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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED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printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2004 VAC Supplement includes final regulations published through *Virginia Register* Volume 20, Issue 24, dated August 9, 2004). 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
Title 1. Administration			
1 VAC 75-40-10 through 1 VAC 75-40-60	Added	20:25 VA.R. 3082	9/22/04
Title 2. Agriculture			
2 VAC 20-30	Erratum	20:25 VA.R. 3111	--
Title 3. Alcoholic Beverages			
3 VAC 5-30	Erratum	21:1 VA.R. 44	--
3 VAC 5-30	Erratum	21:3 VA.R. 345	--
3 VAC 5-40	Erratum	21:1 VA.R. 44	--
3 VAC 5-40	Erratum	21:3 VA.R. 345	--
3 VAC 5-50-60	Amended	21:7 VA.R. 803	2/26/05
3 VAC 5-70	Erratum	21:1 VA.R. 44	--
3 VAC 5-70	Erratum	21:3 VA.R. 345	--
Title 4. Conservation and Natural Resources			
4 VAC 3-20	Repealed	21:3 VA.R. 317	*
4 VAC 15-20-100	Amended	21:3 VA.R. 318	10/1/04
4 VAC 15-40-280	Amended	21:1 VA.R. 24	10/20/04
4 VAC 15-260-10	Amended	20:25 VA.R. 3082	7/28/04
4 VAC 15-320-100	Amended	21:1 VA.R. 24	9/20/04
4 VAC 20-270-30	Amended	20:26 VA.R. 3191	8/6/04
4 VAC 20-320-10	Amended	20:26 VA.R. 3191	8/6/04
4 VAC 20-320-70	Amended	20:26 VA.R. 3192	8/6/04
4 VAC 20-320-80	Amended	20:26 VA.R. 3192	8/6/04
4 VAC 20-564-10 through 4 VAC 20-564-50 emer	Added	20:25 VA.R. 3096	8/16/04-9/3/04
4 VAC 20-720-20	Amended	21:4 VA.R. 408	10/1/04
4 VAC 20-720-40 through 4 VAC 20-720-100	Amended	21:4 VA.R. 409-411	10/1/04
4 VAC 20-910-45 emer	Amended	21:5 VA.R. 499	11/1/04-11/30/04
4 VAC 20-950-47	Amended	21:5 VA.R. 497	10/29/04
4 VAC 20-950-48 emer	Amended	21:3 VA.R. 334	9/29/04-10/30/04
4 VAC 20-950-48	Amended	21:5 VA.R. 497	10/29/04
4 VAC 20-950-48.1	Added	21:5 VA.R. 497	10/29/04
4 VAC 20-1045-10	Added	21:4 VA.R. 412	10/1/04
4 VAC 20-1045-20	Added	21:4 VA.R. 412	10/1/04
4 VAC 20-1045-30	Added	21:4 VA.R. 412	10/1/04
4 VAC 25-31 (Forms)	Amended	21:1 VA.R. 28	--
4 VAC 25-130 (Forms)	Amended	21:2 VA.R. 225	--
4 VAC 50-60-10 through 4 VAC 50-60-1240	Added	21:3 VA.R. 317	*
Title 6. Criminal Justice and Corrections			
6 VAC 20-190-10	Amended	21:2 VA.R. 127	11/3/04
6 VAC 20-190-50	Amended	21:2 VA.R. 127	11/3/04
6 VAC 20-190-150	Amended	21:2 VA.R. 127	11/3/04
6 VAC 20-190-160	Amended	21:2 VA.R. 128	11/3/04

* January 1, 2005, or 30 days after U.S. EPA approval, whichever is the latter.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 20-240-10 through 6 VAC 20-240-140 emer	Added	20:25 VA.R. 3097-3102	8/23/04-8/22/05
Title 8. Education			
8 VAC 20-140-10	Repealed	21:3 VA.R. 332	1/1/05
8 VAC 20-200-10	Repealed	21:7 VA.R. 804	3/1/05
8 VAC 20-210-10	Amended	21:4 VA.R. 413	1/1/05
8 VAC 20-260-10 through 8 VAC 20-260-60	Repealed	21:7 VA.R. 805-806	3/1/05
8 VAC 20-380-10 through 8 VAC 20-380-40	Repealed	21:7 VA.R. 806-807	3/1/05
8 VAC 20-400-10 through 8 VAC 20-400-50	Repealed	21:7 VA.R. 807-808	3/1/05
8 VAC 20-430-10 through 8 VAC 20-430-50	Repealed	21:7 VA.R. 808-809	3/1/05
8 VAC 20-470-10	Repealed	21:4 VA.R. 423	3/1/05
8 VAC 20-480-10	Repealed	21:7 VA.R. 809	3/1/05
8 VAC 40-30 emer	Repealed	21:6 VA.R. 684	11/8/04-11/7/05
8 VAC 40-31-10 through 8 VAC 40-31-320 emer	Added	21:6 VA.R. 684-698	11/8/04-11/7/05
Title 9. Environment			
9 VAC 5-20-204	Erratum	20:26 VA.R. 3210-3211	--
9 VAC 5-20-204	Amended	21:7 VA.R. 790	1/12/05
9 VAC 5-20-205	Erratum	20:26 VA.R. 3210-3211	--
9 VAC 5-50-400	Amended	21:7 VA.R. 791	1/12/05
9 VAC 5-60-60	Amended	21:7 VA.R. 791	1/12/05
9 VAC 5-60-90	Amended	21:7 VA.R. 791	1/12/05
9 VAC 5-60-91	Repealed	21:7 VA.R. 791	1/12/05
9 VAC 5-60-100	Amended	21:7 VA.R. 791	1/12/05
9 VAC 5-80-2000	Amended	21:4 VA.R. 413	12/1/04
9 VAC 5-80-2010	Amended	21:4 VA.R. 414	12/1/04
9 VAC 5-80-2250	Amended	21:4 VA.R. 419	12/1/04
9 VAC 25-31-10	Amended	21:2 VA.R. 128	11/3/04
9 VAC 25-31-30	Amended	21:2 VA.R. 139	11/3/04
9 VAC 25-31-100	Amended	21:2 VA.R. 140	11/3/04
9 VAC 25-31-130	Amended	21:2 VA.R. 158	11/3/04
9 VAC 25-31-170	Amended	21:2 VA.R. 160	11/3/04
9 VAC 25-31-200	Amended	21:2 VA.R. 162	11/3/04
9 VAC 25-71-10	Amended	21:2 VA.R. 165	11/3/04
9 VAC 25-71-60	Amended	21:2 VA.R. 166	11/3/04
9 VAC 25-101-30	Amended	21:2 VA.R. 166	11/3/04
9 VAC 25-101-35	Added	21:2 VA.R. 167	11/3/04
9 VAC 25-101-40	Amended	21:2 VA.R. 167	11/3/04
9 VAC 25-101-45	Added	21:2 VA.R. 170	11/3/04
9 VAC 25-101-50	Amended	21:2 VA.R. 170	11/3/04
9 VAC 25-101-60	Amended	21:2 VA.R. 172	11/3/04
9 VAC 25-101-70	Amended	21:2 VA.R. 172	11/3/04
9 VAC 25-151-140	Amended	21:2 VA.R. 173	11/3/04
9 VAC 25-151-150	Amended	21:2 VA.R. 175	11/3/04
9 VAC 25-151-160	Amended	21:2 VA.R. 179	11/3/04
9 VAC 25-151-180	Amended	21:2 VA.R. 179	11/3/04
9 VAC 25-151-230	Amended	21:2 VA.R. 181	11/3/04
9 VAC 25-151-280	Amended	21:2 VA.R. 182	11/3/04
9 VAC 25-191-10 through 9 VAC 25-191-50	Added	21:2 VA.R. 183-198	11/3/04
9 VAC 25-192-10	Amended	21:2 VA.R. 199	11/3/04
9 VAC 25-192-20	Amended	21:2 VA.R. 200	11/3/04
9 VAC 25-192-30	Repealed	21:2 VA.R. 200	11/3/04
9 VAC 25-192-40	Repealed	21:2 VA.R. 200	11/3/04
9 VAC 25-192-50	Amended	21:2 VA.R. 200	11/3/04
9 VAC 25-192-60	Amended	21:2 VA.R. 201	11/3/04
9 VAC 25-192-70	Amended	21:2 VA.R. 202	11/3/04
9 VAC 25-400-10	Repealed	20:25 VA.R. 3083	9/22/04
9 VAC 25-401-10 through 9 VAC 25-401-50	Added	20:25 VA.R. 3083	9/22/04

