
Department of Transportation Auditorium, 1221 E. Broad St., Richmond, Virginia. 


Monthly meeting of the Commonwealth Transportation Board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

**Contact:** Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti\_cm@vdot.state.va.us.


## BOARD OF VETERINARY MEDICINE

**† July 12, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 


A general business meeting to consider regulatory and disciplinary issues as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915, FAX (804) 662-9504, (804) 662-7197/TTY , e-mail ecarte@dhp.state.va.us.


### Special Conference Committee

**† July 11, 2001 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

Informal disciplinary hearings. No public comment will be received.

**Contact:** Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail tbehr@dhp.state.va.us.

## VIRGINIA WASTE MANAGEMENT BOARD

**† August 15, 2001 - 10 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street, Training Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


**† September 6, 2001** -- 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 Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-60-12 et seq. Virginia Hazardous Waste Management Regulations.** The purpose of the proposed amendment is to clarify that low-level radioactive waste is not subject to the requirements of this regulation.


Statutory Authority: § 10.1-1402 (11) of the Code of Virginia.

**Contact:** Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, e-mail rgwickline@deq.state.va.us.

## STATE WATER CONTROL BOARD

† **August 2, 2001 - 7 p.m.** -- Open Meeting  
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Training Room, Virginia Beach, Virginia. 

† **August 3, 2001 - 10 a.m.** -- Open Meeting  
Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Training Room, Glen Allen, Virginia. 


† **August 6, 2001 - 7 p.m.** -- Open Meeting  
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Training Room, Roanoke, Virginia. 

A public meeting to receive comments on the notice of intent to adopt regulations governing the discharge of sewage from boats.


**Contact:** Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032, e-mail mbgregory@deq.state.va.us.


## INDEPENDENT

### VIRGINIA RETIREMENT SYSTEM


**August 15, 2001 - 3 p.m.** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. 


Regular meetings of the Audit and Compliance Committee and the Benefits and Actuarial Committee.

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dkestner@vrs.state.va.us.


**August 16, 2001 - 8 a.m.** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. 


Regular meetings of the Administration Committee and the Personnel Committee.

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dkestner@vrs.state.va.us.


**August 16, 2001 - 9 a.m.** -- Open Meeting  
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. 

A regular meeting of the Board of Trustees.

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dglazier@vrs.state.va.us.


† **September 19, 2001 - 3 p.m.** -- Open meeting  
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. 

The regular meeting of the Investment Advisory Committee.

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dglazier@vrs.state.va.us.

## LEGISLATIVE

### VIRGINIA CODE COMMISSION


**July 26, 2001 - 10 a.m.** -- Open Meeting  
**August 30, 2001 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. 

A meeting to continue with the recodification of Title 63.1 of the Code of Virginia and to conduct any other business that may come before the commission. Public comment will be received at the end of the meeting.

**Contact:** Jane Chaffin, Registrar of Regulations, General Assembly Bldg., 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591 FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

### JOINT COMMISSION ON PRESCRIPTION DRUG ASSISTANCE (HJR 810)

† **July 18, 2001 - 2 p.m.** -- Open Meeting  
† **September 12, 2001 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 

† **October 10, 2001 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A meeting of the joint commission to develop ways and means to provide prescription drug assistance to needy senior citizens and to coordinate state and federal

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# Calendar of Events

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programs providing such assistance. Questions about the agenda should be addressed to Gayle Vergara, Division of Legislative Services, (804) 786-3591.

**Contact:** Lois V. Johnson, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## JOINT SUBCOMMITTEE TO STUDY CREATION OF A NORTHERN VIRGINIA REGIONAL TRANSPORTATION AUTHORITY (SJR 397, 2001)

† **August 1, 2001 - 9:30 a.m.** -- Open Meeting  
Fairfax Municipal Government Center, 12000 Government Center Parkway, Room 232, Fairfax, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Individuals with questions about the agenda or who require interpreter services or other special accommodations should contact Senate Committee Operations.

**Contact:** Thomas G. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

## RURAL VIRGINIA PROSPERITY COMMISSION

† **July 12, 2001 - 8 a.m.** -- Open Meeting  
State Capitol Building, House Room 4, Richmond, Virginia. ♿

A day-long work session to finalize the commission's recommendations.

**Contact:** Scott Maddrea, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### July 3

Hopewell Industrial Safety Council

#### July 6

Art and Architectural Review Board

#### July 9

Medicine, Board of  
† Motor Vehicle Dealer Board  
- Advertising Committee  
- Dealer Practices Committee  
- Finance Committee  
- Franchise Law Committee  
- Licensing Committee  
- Personnel Committee  
- Transaction Recovery Fund Committee

#### July 10

† Agriculture and Consumer Services, Department of  
- Virginia Peanut Board  
Conservation and Recreation, Department of  
- Goose Creek Scenic River Advisory Board  
† Corrections, State Board of

Environmental Quality, Department of  
- Virginia Ground Water Protection Steering Committee  
† Innovative Technology Authority

#### July 11

† Agriculture and Consumer Services, Department of  
Virginia Corn Board  
† Corrections, State Board of  
Labor and Industry, Department of  
- Virginia Migrant and Seasonal Farmworkers Board  
Medicine, Board of  
- Informal Conference Committee  
† Professional and Occupational Regulation, Board of  
- Property Registration Committee  
Real Estate Board  
- Real Estate Education Committee  
† Veterinary Medicine, Board of  
- Special Conference Committee