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-630-10	Amended	21:2 VA.R. 211	11/3/04
9 VAC 25-630-20	Amended	21:2 VA.R. 212	11/3/04
9 VAC 25-630-30	Amended	21:2 VA.R. 212	11/3/04
9 VAC 25-630-50	Amended	21:2 VA.R. 212	11/3/04
Title 10. Finance and Financial Institutions			
10 VAC 5-100-10	Repealed	21:6 VA.R. 630	6/30/05
10 VAC 5-100-20	Repealed	21:6 VA.R. 630	6/30/05
10 VAC 5-100-30	Repealed	21:6 VA.R. 630	6/30/05
10 VAC 5-110-10	Added	21:6 VA.R. 631	11/15/04
10 VAC 5-110-20	Added	21:6 VA.R. 631	11/15/04
Title 11. Gaming			
11 VAC 10-20-200	Amended	20:25 VA.R. 3083	9/23/04
11 VAC 10-20-240 emer	Amended	20:25 VA.R. 3102	7/28/04-7/27/05
11 VAC 10-45	Erratum	20:25 VA.R. 3112	--
Title 12. Health			
12 VAC 5-90-10 emer	Amended	21:6 VA.R. 699	11/5/04-11/4/05
12 VAC 5-90-40 emer	Amended	21:6 VA.R. 702	11/5/04-11/4/05
12 VAC 5-90-90 emer	Amended	21:6 VA.R. 703	11/5/04-11/4/05
12 VAC 5-90-100 emer	Amended	21:6 VA.R. 705	11/5/04-11/4/05
12 VAC 5-90-105 emer	Added	21:6 VA.R. 705	11/5/04-11/4/05
12 VAC 5-90-110 emer	Amended	21:6 VA.R. 706	11/5/04-11/4/05
12 VAC 5-90-120 emer	Added	21:6 VA.R. 708	11/5/04-11/4/05
12 VAC 5-220-10	Amended	20:26 VA.R. 3193	9/27/04
12 VAC 5-220-160	Amended	20:26 VA.R. 3196	9/27/04
12 VAC 5-220-230	Amended	20:26 VA.R. 3197	9/27/04
12 VAC 5-220-385	Amended	20:26 VA.R. 3198	9/27/04
12 VAC 5-371-110	Amended	20:26 VA.R. 3200	9/27/04
12 VAC 5-410-440	Amended	21:6 VA.R. 665	2/14/05
12 VAC 5-410-441 through 12 VAC 5-410-447	Added	21:6 VA.R. 666-681	2/14/05
12 VAC 30-10-650	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-50-210	Amended	21:6 VA.R. 632	1/3/05
12 VAC 30-70-331	Amended	21:6 VA.R. 683	7/1/05
12 VAC 30-80-30	Amended	21:7 VA.R. 797	1/12/05
12 VAC 30-80-40	Amended	21:6 VA.R. 632	1/3/05
12 VAC 30-80-40 emer	Amended	21:6 VA.R. 709	12/1/04-11/30/05
12 VAC 30-80-190 emer	Amended	20:26 VA.R. 3203	9/1/04-8/31/05
12 VAC 30-80-190 emer	Amended	20:26 VA.R. 3204	9/1/04-8/31/05
12 VAC 30-80-190	Amended	21:7 VA.R. 800	1/12/05
12 VAC 30-90-29	Amended	21:2 VA.R. 223	11/3/04
12 VAC 30-120-211 emer	Amended	21:6 VA.R. 711	12/1/04-11/30/05
12 VAC 30-120-213 emer	Amended	21:6 VA.R. 714	12/1/04-11/30/05
12 VAC 30-120-215 emer	Amended	21:6 VA.R. 715	12/1/04-11/30/05
12 VAC 30-120-219 emer	Amended	21:6 VA.R. 718	12/1/04-11/30/05
12 VAC 30-120-223 emer	Amended	21:6 VA.R. 719	12/1/04-11/30/05
12 VAC 30-120-225 emer	Amended	21:6 VA.R. 720	12/1/04-11/30/05
12 VAC 30-120-227 emer	Amended	21:6 VA.R. 724	12/1/04-11/30/05
12 VAC 30-120-229 emer	Amended	21:6 VA.R. 725	12/1/04-11/30/05
12 VAC 30-120-233 emer	Amended	21:6 VA.R. 726	12/1/04-11/30/05
12 VAC 30-120-237 emer	Amended	21:6 VA.R. 728	12/1/04-11/30/05
12 VAC 30-120-241 emer	Amended	21:6 VA.R. 729	12/1/04-11/30/05
12 VAC 30-120-243 emer	Amended	21:6 VA.R. 730	12/1/04-11/30/05
12 VAC 30-120-245 emer	Amended	21:6 VA.R. 732	12/1/04-11/30/05
12 VAC 30-120-247 emer	Amended	21:6 VA.R. 733	12/1/04-11/30/05
12 VAC 30-120-249 emer	Amended	21:6 VA.R. 734	12/1/04-11/30/05
12 VAC 30-130-290	Amended	21:6 VA.R. 631	1/3/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-130-310	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-130-320	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-130-330	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-130-335	Added	21:6 VA.R. 631	1/3/05
12 VAC 30-130-400	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-130-1000	Added	21:6 VA.R. 633	1/3/05
Title 13. Housing			
13 VAC 5-62-260	Amended	20:25 VA.R. 3084	9/8/04
Title 14. Insurance			
14 VAC 5-90-10 through 14 VAC 5-90-50	Amended	20:25 VA.R. 3090-3091	8/4/04
14 VAC 5-90-55	Added	20:25 VA.R. 3091	8/4/04
14 VAC 5-90-60 through 14 VAC 5-90-180	Amended	20:25 VA.R. 3092	8/4/04
14 VAC 5-90 (Forms)	Amended	20:25 VA.R. 3092	8/4/04
Title 16. Labor and Employment			
16 VAC 25-40-10	Amended	20:26 VA.R. 3201	10/15/04
16 VAC 25-40-20	Amended	20:26 VA.R. 3201	10/15/04
16 VAC 25-40-50	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910	Erratum	21:1 VA.R. 44	--
16 VAC 25-90-1910.103	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910.217	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910.219	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910.268	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1926.307	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-155-10	Added	21:6 VA.R. 634	1/1/05
16 VAC 25-175-1926	Erratum	21:1 VA.R. 44	--
16 VAC 25-175-1926.950(c)(1)	Repealed	21:6 VA.R. 634	1/1/05
Title 18. Professional and Occupational Licensing			
18 VAC 5-30	Repealed	21:3 VA.R. 318	11/3/04
18 VAC 10-20-60	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-90	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-170	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-280	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-400	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-520	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-565	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-580	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-625	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-630	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-665	Amended	21:3 VA.R. 318	12/1/04
18 VAC 45-10-10 through 18 VAC 45-10-40	Amended	20:25 VA.R. 3093-3094	11/8/04
18 VAC 45-10-60 through 18 VAC 45-10-90	Amended	20:25 VA.R. 3094-3095	11/8/04
18 VAC 62-20	Erratum	21:1 VA.R. 44	--
18 VAC 62-20-40 emer	Added	20:25 VA.R. 3104	7/23/04-2/1/05
18 VAC 62-20-90 emer	Added	20:25 VA.R. 3104	7/23/04-2/1/05
18 VAC 85-15-10	Added	21:1 VA.R. 26	9/1/04-8/31/05
18 VAC 85-15-20	Added	21:1 VA.R. 26	9/1/04-8/31/05
18 VAC 85-15-30	Added	21:1 VA.R. 26	9/1/04-8/31/05
18 VAC 85-80-61 emer	Added	20:25 VA.R. 3105	7/27/04-7/26/05
18 VAC 90-15-10	Added	21:1 VA.R. 27	9/1/04-8/31/05
18 VAC 90-15-20	Added	21:1 VA.R. 27	9/1/04-8/31/05
18 VAC 90-15-30	Added	21:1 VA.R. 27	9/1/04-8/31/05
18 VAC 95-20-471 emer	Added	20:25 VA.R. 3105	7/28/04-7/27/05
18 VAC 105-20-5 emer	Added	21:6 VA.R. 735	12/8/04-12/7/05
18 VAC 105-20-10 emer	Amended	21:6 VA.R. 736	12/8/04-12/7/05
18 VAC 105-20-15 emer	Amended	21:6 VA.R. 736	12/8/04-12/7/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 105-20-16 emer	Added	21:6 VA.R. 736	12/8/04-12/7/05
18 VAC 105-20-20 emer	Amended	21:6 VA.R. 736	12/8/04-12/7/05
18 VAC 105-20-70 emer	Amended	21:6 VA.R. 737	12/8/04-12/7/05
18 VAC 105-30 emer	Repealed	21:6 VA.R. 735	12/8/04-12/7/05
18 VAC 125-15-10 emer	Added	20:25 VA.R. 3106	7/28/04-7/27/05
18 VAC 125-15-20 emer	Added	20:25 VA.R. 3106	7/28/04-7/27/05
18 VAC 125-15-30 emer	Added	20:25 VA.R. 3106	7/28/04-7/27/05
18 VAC 145-20-151	Amended	21:3 VA.R. 319	12/1/04
18 VAC 160-20-102	Amended	21:3 VA.R. 319	12/1/04
Title 19. Public Safety			
19 VAC 30-70-1	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-2	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-6	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-7	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-8	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-9	Added	21:4 VA.R. 420	9/22/04
19 VAC 30-70-10	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-30 through 19 VAC 30-70-110	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-130 through 19 VAC 30-70-170	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-190 through 19 VAC 30-70-230	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-250 through 19 VAC 30-70-300	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-340	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-350	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-360	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-400	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-430 through 19 VAC 30-70-560	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-580	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-600	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-650	Amended	21:4 VA.R. 420	9/22/04
Title 22. Social Services			
22 VAC 40-141-10 through 22 VAC 40-141-40	Amended	21:6 VA.R. 635	2/1/05
22 VAC 40-141-60 through 22 VAC 40-141-130	Amended	21:6 VA.R. 635	2/1/05
22 VAC 40-141-87	Added	21:6 VA.R. 634	2/1/05
22 VAC 40-141-150	Amended	21:6 VA.R. 636	2/1/05
22 VAC 40-141-170 through 22 VAC 40-141-210	Amended	21:6 VA.R. 636-638	2/1/05
22 VAC 40-705-30	Amended	21:4 VA.R. 421	12/1/04
Title 24. Transportation and Motor Vehicles			
24 VAC 20-70	Repealed	20:25 VA.R. 3092	9/22/04
24 VAC 30-90	Repealed	21:6 VA.R. 643	1/1/05
24 VAC 30-91-10 through 24 VAC 30-91-160	Added	21:6 VA.R. 643-663	1/1/05
24 VAC 30-120-170	Amended	21:3 VA.R. 330	11/17/04

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-10, Procedural Rules for the Conduct of Hearings Before the Board and its Hearing Officers and the Adoption or Amendment of Regulations**. The purpose of the proposed action is to remove obsolete references to positions or divisions of the agency that no longer exist, incorporate the discovery rules of the Virginia Supreme Court by reference, and update public participation guidelines.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until January 13, 2005.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

VA.R. Doc. No. R05-79; Filed November 23, 2004, 10:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-20, Advertising**. The purpose of the proposed action is to loosen some of the current restrictions on the types of advertising materials that may be used by sellers of alcoholic beverages.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until January 13, 2005.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

VA.R. Doc. No. R05-80; Filed November 23, 2004, 10:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-30,**

Tied-House. The purpose of the proposed action is to lessen some restrictions on promotional activities and items that may be provided by industry members to retailers.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until January 13, 2005.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

VA.R. Doc. No. R05-81; Filed November 23, 2004, 10:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-40, Requirements for Product Approval**. The purpose of the proposed action is to amend regulations governing the approval of new alcoholic beverages to be sold in the Commonwealth, clarify and simplify the process, and eliminate obsolete provisions.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until January 13, 2005.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

VA.R. Doc. No. R05-82; Filed November 23, 2004, 10:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-50, Retail Operations**. The purpose of the proposed action is to provide a process for licensees to apply for approval for the employment of individuals with criminal records, allow farm wineries to allow 18 year old persons to serve wine at counters and sell wine from containers of ice at wine festivals, simplify food sale requirements, simplify nonmember use restrictions for clubs, clarify rules prohibiting lewd conduct on licensed premises, and allow advertising of drink specials.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Notices of Intended Regulatory Action

Public comments may be submitted until January 13, 2005.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

VA.R. Doc. No. R05-83; Filed November 23, 2004, 10:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-60, Manufacturers and Wholesalers Operations**. The purpose of the proposed action is to eliminate restrictions on peddling of wine, increase the amount of the indemnifying bond required of wholesale wine licensees, allow mixed beverage solicitors to participate in tasting events, and revise rules for giving away novelty and specialty items bearing spirits advertising.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until January 13, 2005.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

VA.R. Doc. No. R05-84; Filed November 23, 2004, 10:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-70, Other Provisions**. The purpose of the proposed action is to expand the ability of manufacturers and wholesalers of alcoholic beverages to participate in tasting events at licensed premises, remove an unnecessary price change reporting requirement for licensees serving as both importer and wholesaler of a product, increase the number of remote retail locations available to farm wineries in accordance with a recent statutory change, and add a procedure for sale by auction of designer or vintage spirits bottles.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until January 13, 2005.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

VA.R. Doc. No. R05-85; Filed November 23, 2004, 10:50 a.m.

TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Council of Higher Education for Virginia intends to consider repealing regulations entitled **8 VAC 40-30, Regulations Governing the Approval of Certain Institutions to Confer Degrees, Diplomas and Certificates** and promulgating regulations entitled **8 VAC 40-31, Regulations Governing the Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates**. The purpose of the proposed action is to promulgate regulations as required by Chapter 991 of the 2004 Acts of Assembly to govern the certification and operation of the Virginia private not-for-profit and private for-profit postsecondary schools operating in Virginia.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 23-276.3 of the Code of Virginia.

Public comments may be submitted until January 12, 2005.

Contact: Rick Patterson, Assistant Director for Private and Out-of-State Postsecondary Education, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2609, FAX (804) 786-2027 or e-mail rickpatterson@schev.edu.

VA.R. Doc. No. R05-77; Filed November 23, 2004, 10:19 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled **9 VAC 5-20, General Provisions (Rev. D04)**. The purpose of the proposed action is to enlarge the scope of volatile organic compound and nitrogen oxides emissions control areas in order to include new ozone nonattainment areas.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 10.1-1308 of the Code of Virginia and §§ 110 and 182 of the Clean Air Act (40 CFR Part 51).

Public comments may be submitted until 5 p.m. on January 12, 2005.

Notices of Intended Regulatory Action

Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510 or e-mail gegraham@deq.virginia.gov.

VA.R. Doc. No. R05-66; Filed November 10, 2004, 10:56 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled **12 VAC 5-585, Biosolids Use Regulations**. The purpose of the proposed action is to carry out 2004 legislation by providing a program for certifying persons who apply biosolids to land.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until 5 p.m. on January 13, 2005.

Contact: Cal Sawyer, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7463 or e-mail cal.sawyer@vdh.virginia.gov.

VA.R. Doc. No. R05-69; Filed November 22, 2004, 3:13 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-80, Methods and Standards for Establishing Payment Rates--Other Types of Care**. The purpose of the proposed action is to promulgate a new methodology for the reimbursement of generic drugs.

The agency does not intend to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until December 29, 2004, to Javier Menendez, R.Ph., Manager, Pharmacy Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Brian M. McCormick, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219,

telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov or brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R05-57; Filed November 3, 2004, 2:48 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-120, Waiver Services**. The purpose of the proposed action is to conform the agency's regulations to the federally approved CBC mental retardation waiver. This program provides supportive services in home and communities of persons with diagnoses of mental retardation and children younger than the age of six years who are at risk of developmental delay.

The agency does not intend to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until December 29, 2004, to Suzanne Klaas, Analyst, Division of Long Term Care and Quality Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Brian M. McCormick, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov or brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R05-55; Filed November 3, 2004, 2:50 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled **18 VAC 115-20, Regulations Governing the Practice of Professional Counseling**. The purpose of the proposed action is to amend prerequisites for licensure by endorsement to allow for greater portability of licensure from state to state.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Notices of Intended Regulatory Action

Public comments may be submitted until 5 p.m. on December 29, 2004.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9133, FAX (804) 662-9943 or e-mail evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R05-59; Filed November 4, 2004, 11:04 a.m.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled **18 VAC 105-20, Regulations for the Virginia Board of Optometry**, and repealing regulations entitled **18 VAC 105-30, Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents**. The purpose of the proposed action is to incorporate the requirements for initial licensure with therapeutic education agents (TPA) certification, fees for applications and renewals, and the continuing education requirement for TPA-certified optometrists.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until 5 p.m. on December 29, 2004.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board for Optometry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7097 or e-mail elizabeth.carter@dhp.virginia.gov.

VA.R. Doc. No. R05-60; Filed November 4, 2004, 11:04 a.m.



PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

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.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Title of Regulation: **12 VAC 5-585. Biosolids Use Regulations (adding 12 VAC 5-585-500).**

Statutory Authority: § 32.1-164.5 of the Code of Virginia.

Public Hearing Dates:

February 1, 2005 - 7 p.m. (Amelia Court House)

February 2, 2005 - 7 p.m. (Tappahannock)

February 3, 2005 - 7 p.m. (Culpeper)

Public comments may be submitted until February 28, 2005.
(See Calendar of Events section for additional information)

Agency Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, 109 Governor Street, 5th Floor, Richmond, VA 23219, telephone (804) 864-7463, FAX (804) 864-7475, or e-mail cal.sawyer@vdh.virginia.gov.

Basis: Section 32.1-164.5 of the Code of Virginia provides that the Board of Health, with the assistance of the Departments of Environmental Quality and Conservation and Recreation, shall promulgate regulations to ensure that (i) sewage sludge permitted for land application, marketing or distribution is properly treated or stabilized, (ii) land application, marketing and distribution of sewage sludge is performed in a manner that will protect public health and the environment, and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3 of the Code of Virginia, will be prevented.

Purpose: The purpose of amending the proposed amendments is to provide uniform standards for design and operation of field storage sites that will prevent the problems of odors and runoff identified as concerns by local governments. The use of smaller field storage sites will greatly reduce the need to use the larger temporary storage facilities that have been approved to date through the variance procedure. Although this amendment will eliminate the need to process such variances, site specific comments from local government will continue to be solicited as is currently done in the processing of land application permits.

The regulations provide the means to protect public health from improper and unregulated disposal of sewage sludge. However, the opponents of the land application of biosolids have insisted that local governments enact local ordinances that are more restrictive than the state regulations. This amendment is designed to provide a consistent and uniform set of state requirements that will address a number of issues that local governments must routinely deal with. It is anticipated that the development of state requirements will eliminate the need to develop non-uniform local requirements

in these areas of concern and prevent extended litigation brought by permitted entities concerning restrictive local government ordinances that would effectively ban temporary storage of biosolids.

Substance: The proposed amendment adds a new subsection addressing field storage standards. The land applier may use field storage as an alternative to routine storage during periods of inclement weather, or when the site soils are frozen, or surface saturated. Field storage can be used during winter conditions when there is limited or no nutrient uptake following land application, or land application operations could result in either physical damage to the site soils, or alteration of the site surface, or otherwise increase the surface runoff of particulates. Only dewatered biosolids suitable for land application (Class A or B pathogen control) and established as having minimal odor can be placed into field storage. The quantity of stored biosolids at the storage site will be limited to the amount equivalent to the quantity that would provide the agronomic rate of application, in accordance with (12 VAC 5-585-510) for approved sites within or nearby the property on which the storage site is located. The stored biosolids will be sufficiently dewatered so as to be capable of maintaining a stacking height of at least four feet. The ability of the biosolids to stay consolidated during stockpiling is to be verified and documented by the operator of the treatment works producing the biosolids at the source.

Field storage areas are to be designed to furnish an impermeable storage surface capable of supporting heavy equipment and sloped to minimize accumulation of precipitation, or other methods of removing accumulated precipitation are to be provided. Management steps must be taken to assure that no ponding of water occurs in contact with biosolids. The stored biosolids shall maintain a sloping surface shape that minimized accumulation of precipitation on the stored biosolids. If biosolids are stored longer than a 14-day period an impervious liner under the stored biosolids, capable of supporting operational equipment will be required. If biosolids are stored longer than 30 days a waterproof covering over the stored biosolids may be required. These standards are designed to prevent contamination of any runoff from around the site. Minimum buffer distances around the storage site to points of access and sources of water are designed to ensure protection of public health. If environmental or public health concerns develop at the storage location, VDH will require that the biosolids be removed to another site and will remove the approval of the problem field storage site.

Issues: The Biosolids Use Regulations Advisory Committee (BURAC) has assisted the Virginia Department of Health (VDH) in developing the proposed language. The proposed amendment reflects the recommendations from a majority of committee members. However, several committee members disapproved of the proposed language due to concerns that the field storage sites will not be properly managed. However,

the temporary storage sites approved through the variance process to date have not been designed to meet the more strict standards now being proposed and their operation has not resulted in either actual public health effects or water quality standards violations. Although the majority of the advisory committee members were in favor of the draft revision language, several members of the committee requested that more stringent requirements be included and stated that they objected to the field storage amendment without additional restrictions for site management practices limiting biosolids applications in winter months on sites that did have sufficient vegetation established.

Several letters and an e-mail were received providing comments in response to the Notice of Intended Regulatory Action (NOIRA). The comments generally expressed opposition to the amendment due to concerns that the field storage sites will generate odor and runoff problems and will not be properly inspected. The draft proposed amendment language was available to BURAC members but was not published with the NOIRA and thus was not available to the general public with the NOIRA. Thus, the public was not aware that the regulation amendment established detailed standards for the location and operation of field storage. Members of the BURAC did not comment directly, but the land application contractors support the proposed amendment. The establishment of local biosolids monitors will help address many of the expressed concerns, including providing for frequent inspection of the field storage sites.

The advantage of adopting the requested amendments is that the use of large routine storage facilities will not be necessary and there would be much less incentive to apply biosolids on wet soils or sites just prior to precipitation events. By establishing reasonable requirements for land application operations, the most economical and most beneficial means of sludge management will continue to be available to the owners of sewage treatment works, who are primarily metropolitan governments.

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 § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Section 32.1-164.5 of the Code of Virginia requires a current Virginia Pollution Abatement permit from the State Water Control Board or a current permit from the State Health Commissioner prior to the land application, marketing, or distribution of sewage sludge. Moreover, the Code of Virginia requires that the location(s) and terms and conditions of any land application, marketing,

or distribution of sewage sludge in the state be specified in the permit. Specifically, the Code mandates that the State Board of Health, with the assistance of the Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR), promulgate regulations that ensure that land application, marketing, and distribution of sewage sludge is performed in a manner that is protective of public health and the environment.

The proposed regulation amends the existing regulation to allow for field storage of biosolids. Under the existing regulation, temporary storage of biosolids in excess of the amount transported to a land application site on a given day and not applied to the site on that day is allowed through the granting of variances. Under the proposed regulation, biosolids in excess of the amount transported to a land application during a single day's operation can be stored without a variance. Field storage of biosolids is allowed as long as conditions and requirements specified in the proposed regulation are met. These include the circumstances under which biosolids may be put into field storage, the length of time and conditions under which biosolids may be stored, the types of biosolids that can be placed into field storage, design and operational requirements for field storage sites, best management practices, recordkeeping and reporting requirements, pre-approval, notification, and public participation requirements, and the conditions under which approval for a field storage site may be denied or revoked.

Estimated economic impact. Description of the regulation. The proposed regulation allows for temporary storage of biosolids in excess of the amount transported to a land application during a single day's operation without requiring a variance to the biosolids use regulations. Existing regulations restrict temporary storage to a maximum daily amount of 100 wet tons per site and require the stored material to be land applied or moved to a routine storage facility within 30 days. No additional temporary storage is allowed after the first day until the originally stored biosolids are land applied. In order to temporarily store biosolids in excess of the amount transported to a land application site on a given day and not applied to the site on that day, land applicators are required to apply for and be granted a variance. The proposed regulation allows temporary field storage of biosolids in excess of the amount currently allowed under the temporary storage provisions without a variance, as long as conditions and requirements specified in the regulation are met.