#### July 12

† Agriculture and Consumer Services, Department of  
- Virginia Corn Board  
† Auctioneers Board  
† Child Day-Care Council  
† Conservation and Recreation, Department of  
- Board on Conservation and Development of Public Beaches  
- Falls of the James Scenic River Advisory Board  
† Geology, Board for  
Medicine, Board of  
- Informal Conference Committee  
Real Estate Board  
- Fair Housing Committee  
† Rural Virginia Prosperity Commission  
Technology Services, Council on  
† Veterinary Medicine, Board of

#### July 13

† Agriculture and Consumer Services, Department of  
- Virginia Pork Industry Board  
† Child Day-Care Council  
† Optometry, Board of  
† Physical Therapy, Board of

#### July 16

† Local Government, Commission on  
Nursing, Board of

#### July 17

Agriculture and Consumer Services, Department of  
- Virginia State Apple Board  
† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
Blind and Vision Impaired, Department for the  
† Funeral Directors and Embalmers, Board of  
Higher Education for Virginia, State Council of  
† Housing Development Authority, Virginia  
† Nursing, Board of  
† Psychology, Board of  
Real Estate Appraiser Board

#### July 18

Cemetery Board  
- Regulatory Review Committee  
† Community Colleges, State Board for  
- Academic and Student Affairs Committee  
- Audit Committee

- Budget and Finance Committee
- Facilities Committee
- Personnel Committee
- Contractors, Board for
  - Tradesman Committee
- † Health, State Board of
  - Biosolids Fee Regulation Ad Hoc Committee
- Nursing, Board of
- † Prescription Drug Assistance, Joint Commission on
- † Racing Commission, Virginia
- † Transportation Board, Commonwealth

**July 19**

- † Agriculture and Consumer Services, Department of
  - Pesticide Control Board
- † Community Colleges, State Board for
- Game and Inland Fisheries, Board of
- Nursing, Board of
- † Transportation Board, Commonwealth

**July 23**

- † Nursing Home Administrators, Board of

**July 24**

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Compensation Board
- Marine Resources Commission
- † Small Business Financing Authority, Virginia

**July 25**

- At-Risk Youth and Families, Comprehensive Services for
  - State Executive Council

**July 26**

- Agriculture and Consumer Services, Department of
  - Virginia Small Grains Board
- Code Commission, Virginia
- Education, Board of
- Medicine, Board of
  - Informal Conference Committee

**July 27**

- † Aging, Commonwealth Council on
  - Legislative Committee

**July 31**

- Agriculture and Consumer Services, Department of
  - Virginia Cattle Industry Board
- † Funeral Directors and Embalmers, Board of
  - Special Conference Committee

**August 1**

- † Branch Pilots, Board for
- † Northern Virginia Regional Transportation Authority, Joint Subcommittee to Study Creation of a

**August 2**

- † Branch Pilots, Board for
- Nursing, Board of
  - Special Conference Committee
- † Water Control Board, State

**August 3**

- † Aging, Commonwealth Council on
  - Public Relations Committee
- Art and Architectural Review Board
- † Opticians, Board for
- † Water Control Board, State

**August 6**

- † Water Control Board, State

**August 7**

- Nursing, Board of
  - Special Conference Committee

**August 8**

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
  - Architect Section

**August 13**

- Nursing, Board of
  - Special Conference Committee

**August 14**

- † Land Evaluation Advisory Council, State
- † Resources, Authority, Virginia

**August 15**

- † Agriculture and Consumer Services, Department of
  - Virginia Soybean Board
- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
  - Professional Engineer Section
- Asbestos and Lead, Virginia Board for
- Milk Commission, State
- Retirement System, Virginia

**August 16**

- Nursing, Board of
  - Special Conference Committee
- Retirement System, Virginia

**August 17**

- † Health Professions, Department of
  - Health Practitioners' Intervention Program Committee

**August 22**

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
  - Land Surveyor Section

**August 28**

- Marine Resources Commission
- Nursing, Board of
  - Special Conference Committee

**August 29**

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
  - Landscape Architect Section
- At-Risk Youth and Families, Comprehensive Services for
  - State Executive Council

**August 30**

- Code Commission, Virginia

**September 5**

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
  - Certified Interior Designer Section

**September 6**

- Technology Planning, Department of
  - Virginia Geographic Information Network Advisory Board

**September 7**

- Art and Architectural Review Board

**September 11**

- † Resources, Authority, Virginia

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# Calendar of Events

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**September 12**

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- † Prescription Drug Assistance, Joint Commission on

**September 19**

- † Polygraph Examiners Advisory Board
- † Retirement System, Virginia

**September 20**

- Education, Board of
  - Accountability Advisory Committee
- † Land Evaluation Advisory Council, State

**September 24**

- Nursing, Board of
- Technology Services, Council on

**September 25**

- † Marine Resources Commission

**September 26**

- At-Risk Youth and Families, Comprehensive Services for
  - State Executive Council
- Nursing, Board of

**September 27**

- † Education, Board of
- Nursing, Board of

**October 2**

- Nursing, Board of
  - Special Conference Committee

**October 10**

- † Prescription Drug Assistance, Joint Commission on

## PUBLIC HEARINGS

**July 9**

- Asbestos and Lead, Virginia Board for

**July 12**

- Auctioneers Board

**July 16**

- † Local Government, Commission on
- Transportation Board, Commonwealth

**July 18**

- Contractors, Board for

**August 6**

- † Professional and Occupational Regulation, Board for

**August 13**

- † Health, State Board of

**August 15**

- † Health, State Board of
- † Milk Commission, State
- † Waste Management Board, Virginia

**August 16**

- † Air Pollution Control Board, State
- † Health, State Board of

**August 17**

- † State Mental Health, Mental Retardation and Substance Abuse Services Board

**August 20**

- Health, State Board of

**August 23**

- Health, State Board of

**August 27**

- Health, State Board of