The proposed regulation specifies the circumstances under which field storage of biosolids may be utilized. Biosolids may be put into field storage during (i) inclement weather, (ii) times when the soil at the land application site is frozen or its surface saturated, and (iii) winter months when there is limited or no nutrient uptake and land application of biosolids could physically alter the site surface or result in increased surface run-off of particulates. The proposed regulation also establishes restrictions on the length of time and the conditions under which biosolids may be stored at field storage sites. Biosolids may be stored in approved field storage sites for up to 14 days. Biosolids stored for more than 14 days are required to have a liner base impervious to and able to support operational equipment. Biosolids stored for more than 30 days are required to have a cover equivalent to

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or better than that provided by a 10 mil plastic sheet. In addition to these restrictions, the proposed regulation also establishes seasonal restrictions on field storage. Between April and October, biosolids stored at field storage sites are to be removed for use or disposal within 30 days of being placed there. Between November and March, the maximum time in field storage is increased to 45 days for uncovered biosolids and to 120 days for covered biosolids. Finally, the proposed regulation specifies that only dewatered Class A or B pathogen control biosolids established as having minimum odor (i.e., a pH of 11 or more, digested with volatile solids level of 60% or less, etc.) can be placed into field storage.

The proposed regulation also establishes design requirements for biosolids field storage facilities, including a minimum distance of 36 inches to the seasonal high water table and of 40 inches to bedrock (unless an approved site liner of sufficient strength to support operational equipment and with a minimum permeability of 10^{-6} cm/sec is installed), adequate water diversion for sites with an average site slope of greater than 6%, a minimum buffer distance of 500 feet to property lines, occupied residences, potable wells, and surface water¹, and any additional karst topography-specific design requirements deemed necessary by the Virginia Department of Health (VDH)². The operational requirements for biosolids field storage facilities include the removal of the stored biosolids within 48 hours if objectionable odors are found, by VDH, to be interfering with the use of adjacent property, ensuring that biosolids placed into covered field storage are sufficiently cool and have minimum potential for heat build up³, ensuring at least once every 14 days and within 24 hours of a severe precipitation event that run-off controls at field storage sites are working adequately⁴, testing all biosolids stored for more than 45 days for fecal coliform and nitrogen prior to land application, scraping and removing any residual biosolids at unlined field storage sites, tilling the soil to break up compaction, and cropping the site to take up nutrients following removal of stored material, and any other requirements deemed necessary by VDH. The best management practices include site requirements such as remoteness, no flooding potential (as identified by the County Soil Survey), and low hydraulic conductivity for unlined field storage sites (based on the Natural Resources Conservation Service permeability values), a limit on the quantity of biosolids stored at a site to the agronomic rate of application for nearby land application sites⁵, a requirement for biosolids to be sufficiently dewatered such that a stacking ability of at least four feet is maintained⁶, and requirements that minimize the accumulation of precipitation on the stored material or on material in contact with the stored material.

¹ Under certain circumstances, the minimum distance to property lines, occupied residences, and potable wells may be reduced by 250 feet.

² Karst topography describes a topography that indicates dissolution of underlying soluble rocks by surface water or ground water.

³ In other words, the health and safety concerns arising out of the build-up of heat, ammonia, and other gases or odors are minimized.

⁴ Any excessive slumping, erosion, or movement of the biosolids pile is to be corrected within 24 hours. The regulation also requires that ponding or odor problems at the site be corrected.

⁵ As specified in 12 VAC 5-585-510 (Biosolids Utilization Methods)

⁶ The treatment facility generating the biosolids is responsible for ensuring and documenting the ability of the biosolids to stay consolidated during storage.

The proposed regulation also requires that either the treatment facility or the applicator maintain adequate daily records of the quantity of biosolids stored, document all biosolids stockpile field checks (including checking for runoffs and stacking ability), and report the information to VDH on a monthly basis. All field storage locations and biosolids sources are to be pre-approved by VDH prior to field storage. In addition, VDH is required to notify local governments of all proposed field storage sites and provide them with a minimum 30-day comment period. Finally, the proposed regulation allows field storage site approval to be denied or revoked due to odor, health, and water quality problems.

Estimated economic impact. The proposed regulation is likely to produce economic benefits and impose economic costs. According to VDH, the standards being proposed for field storage are the same as those used by the agency in determining whether to grant a variance. VDH believes that the main differences between the granting of a variance and the proposed approval process are procedural and administrative in nature. Under existing regulations, land applicators are required to submit a variance request to VDH and go through several layers of administrative review before the variance can be granted. In many cases, they are required to appear at local government meetings and explain the need for a variance. In all, the process takes up to three months. Under the proposed regulation, some of the procedural and administrative requirements are eliminated and the approval process for field storage sites is streamlined. According to VDH, a field storage site will now be approved in much the same manner as permit amendments are approved, through an inspection by VDH to verify that the location meets the requirements of the regulation. The proposed regulation continues to provide for local government participation by requiring that local governments be notified in advance of all proposed field storage sites and be provided with a minimum 30-day comment period.

The economic benefits of the proposed regulation arise from a reduction in approval requirements for temporary field storage. The proposed regulation is likely to reduce the cost to land applicators, in terms of time and other resources, in applying for and being granted approval for a biosolids field storage site⁷. VDH believes that the approval process under the proposed regulation is likely to be shorter than the variance process under existing regulations: the approval process being proposed is likely to take around 30 days on average, compared to the three months on average it takes to grant a variance. The approval requirements are also being made less burdensome in other ways. For example, the applicants will no longer be required to appear at local government meetings and explain the need for a field storage site.

A less time-consuming and costly approval process for temporary field storage sites is likely to produce additional economic benefits by reducing the dependence on routine storage facilities⁸. VDH estimates that routine storage of biosolids costs an additional \$8 to \$10 more per ton compared

⁷ No fees are charged by VDH for the granting of variances. Under the proposed regulation, no fees are to be charged for approving temporary field storage sites.

⁸ Routine storage involves an engineered, permanent structure designed to retain up to 60 days of biosolids production volume.

to transporting the biosolids directly to a land application site. The agency further estimates that field storage sites near land application sites can reduce storage costs by 50% or more. Thus, a less time-consuming and costly approval process for temporary field storage sites is likely to encourage land applicators to store biosolids at field storage sites than at routine storage facilities. According to VDH, temporary field storage sites pose less of a risk to public health and the environment than do routine storage facilities. Routine storage sites are generally used to store large amounts of biosolids and have led to odor and liquid management problems in the past. Ground water testing results from wells located at routine storage facilities across the state over the last 10 years have not verified that nitrogen contamination has occurred directly as result of the stored biosolids. However, the management of precipitation and other accumulated liquids in these storage lagoons has proved to be problematic. Disposal of accumulated liquids at routine storage sites has been especially problematic⁹. For example, the lagoon system once located at the Hanover Industrial Air Park resulted in liquid management problems and odor concerns that eventually led to its closure. By the end of 2005, the agency expects only three storage facilities to be used on a routine basis in the state. Smaller temporary storage sites are not likely to have the same magnitude of odor and liquid management problems as larger routine storage facilities and are, thus, likely to pose less of a risk to public health and the environment. VDH is not aware of any instances when temporary field storage of biosolids has led to health or environmental problems in Virginia. Thus, any shift away from routine storage and towards temporary field storage of biosolids is likely to reduce the risk to public health and the environment from biosolids and produce economic benefits.

A less time-consuming and costly approval procedure is also likely to reduce instances of biosolids being land applied inappropriately. Land application of biosolids during inclement weather and inappropriate soil conditions can cause nitrogen to be leached into surface and ground water, contaminating the water and reducing the plant-available nitrogen in the soil. Nitrogen can be lost to surface and ground water if biosolids are applied at rates that supply more nitrogen than crops can utilize or if biosolids are applied at times of low crop nitrogen uptake on soils subject to leaching losses. During winter months, many of the land application sites around the state are frozen and have limited or no nutrient uptake. During these months, land applicators tend to concentrate their activities in the coastal regions of the state, where the soils drain easily and are better able to support vehicular traffic and tilling without risk of soil compaction. However, these soils also pose the greatest risk for leaching loss of nitrogen. A study by Evanylo (2003)¹⁰ looked at the effects of biosolids application timing and soil texture on the availability of nitrogen for corn. The study was based on field experiments conducted on coarse- and fine-textured soils from two farms in the coastal plains of Virginia between 1996 and 1998. The

study concludes that, due to winter weather variability, the opportunities for mineralization of nitrogen from winter-applied anaerobically digested biosolids and subsequent transport into ground water can be high in the coastal plains of Virginia. The study goes on to recommend seasonal restrictions on the land application of biosolids. By reducing the costs associated with obtaining approval for field storage, the proposed regulation will make it easier for land applicators to store biosolids during unsuitable soil and weather conditions at sites that are convenient for subsequent land application. This, in turn, is likely to reduce instances of biosolids being land applied inappropriately and reduce the risk to public health and the environment from biosolids.

Finally, by instituting a uniform and consistent statewide policy regarding temporary field storage of biosolids, the proposed regulation is likely to produce some additional economic benefits. According to VDH, statewide requirements will eliminate the need for non-uniform locality-specific requirements and prevent litigation by land applicators and other permitted entities based on differences in temporary field storage requirements between localities. The agency believes that the language in most approved locality biosolids ordinances is general enough that it would not conflict with the use of a VDH-approved field storage site. However, some localities do place additional restrictions that might conflict with VDH-approved field storage. According to VDH, there have been several instances when land applicators have litigated, sometimes successfully and sometimes unsuccessfully, against localities that restrict temporary field storage of biosolids.

The proposed regulation could also impose additional economic costs on the state. By relaxing or eliminating some of the requirements for temporary field storage, the proposed regulation could increase the risk to public health and the environment. Fewer requirements could result in a higher risk of illness or contamination from biosolids stored at temporary field storage sites. In addition, by lowering the cost associated with obtaining approval, the proposed regulation is likely to lead to an increase in the number of temporary field storage sites across the state and this, in turn, could lead to an increased risk of public exposure and environmental contamination.

Biosolids refer to sewage sludge that has been treated for pathogens, disease vector attraction, and other pollutants such that it can be used for land application, marketing, and distribution. According to a study by the National Academy of Sciences¹¹, approximately 5.6 million dry tons of sewage sludge are used or disposed of annually in the United States. Of this, approximately 60% or 3.36 million dry tons are used for land application. In Virginia, 200,000 dry tons of biosolids were land applied on 42,000 acres of land (across 20-30 counties) in 2002. Virginia's biosolids use regulations require the same chemical and pathogen standards required under federal regulations. However, VDH believes that the management practices established for land application of biosolids in Virginia are more stringent than those required by federal regulations.

⁹ According to VDH, liquids removed from routine storage facilities due to odor concerns are generally applied to drainfields, increasing the risk of nitrogen contamination of surface and ground water.

¹⁰ Evanylo, G. K., 2003. Effects of Biosolids Application Timing and Soil Texture on Nitrogen Availability for Corn. *Communications in Soil, Science, and Plant Analysis* 14: 125-143.

¹¹ "Biosolids Applied to Land: Advancing Standards and Practices", National Academy of Sciences, 2002

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There exist certain public health and environmental risks associated with unregulated exposure to biosolids. The 2002 National Academy of Sciences study evaluated 40 CFR Part 503 (Standards for the Use or Disposal of Sewage Sludge) and found that there was no documented scientific evidence that federal regulations governing the land application of biosolids had failed to protect public health. The study acknowledged that land application of biosolids is a practical, widely used option of managing the large volume of sewage sludge generated at wastewater treatment plants that otherwise would be disposed of at landfills or by incinerators. However, the study went on to state that additional scientific work was needed to reduce persistent uncertainty about the potential for adverse human health effects from exposure to biosolids. Based on anecdotal reports of adverse health effects, public concerns, and the lack epidemiological investigation, the study recommended that the Environmental Protection Agency (EPA) conduct studies or promote and support studies that examine exposure and potential health risks to worker and residential populations.

In its preliminary strategy response, EPA identified three main objectives for achieving a better understanding of biosolids and reducing the potential for, or reducing the uncertainty related to, human health impact: (i) updating the scientific basis of 40 CFR Part 503 by conducting research in priority areas, (ii) strengthening the biosolids program by evaluating results of completed, ongoing, or planned studies both within and outside EPA, and (iii) continuing ongoing activities for enhancing communication with outside associations and with the public. In its final action plan, EPA identified 14 specific projects to be initiated over the next two to three years aimed at measuring pollutants of interest, determining the risks posed by contaminants identified as potentially hazardous, bringing various stakeholder groups together via a workshop to begin development of a national incidence tracking system to ultimately determine health effects following land application of biosolids, better understanding and characterizing the odors, volatile chemicals, and bioaerosols that may be emitted from land application sites, better understanding the effectiveness of biosolids processes and management practices to control pathogens, improving EPA's inspection and compliance initiatives, and improving stakeholders' involvement in EPA's biosolids program.

In the interim, pending the development of specific evidence to the contrary, EPA believes that existing federal regulations are protective of public health and the environment. To ensure ongoing review of the public health aspects of the land application of biosolids, VDH has established a biosolids workgroup comprised of eight district health directors who are preventive medicine specialists, an epidemiologist, and a toxicologist. In 2003, the workgroup concluded that a moratorium on the land application of biosolids was not necessary.

According to VDH, the standards being proposed for approval of field storage sites are the same as those used by the agency to determine whether or not to grant a variance under existing regulations. The agency believes that most of the differences between the proposed and existing regulations are procedural and administrative in nature. Applicants will no longer have to go through as many administrative steps and

layers as currently required. Despite changes to the approval process, local government participation will continue to be solicited. Even though applicants may no longer be required to appear at local government meetings, the proposed regulation will continue to incorporate local government input into any decision on whether to approve the field storage site or not. According to VDH, under existing regulations local governments are notified of variance applications and, if they choose to request a denial of the variance, are requested to provide specific reasons for such a request. In the absence of any site-specific local concerns and as long as the site meets the required standards, VDH approves the variance. The proposed regulation also requires local government notification of all proposed field storage sites and provides them with a minimum 30-day comment period. VDH is required to consider all such comments in deciding whether to approve the field storage site or not.

Thus, the proposed regulation is unlikely to increase the risk of illness or contamination from biosolids stored at temporary field storage sites. Moreover, existing standards used for granting variances appear to be adequate for the protection of public health and the environment. VDH is not aware of any instances to date when a temporary storage site authorized under a variance has created health or environmental problems in Virginia. All sites approved for field storage under the proposed regulation will have to continue to meet these standards. As the standards are site specific and applied to individual field storage sites, an increase in the number of such sites, all meeting these standards, should not increase the risk to public health and the environment from existing levels.

In addition, field storage of biosolids appears to pose less of a risk to public health and the environment than some of the available alternatives. During inclement weather and inappropriate soil conditions, the alternatives to field storage include routine storage and inappropriate land application of biosolids. As discussed above, both these alternatives appear to pose a greater risk to public health and the environment than field storage. Thus, any increase in risk due to a reduction in approval requirements and an increase in the number of field storage sites, is likely to be counter balanced by a reduction in risk from routine storage or inappropriate land application.

Overall, the proposed regulation is not likely to significantly increase the risk to the public and the environment from the storage and land application of biosolids, and may even lead to an overall reduction in risk.

The net economic impact of the proposed change will depend on whether the benefits of reducing the requirements for approval and streamlining the approval process for temporary field storage sites are outweighed by the costs of doing so. There are no precise estimates available at this time of the net economic impact of the proposed change. However, based on available information, the costs associated with the proposed change do appear to be very large. To the extent that the proposed regulation provides benefits in terms of cost savings to land applicators, a reduction in the use of routine storage and in the instances of inappropriate land application, and establishes a consistent statewide policy without

significantly increasing the risk to public health and the environment, it is likely to produce a net positive economic impact.

Under the existing regulation, there have been 23 applications for variance since 1998, of which twelve were approved, seven were disapproved, and four are still pending. The amount of biosolids placed into storage each year depends on weather conditions. Under drier-than-normal conditions, as little as 5% of all biosolids handled may be put into storage. Under wetter-than-normal conditions, up to 30% of all biosolids handled may be put into storage. Of the over 120,000 wet tons stored by one applicator in 2003, approximately 70,000 wet tons were put into routine storage and a little less than 60,000 wet tons were put into temporary storage.

While a majority of the Biosolids Use Regulations Advisory Committee (BURAC) was in support of the proposed regulation, some members have expressed concerns about the regulation.

DCR has expressed concern that the proposed regulatory action is occurring without simultaneous changes to the timing of biosolids land application. As discussed above, inappropriate application of biosolids increases the risk of nitrogen leaching into surface and ground waters. DCR is concerned that the present practice of allowing land application during fall and winter months on sites without growing crops does not adequately protect ground water quality and believes that some restrictions should be placed limiting land application during these months. Since one of the primary reasons for providing storage is to allow land application to occur only when soil and weather conditions are suitable, DCR believes that any changes to the field storage provisions should go hand-in-hand with seasonal restrictions on the land application of biosolids. An earlier draft of the proposed regulation included provisions restricting the application of biosolids during the winter months. However, all changes relating to the timing of biosolids land application are now to be dealt with in a separate regulatory action. The proposed regulation, even without any seasonal restrictions on land application, is still likely to have a beneficial impact in terms of preventing inappropriate land application. By reducing some of the costs associated with getting approval for a temporary field storage site, the proposed regulation provides applicators with a lower cost alternative to land applying biosolids than currently available.

Public comments received by VDH from local governments indicate that they are against state approval of temporary field storage sites. They believe that local governments should have a greater say in the process due to the prevailing health and environmental concerns associated with biosolids. Conversation with a BURAC member representing the Virginia Association of Counties indicated that there was a fear that the proposed changes would allow applicators to store biosolids at field storage sites without notifying VDH and without justifying the need for field storage. However, as described in the previous section, the proposed regulation specifies the circumstances under which biosolids may be put into field storage, the length of time and conditions under which biosolids may be stored, the types of biosolids that can

be placed into field storage, design and operational requirements for field storage sites, best management practices, recordkeeping and reporting requirements, pre-approval, notification, and public participation requirements for all field storage sites, and the conditions under which approval for a field storage site may be denied or revoked. Concerns were also expressed that the proposed regulation would encourage land applicators to store biosolids at sites around wastewater treatment facilities rather than land applying it, leading to an increased risk of nitrogen and phosphorous contamination and degradation in the nutrient content of the biosolids. However, the proposed regulation establishes restrictions on the type, quantity, and length of time biosolids can be stored at field storage sites. Moreover, according to VDH, the proposed regulation will favor the setting up of small field storage sites adjacent to land application sites rather than large sites around wastewater treatment facilities. Finally, VDH is not aware of any significant degradation in nutrient content of biosolids put into temporary storage. It should be noted that to the extent that the proposed regulation prevents inappropriate land application and reduces the dependence on large routine storage facilities, the proposed change is likely to produce economic benefits.

Concerns were also raised by a BURAC member about the lack of compliance with the proposed standards and the enforcement deficiencies in the proposed regulation (especially with regard to phosphorous content of biosolids). It was the opinion of this member that until these deficiencies were removed, protections currently afforded by local governments should not be stripped away. According to VDH, under the existing regulations local governments are notified of variance applications and, if they choose to request a denial of the variance, are requested to provide specific reasons for such a request. In the absence of any site-specific local concerns and as long as the site meets the required standards, VDH approves the variance (as was the case with the Lanier Farm temporary storage site in Goochland County). The proposed regulation will continue to provide for local government input, requiring local governments to be notified of all proposed field storage sites and allowing them a minimum 30-day comment period. Moreover, the agency believes that the use of local monitors working with VDH staff should ensure that local government concerns are properly considered prior to the approval of a field storage site.

Businesses and entities affected. The proposed regulation affects all land applicators of biosolids. Land applicators would now have to meet less burdensome requirements for approval of temporary biosolids field storage sites than under existing regulations. Under the existing regulation, temporary storage of biosolids in excess of the amount transported to the land application site on a given day and not applied to the site on that day is allowed only through the granting of variances. Under the proposed regulation, some of the procedural and administrative requirements required for a variance are eliminated and the approval process for temporary field storage sites is streamlined. This is likely to result in cost savings for land applicators.

According to VDH, there are nine contractors currently permitted to land apply biosolids in Virginia.

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Localities particularly affected. The proposed regulation applies to all localities in the Commonwealth.

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

Effects on the use and value of private property. To the extent that the proposed regulation provides cost savings and reduces the cost of operation for the producers, appliers, and users of biosolids, it is likely to raise asset values for these businesses and have a positive impact on the use and value of private property. Moreover, by clarifying and standardizing operating procedures the proposed regulation is likely to further lower operating costs and raise the asset values for companies and entities involved in biosolids land application.

An increase in the number of temporary field storage facilities around the state could have a negative impact on surrounding property values. However, as these sites are most likely to be located in the vicinity of land application sites, the impact is likely to be limited. In addition, to the extent that the proposed regulation provides a lower cost alternative to routine storage and land application during unsuitable soil and weather conditions, it is likely to reduce the risk to public health and the environment in areas around routine storage facilities and biosolids land application sites. This, in turn, is likely to have a positive impact on property values in these areas.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding these regulations.

Summary:

The proposed amendments allow for field storage of biosolids as an alternative to routine storage and provide that biosolids in excess of the amount transported to a land application during a single day's operation can be stored without a variance. The amendments set forth the conditions and requirements for field storage of biosolids including (i) the circumstances under which biosolids may be put into field storage; (ii) the length of time and conditions under which biosolids may be stored; (iii) the types of biosolids that can be placed into field storage; (iv) design and operational requirements for field storage sites; (v) best management practices; (vi) recordkeeping and reporting requirements; (vii) preapproval, notification, and public participation requirements; and (viii) the conditions under which approval for a field storage site may be denied or revoked.

12 VAC 5-585-500. Storage facilities.

A. Three types of storage may be integrated into a complete sludge management plan including: (i) "emergency storage" involving immediate implementation of storage for any sludge which becomes necessary due to unforeseen circumstances, (ii) "temporary storage" involving the provision of storage of stabilized sludges at the land application site which becomes necessary due to unforeseen climatic events which preclude land application of biosolids in the day that it is transported from the generator, (iii) "routine storage" involving the storage of biosolids as necessary for all nonapplication periods of the

year. Only routine storage facilities shall be considered a facility under this chapter.

B. Emergency storage. The owner shall notify the division upon implementation of any emergency storage. Approval of such storage and subsequent processing of the sludge and supernatant will be considered as a contingency plan integrated into the sludge management plan. Only emergency storage shall be used for storage of unstabilized sludges. Further processing utilization and disposal shall be conducted in accordance with the approved sludge management plan. Design and implementation of facilities used for emergency storage shall not result in water quality, public health or nuisance problems.

C. Temporary storage. The owner shall notify the division whenever it is necessary to implement temporary storage. Temporary storage may be utilized at the land application site due to unforeseen climatic factors which preclude application of sludge (either off-loaded at the site or in transport to the site) to permitted sites within the same working day. Temporary storage is not to be used as a substitute for routine storage and is restricted as follows:

1. Sludge stored at the site shall be land applied prior to additional off-loading of sludge at the same site;
2. The owner shall be restricted to storing a daily maximum amount of 100 wet tons per operational site;
3. The stored sludge shall be land applied within 30 days from the initiation of storage or moved to a routine sludge facility;
4. Approval of plans for temporary storage will be considered as part of the overall sludge management plan;
5. Temporary storage shall not occur in areas prone to flooding at a 25-year or less frequency interval;
6. A synthetic liner shall be required for placement under and over sludge stored in this manner with one exception: where sludge is stockpiled for less than seven days, a liner placed under the stored sludge is not required. Surface water diversions and other Best Management Provisions (BMP) should be utilized as appropriate; and
7. Temporary storage shall not result in water quality, public health or nuisance problems.

D. Routine storage. Routine storage facilities shall be provided for all land application projects if no alternative means of management is available during nonapplication periods. Plans and specifications for any surface storage facilities (pits, ponds, lagoons) or aboveground facilities (tanks, pads) shall be submitted as part of the minimum information requirements.

1. Location. The facility shall be located at an elevation which is not subject to, or is otherwise protected against, inundation produced by the 100-year flood/wave action as defined by U.S. Geological Survey or equivalent information. Storage facilities should be located to provide minimum visibility. All storage facilities with a capacity in excess of 100 wet tons and located off-site of property owned by the generator shall be provided with a minimum

750-foot buffer zone. The length of the buffer zone considered will be the distance measured from the perimeter of the storage facility. Residential uses, high-density human activities and activities involving food preparation are prohibited within the buffer zone. The commissioner may consider a reduction of up to 1/2 of the above buffer requirements based on such facts as lagoon area, topography, prevailing wind direction, and the inclusion of an effective windbreak in the overall design.

2. Design capacity. The design capacity shall be sufficient to store a minimum volume equivalent to 60 days or more average production of biosolids and the incidental wastewater generated by operation of the treatment works plus sufficient capacity necessary for: (i) the 25 year-24 hour design storm (incident rainfall and any runoff as may be present); (ii) net precipitation excess during the storage period; and (iii) an additional one foot freeboard from the maximum water level (attributed to the sum of the above factors) to the top berm elevation. Storage capacity of less than that specified above will be considered on a case-by-case basis only if sufficient justification warrants such a reduction. If alternative methods of management cannot be adequately verified contractors should provide for a minimum of 30 days of in-state routine storage capacity for the average quantity of sludge transported into Virginia from out-of-state treatment works generating at least a Class II level treated sludge.

3. Construction. Storage facilities shall be of uniform shape (round, square, rectangular) with no narrow or elongated portions. The facilities shall be lined in accordance with the requirements contained in sewerage regulations or certificate. The facilities shall also be designed to permit access of equipment necessary for loading and unloading biosolids, and should be designed with receiving facilities to allow for even distribution of sludge into the facility. Design should also provide for truck cleaning facilities as may be necessary. Storage facilities with a capacity of 100 wet tons or less shall comply with the provision for temporary storage as a minimum.

4. Monitoring. All sludge storage facilities in excess of 100-wet ton capacity shall be monitored in accordance with the requirements of this chapter. Plans and specifications shall be provided for such a monitoring program in accordance with the minimum information specified in Part IV (12 VAC 5-585-620 et seq.).

5. Operation. Only biosolids suitable for land application (Class A or B Biosolids) shall be placed into permitted routine storage facilities. Storage of biosolids located offsite or remote from the Wastewater Treatment Works during the summer months shall be avoided whenever possible so that the routine storage facility remains as empty as possible during the summer months. Storage facilities should be operated in a manner such that sufficient freeboard is provided to ensure that the maximum anticipated high water elevation due to any and all design storm inputs is not less than one foot below the top berm elevation. Complete plans for supernatant disposal shall be provided in accordance with Part IV (12 VAC 5-585-620 et seq.). Plans for supernatant disposal may include transport to the

sewage treatment works, mixing with the biosolids for land application or land application separately. However, separate land application of supernatant will be regulated as liquid sludge; additional testing, monitoring and treatment (disinfection) may be required. The facility site shall be fenced to a minimum height of five feet; gates and locks shall be provided to control access. The fence should be posted with signs identifying the facility. The fence should not be constructed closer than 10 feet to the outside edge of the facility or appurtenances, to allow adequate accessibility.

6. Closure. An appropriate plan of closure or abandonment shall be developed by the permittee when the facility ceases to be utilized and approved by the commissioner. Such plans may also be reviewed by the Department of Environmental Quality.

7. Recordkeeping. A manifest system shall be developed, implemented and maintained and be available for inspection during operations as part of the overall daily recordkeeping for the project (Part IV, 12 VAC 5-585-620 et seq.).

E. Field storage. The biosolids owner may use field storage as an alternative to routine storage during periods of inclement weather, or when the site soils are frozen or surface saturated. Field storage may be used during winter conditions when there is limited or no nutrient uptake, or land application operations could physically alter the site surface or otherwise increase surface runoff of particulates. The local government shall be notified by the division in advance of all proposed field storage locations and provide an opportunity of at least 30 days to comment on the proposed site. The commissioner will consider all comments on the proposed location and may deny or revoke approval of any site if it becomes problematic due to odor, health, or water quality issues in accordance with the provisions of 12 VAC 5-585-70. Adequate daily records of biosolids quantities stored shall be maintained and reported monthly in accordance with the provisions of this chapter. The design and operation of the field storage site shall be adequately described and approved in accordance with this section and 12 VAC 5-585-620. All field storage locations and biosolids sources must be preapproved by the division and all such facilities shall comply with the following standards:

1. Only dewatered biosolids suitable for land application (Class A or B pathogen control) and established as having minimal odor (e.g., pH of 11 or more, digested with a volatile solids level of 60% or less, or other method approved by the division) shall be placed into field storage.

2. Field storage operations shall not result in water quality, public health, or public nuisance problems. If field storage is used, the following requirements and best management practices shall be adhered to:

a. Field storage locations shall be as remote as practicable and located only in areas identified as having no flooding potential as identified by the county soil survey. Sites selected for field storage shall not be located on soils that regularly experience either standing water, excessive runoff after storm events, or water tables within six inches of the ground surface, such as the Hydrologic Group D soils as defined by the Natural

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Resources Conservation Service (NRCS) and indicated by the county soil survey. Unlined stockpiles shall not be located on soils with NRCS defined permeability values of more than 12.0 inches per hour in the top 24 inches of soil (such as gravel) resulting in excessive infiltration rates.

b. The quantity of stored biosolids at the storage site shall be limited to the amount equivalent to the quantity that would provide the agronomic rate of application, in accordance with the provisions of 12 VAC 5-585-510, for approved sites within or nearby to the property on which the storage site is located. The stored biosolids shall be sufficiently dewatered so as to be capable of maintaining a stacking height of at least four feet. The ability of the biosolids to stay consolidated during stockpiling is to be verified and documented by the operator of the treatment works producing the biosolids at the source. This consolidation property is to be rechecked at the storage location if the biosolids contain polymers that may be altered during storage such that the biosolids bound water is released. Biosolids may be blended with thickened biosolids at the source treatment facility if they do not have the proper consistency.

c. Field storage areas are to be designed to minimize accumulation of precipitation, or methods of removing accumulated precipitation are to be provided. Management steps must be taken to assure that no ponding of water occurs in contact with biosolids. The stored biosolids shall maintain a sloping surface shape that minimizes accumulation of precipitation on the stored biosolids.

3. The design of field storage sites shall meet the following requirements:

a. The distance to seasonal high water table shall be equal to or more than 36 inches, unless a liner with a minimum permeability of 10^{-6} cm/sec and of sufficient strength to support operational equipment and approved by the division is installed.

b. The distance to bedrock shall be equal to or greater than 40 inches unless a liner with a minimum permeability of 10^{-6} cm/sec and of sufficient strength to support operational equipment and approved by the division is installed.

c. In karst topography, the division may require additional design measures.

d. If the average site slope is greater than 6.0%, adequate surface water diversion methods must be provided and maintained.

e. The minimum buffer distances to property lines, occupied residences, and potable wells will be 500 feet. The commissioner may grant a buffer reduction of up to 250 feet if the affected party agrees to the reduction in writing and the agreement is notarized and submitted to the division. The minimum distance to surface waters that are flowing in a distinct channel shall be 500 feet.

4. Seasonal restrictions on storage time shall be established in accordance with the design of the field storage site.

Biosolids may be stored on an approved field storage site for up to 14 days. If biosolids are stored on an approved field storage site for more than 14 days, a liner base under the stored biosolids shall be maintained during the storage time. The liner base shall be impervious and of sufficient strength to support operational equipment as approved by the division. If biosolids are to be stored for more than 30 days, a cover over the biosolids equivalent or better to that provided by a 10 mil plastic material, shall be maintained during the storage time. Biosolids stored during the months of April through October shall be removed for permitted use or disposal within 30 days of placement in storage. Biosolids stored during the months of November through March shall be removed for permitted use or disposal within 45 days of placement in storage unless covered. Covered biosolids stored during the months of November through March must be removed for permitted use or disposal within 120 days of placement in storage.

5. Operation of the field storage site shall meet the following requirements:

a. Biosolids must be removed from the storage site within 48 hours if objectionable odors (such as those that would interfere with reasonable use of adjacent property) related to the stored biosolids are verified by the division at any occupied residence on surrounding property.

b. Biosolids placed into covered storage are to be of a sufficiently cool temperature to allow placement of covering that will not result in safety or health concerns from a build up of heat, ammonia, or other gases or odors. Only biosolids with a minimum potential for heat build-up, such as stabilized compost, are to be placed in covered storage as incompletely stabilized compost can reheat to the point of catching fire.

c. Biosolids stockpiles are to be checked by the generator or its agent, at least every 14 days and within 24 hours after precipitation events with a sustained duration of 30 minutes or more at a National Weather Service estimated intensity of more than 0.75 inches per hour, to ensure that runoff controls are in good working order. Any observed excessive slumping, erosion or movement of biosolids is to be corrected within 24 hours. Any ponding within or abutting the stored biosolids that could either lead to runoff to nearby waterways or produce objectionable odor at the site is to be corrected. Appropriate documentation of biosolids stockpile field checks shall be submitted with monthly reports.

d. Biosolids stored for greater than 45 days shall be retested prior to land application for fecal coliform, TKN, and $\text{NH}_3\text{-N}$.

e. Following storage without liners, the residual biosolids remaining on the soil should be scraped and removed, the soil at the site shall be tilled to break up compaction, and the site should be cropped to take up nutrients.

f. The division may specify further restrictions on field storage at any time it deems necessary.

VA.R. Doc. Nos. R03-243 and R04-4; Filed December 7, 2004, 3:25 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Title of Regulation: 18 VAC 115-15. Regulations Governing Delegation to an Agency Subordinate (adding 18 VAC 115-15-10 through 18 VAC 115-15-30).

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

Public Hearing Date: February 18, 2005 - 9 a.m.

Public comments may be submitted until February 25, 2005.
(See Calendar of Events section for additional information)

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, or e-mail evelyn.brown@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system and to delegate informal fact-finding to an agency subordinate.

Purpose: One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The law enacted by the 2004 General Assembly and adoption of these proposed rules give another tool to health regulatory boards seeking to bring closure to cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member trained and qualified to conduct a fact-finding proceeding.

In § 2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The board will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While certain standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a

person qualified by knowledge and background to determine the facts in the case. Delegation to an agency subordinate will be available to address cases that may arise from audits for continuing education compliance or other cases not involving patient care. Proposed regulations state the types of cases that may not be heard by a subordinate but leave the final decision of delegation to the probable cause committee in consultation with the board chair. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

Substance: 18 VAC 115-15 establishes the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated except as may be approved by a committee of the board, and the individuals who may be designated as agency subordinates.

Issues: The only advantage to the public may be a speedier resolution of disciplinary cases, but the cases that would likely be heard by a subordinate of the Board of Counseling would probably not involve standard of care for patients. It is likely that the board will delegate cases that involve such violations as failure to obtain continuing education. Therefore, there may not be any real advantage or disadvantage to the public.

There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the board, there may be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member to sit as an agency subordinate will be easier than scheduling for two or more members, so it may be possible for cases to be heard more quickly. On the other hand, recommendations of the subordinate will have to be ratified by the board, so resolution of the case may be somewhat delayed until the next scheduled meeting at which a quorum of the board can be present.

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 § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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. Pursuant to House Bill 577 of the 2004 General Assembly, the Board of Counseling (board) proposes to delineate the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

Proposed Regulations

Estimated economic impact. Section 54.1-2400 of the Code of Virginia (Code) describes the general powers and duties of health regulatory boards. Among the powers and duties listed is to appoint a special conference committee upon receipt of information that a practitioner of the board in question may be subject to disciplinary action. "The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty ..." House Bill 577 of the 2004 General Assembly added the following language to this section of the Code: "This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings..., upon receipt of information that a practitioner may be subject to disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

In response, the board proposes regulations that specify criteria for delegation of informal fact-finding proceedings to an agency subordinate. Section 2.2-4001 of the Code defines "subordinate" to mean "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." According to the Department of Health Professions (department), the board has not been delegating to an agency subordinate the authority to conduct informal fact-finding proceedings upon receipt of information that a practitioner may be subject to disciplinary action. The department believes that the introduced clarifying language in the Code and the proposed criteria for delegation of informal fact-finding proceedings to an agency subordinate in the regulations will make it more likely that the board will delegate to an agency subordinate the authority to conduct informal fact-finding proceedings. The department also believes that it is more likely that such agency subordinates will consist of current or past board members than department staff.

It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., the entire board. Thus, to the extent that the adoption of the proposed criteria in the regulations paired with the clarifying language in the Code make it more likely that the board will delegate to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in a more timely manner. Since the board must still ratify recommendations of the subordinate, the subject of the potential disciplinary action will still be under the judgment of the entire board, rather than just a subset. Therefore, since the proposal produces no significant cost and the potential for disciplinary cases to be concluded in a timelier manner is created, the proposed amendment to the regulations will likely produce a net benefit.

Businesses and entities affected. The proposed criteria potentially affect the 1,371 certified substance abuse counselors, 847 marriage and family therapists, 2,739 professional counselors, 387 rehabilitation providers, 3 substance abuse assistants, and 171 substance abuse

treatment practitioners¹ in the Commonwealth, as well as their patients.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 115-15, Regulations Governing Delegation to an Agency Subordinate, relating to delegation of informal fact-finding to an agency subordinate.

Summary:

The proposed regulation establishes the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.

CHAPTER 15.

DELEGATION OF INFORMAL FACT-FINDING TO AN AGENCY SUBORDINATE.

18 VAC 115-15-10. Decision to delegate.

In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

18 VAC 115-15-20. Criteria for delegation.

Cases that may not be delegated to an agency subordinate include violations of standards of practice as set forth in regulations governing each profession certified or licensed by the board, except as may otherwise be determined by the probable cause committee in consultation with the board chair.

18 VAC 115-15-30. Criteria for an agency subordinate.

A. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

B. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

C. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the

¹ Source: Department of Health Professions.

qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R04-204; Filed December 8, 2004, 11:24 a.m.

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 § 2.2-4002 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, it is available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1300 East Main Street, 1st Floor, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday.

Title of Regulation: 20 VAC 5-313. Rules Governing Exemptions to Minimum Stay Requirements and Wires Charges (adding 20 VAC 5-313-10 through 20 VAC 5-313-40).

Statutory Authority: §§ 12.1-13, 56-577 and 56-583 of the Code of Virginia.

Public Hearing Date: A hearing will be scheduled if requested.

Public comments may be submitted until February 7, 2005.

Agency Contact: David R. Eichenlaub, Assistant Director, Division of Economics and Finance, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9050, FAX (804) 371-9935, toll free (800) 552-7945, or e-mail deichenlaub@scc.state.va.us.

Summary:

The Virginia Electric Utility Restructuring Act requires customers of certain electric utilities to pay wires charges if they leave a utility and begin purchasing electric energy from a competitive service provider. In addition, certain large industrial and commercial customers who return to a utility from a competitive service provider may, under certain circumstances, be required to remain a customer of the utility for a minimum period of 12 months. In its 2004 session, the General Assembly passed legislation allowing certain customers to avoid paying wires charges when they leave a utility and begin purchasing electric energy from a competitive service provider. The new legislation also allows large industrial and commercial customers to avoid the 12-month minimum stay period if they agree to pay market-based costs for electric energy upon their return to an incumbent utility or default service provider. The

proposed rules and regulations are designed to implement the two new exemption programs mandated by the General Assembly and to establish a methodology for determining market based costs.

AT RICHMOND, DECEMBER 6, 2004

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2004-00068

Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for exemptions to minimum stay requirements and wires charges

ORDER INVITING COMMENTS

The Virginia Electric Utility Restructuring Act, Chapter 23, Title 56 of the Code of Virginia (§ 56-576 et seq.) ("the Act" or "Restructuring Act"), as amended by Chapter 827 of the 2004 Acts of the Assembly ("Senate Bill 651"), directs the State Corporation Commission ("Commission") to promulgate rules and regulations and to adopt certain market-based pricing methodologies in order to implement two new provisions of the Restructuring Act. These new statutory provisions relate to the minimum stay period adopted by the Commission pursuant to § 56-577 E 1 of the Act, and wires charges imposed pursuant to § 56-583 of the Act.

Under the Commission's Rules Governing Retail Access to Competitive Energy Services,¹ local distribution companies can require certain large industrial and commercial customers who return from a competitive service provider ("CSP") to capped rate service to remain a customer of the utility for a minimum stay period of 12 months.² Section 56-577 E 2 of the Act creates a statutory exemption to the minimum stay period and allows large commercial and industrial customers returning to a utility or default service provider to pay market-based costs for electric energy as an alternative to being bound by the 12-month minimum stay period. Section 56-577 E 2 of the Act also directs the Commission to adopt a methodology for determining market-based costs for customers returning to the utility or default service provider, and § 56-577 E 4 further directs the Commission to adopt rules and regulations necessary to implement the new minimum stay exemption program.

Senate Bill 651 also creates a new statutory exemption program that allows certain customers to avoid paying wires charges when they switch to a CSP. Section 56-583 E 1 of the Act allows large industrial and commercial customers, and aggregated customers in all rate classes subject to demand criteria established by the Commission, to avoid paying wires charges when they switch to a CSP if the customers agree to pay market-based costs for electric energy if they return to an incumbent electric utility or default service provider. Section 56-583 E 3 of the Act further provides that the Commission shall establish a methodology to determine market-based costs for customers returning to a utility or default service

¹ 20 VAC 5-312-10 et seq.
² 20 VAC 5-312-80 Q.

Proposed Regulations

provider, and § 56-583 E 4 directs the Commission to adopt rules and regulations necessary to implement the wires charges exemption program.

On June 16, 2004, the Commission entered an Order Establishing Proceeding that directed the Commission Staff to investigate the new minimum stay and wires charges exemption programs established by Senate Bill 651; provided public notice to interested persons and stakeholders of the Staff investigation; and directed the Commission Staff to form a work group for the purpose of assisting the Staff in developing a methodology for determining market-based costs and drafting proposed rules and regulations to implement the new exemption programs mandated by Senate Bill 651. The Commission's June 16, 2004, Order also invited interested persons and stakeholders to respond to a series of questions designed to develop the information necessary to implement the new programs. Finally, the Staff was directed to file a report, after soliciting input from members of the work group, recommending an appropriate methodology for determining market-based costs, as well as proposed rules and regulations to implement the new programs.

On November 19, 2004, the Staff filed its report addressing the key issues identified by the Staff and work group relating to the implementation of the new exemption programs; making recommendations on the best way to resolve key issues identified by the Staff and members of the work group; and proposing rules and regulations to implement the minimum stay and wires charges exemption programs.

The Staff report notes that all members of the work group recognize that the limited duration of the new programs creates a critical time frame for the Commission to develop, approve, and implement the new exemption programs. Since the Restructuring Act requires the Commission to develop the rules and regulations to implement the programs and approve each utility's compliance plan before approving a methodology for determining market-based costs, the Staff and members of the work group recommend that the proposed rules and regulations and utility compliance plans be reviewed simultaneously by the Commission. The Staff and members of the work group recognize there is a risk of significant revisions to the proposed rules that may necessitate further revisions to the utility compliance plans. Nevertheless, the Staff and members of the work group believe that a parallel review of the proposed rules and regulations and the utility compliance plans represents the best way to proceed in order to implement the new exemption programs as soon as possible.

Another significant issue that arose during the work group meetings is whether the Act requires electric distribution cooperatives ("Cooperatives") to offer the new minimum stay and wires charges exemption programs to their members. The Cooperatives argue that the General Assembly never intended the new programs to apply to them because the programs require local distribution companies to transfer their transmission assets to regional transmission entities ("RTEs") before any obligation to offer the programs arises. Since the Cooperatives have no transmission assets to transfer to RTEs, they argue a necessary "threshold condition precedent

to application of the programs" does not exist for them.³ The Cooperatives further argue that charging their members market-based costs and a reasonable margin upon their return to a Cooperative is inconsistent with their not-for-profit operations. Accordingly, the Cooperatives argue they should be allowed, but not be required to offer the new exemption programs to their members.

The Office of the Attorney General, Division of Consumer Counsel, filed a letter with the Commission on September 24, 2004, supporting the Cooperatives' position. The Division of Consumer Counsel's letter states that "in our view the provisions of §§ 56-577 E 2 and 56-283 of the Code of Virginia do not require cooperatives' participation in these programs."⁴

The Staff report notes that the statutory language creating the new programs is ambiguous concerning the applicability of the programs to the Cooperatives. The Staff therefore recommends that the proposed rules and regulations implementing the exemption programs not be applied to the Cooperatives until such time as the General Assembly makes it clear that the new exemption programs apply to them.

The Staff report also discusses the importance of educating consumers on the availability of the new exemption programs, particularly since participation in the wires charges exemption program will forever preclude customers from returning to capped rates -- a significant consumer entitlement. The proposed rules therefore require utilities to provide written notice to each customer advising them of the availability of the new programs, as well as the attendant risks of participation.

The Staff report also addresses the anticipated costs that must be incurred by utilities to implement the new programs and what specific costs should be included in the methodology to determine market-based costs. The utilities are concerned that incurring significant costs to implement the programs, particularly if there is little or no customer participation, will place them at a disadvantage. Most utilities therefore believe that all implementation costs should be reflected in the market-based costs charged to customers when they return to a utility or default service provider.

The Staff, in contrast, opposes including all implementation costs in the market-based costs charged customers returning to a utility or default service provider. The Staff report notes that one obvious option that would reduce or eliminate totally all costs associated with the programs is for a utility to simply waive its current minimum stay requirement or wires charges and therefore not be required to implement these programs. Another alternative proposed by the Staff to reduce any unfavorable economic impacts is for utilities to develop manual work-around solutions to implement the programs, rather than extensive automated or computer intensive solutions, similar in concept to that accepted by the Commission regarding competitive supplier billing in Case No. PUE-2001-00297.⁵

³ Letter posted at:

http://www.state.va.us/scc/division/eaf/comments_minimumstay.htm

⁴ *Ibid.*

⁵ Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia

The Staff report also addresses the eligibility of aggregated customers to participate in the wires charges exemption program. Section 56-583 E 1 of the Act allows aggregated customers from all rate classes, subject to demand criteria established by the Commission, to participate in the wires charges exemption program. The general consensus of the work group is that no threshold level of demand should be established for aggregated customers in order to encourage all customers to participate in the program. Subsequent to work group discussions, however, American Electric Power Company ("AEP") filed written comments recommending that a threshold of 500 kW be established as the minimum aggregated load to be eligible for participation in the wires charges exemption program. The Staff, in response, opposes establishing any threshold for aggregated customers to participate in the programs. The Staff report acknowledges AEP's position, but argues that the law states that the Commission "may" establish a threshold of demand for aggregated customers, not that the Commission "must" establish a threshold limit.

The Staff report also examines the limitation placed on the number of customers that can participate in the wires charges exemption program. Section 56-283 E 4 of the Act allows industrial, commercial, and aggregated customers to participate in the wires charges exemption program on a first-come, first-served basis until such time as the load associated with participating customers reaches 1,000 MW or eight percent of the utility's prior year adjusted peak load. Several members of the work group discussed the possibility of allocating the threshold load in a variety of ways to encourage more suppliers and customers to participate in the wires charges exemption program. While the Staff believes that the current statutory language allowing customers to participate in the program on a first-come, first-served basis may preclude allocating the threshold load in the manner discussed by the work group, the Staff indicates it would consider any such proposals included in a utility's compliance plan. However, the Staff expressed no opinion on the legality of allocating load among customers in the manner suggested by several members of the work group.

Finally, the Staff report contains proposed rules and regulations designed to implement the new exemption programs. The report indicates that the Staff and members of the work group considered a series of definitions to include in the proposed rules, but eventually concluded their time was better spent discussing more significant issues given the tight time constraints imposed upon the Commission to implement the new programs. The Staff report submits, however, that the definitions contained in the Act itself, the existing Retail Access Rules, and in 20 VAC 5-312-40 of the proposed rules and regulations should be sufficient to implement the new programs.

The proposed rules and regulations also contain certain basic cost elements for utilities to consider when determining market-based costs and implementing the new programs. The Staff further states that the cost elements identified in the Staff report are not exclusive, but are presented merely as a

framework for developing market-based costs in utility compliance plans. Staff recommends that the utility compliance plans identify all costs included in their proposed market-based costs to implement the programs, and should also describe such costs in sufficient detail to allow for an adequate review by the Staff and Commission.

NOW THE COMMISSION, having considered the Staff report and the proposed rules and regulations proposed therein, is of the opinion, and finds, that public notice of the Staff's report and the proposed rules and regulations therein should be provided to the public; that investor owned electric utilities should be required to file compliance plans and proposed market-based costs to implement the minimum stay and wires charges exemption programs; and that interested persons should be given the opportunity to file comments and requests for hearing on the Staff's proposed rules and regulations and the compliance plans submitted by utilities to implement the new exemption programs.

As the Staff recognizes in its report, the limited duration of the programs creates a critical time frame to develop, approve, and implement the new exemption programs mandated by Senate Bill 651. The Act further requires the Commission to provide appropriate public notice and an opportunity for hearing before adopting any rules and regulations to implement the programs and before approving a methodology for determining market-based costs. Given the time constraints imposed in this case, we will provide for public notice of the rules as proposed by the Staff; require investor owned utilities to file their compliance plans to implement the new programs; and allow interested persons to file comments on the proposed rules and regulations and the utility compliance plans designed to implement the minimum stay and wires charges exemption programs.

We will not, however, require the Cooperatives to file compliance plans at this time. As indicated in the Staff report, one legal issue that was raised during the Staff's investigation is whether electric distribution cooperatives are subject to the new exemption programs. We find it appropriate to resolve this legal issue prior to requiring the Cooperatives to file any compliance plans. Accordingly, members of the work group and other interested persons will be allowed to file comments or briefs addressing this legal issue before we decide whether the Cooperatives must implement the new exemption programs.

In addition, given the limited duration of the new exemption programs and the tight time constraints imposed in this case, we encourage all interested persons to file their comments in writing. While this Order affords interested persons an opportunity to request a hearing in this matter, we encourage interested persons to resolve any factual disputes informally through negotiation. A hearing will be scheduled only for good cause shown, and where the person requesting a hearing demonstrates that its comments or concerns cannot be addressed adequately in written comments.

Accordingly, IT IS ORDERED THAT:

(1) The Commission Staff shall promptly submit for publication in the Virginia Register of Regulations a copy of this Order and the rules and regulations as proposed by the Staff

Electric Utility Restructuring Act for consolidated billing services, 2002 Ann. Rept. 410.

Proposed Regulations

implementing the minimum stay and wires charges exemption programs.

(2) On or before January 10, 2005, each investor owned electric utility imposing a minimum stay period and/or wires charges shall file an original and fifteen (15) copies of a compliance plan containing proposed market-based costs to implement the new minimum stay and wires charges exemption programs with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. The compliance plans shall refer to Case No. PUE-2004-00068, and shall identify all costs included in the proposed market-based costs as well as an explanation of how each cost element falls within the definition of market-based costs contained in §§ 56-577 E 2 and 56-583 E 3 of the Restructuring Act.

(3) On or before February 7, 2005, interested persons may file written comments on the Staff report, the rules and regulations proposed by the Staff, and any utility compliance plans filed pursuant to Ordering paragraph (2) above. All written comments shall refer to Case No. PUE-2004-00068, and shall be filed in an original and fifteen (15) copies with the Clerk of the Commission at the address set forth in Ordering Paragraph (2) above. Interested persons desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

(4) Interested persons desiring to file comments or briefs addressing the legal issue of whether electric distribution cooperatives must implement the new minimum stay and wires charge exemption programs may do so by filing, on or before February 7, 2005, an original and fifteen (15) copies of their comments or briefs with the Clerk of the Commission at the address set forth in Ordering Paragraph (2) and shall refer to Case No. PUE-2004-00068.

(5) On or before February 7, 2005, interested persons may request the Commission to convene a hearing on the rules and regulations proposed by the Staff or any utility compliance plans filed pursuant to Ordering Paragraph (2) above. Requests for hearing must be filed in writing, in an original and fifteen (15) copies, with the Clerk of the Commission at the address set forth in Ordering Paragraph (2) and shall refer to Case No. PUE-2004-00068. Requests for hearing shall also include: (i) a precise statement of the party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter.

(6) On or before February 7, 2005, persons desiring to participate as a Respondent addressing a utility's compliance plan shall file with the Clerk of the Commission at the address set forth in Ordering Paragraph (2) an original and fifteen (15) copies of a Notice of Participation as provided in the Commission's Rules of Practice and Procedure, 5 VAC 5-20-80, and shall refer to Case No. PUE-2004-00068. Respondents may request a hearing in their Notice of Participation by including a precise statement complying with the requirements of Ordering Paragraph (5) above.

(7) On or before February 21, 2005, the Commission Staff may file any response it has to the utility compliance plans and any comments filed in this case.

(8) On or before February 28, 2005, any utility filing a compliance plan and any Respondent may file a reply to any response filed by the Commission's Staff pursuant to Ordering Paragraph (7) above.

(9) On or before December 20, 2004, 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
ESTABLISH RULES AND REGULATIONS PURSUANT
TO THE VIRGINIA ELECTRIC UTILITY RESTRUCTURING
ACT FOR EXEMPTIONS TO MINIMUM STAY
REQUIREMENTS AND WIRES CHARGES
CASE NO. PUE-2004-00068**

The Virginia Electric Restructuring Act (§ 56-576 et seq. of the Code of Virginia) ("the Act"), as amended this year by the General Assembly, directs the Virginia State Corporation Commission ("Commission") to promulgate certain rules and regulations to implement two new provisions of the Act. These new provisions relate to the 12-month minimum stay period adopted by the Commission pursuant to § 56-577 E 1 of the Act, and wires charges imposed pursuant to § 56-583 of the Act.

Under the Commission's Rules Governing Retail Access to Competitive Energy Services, an incumbent electric utility or default service provider can require certain large industrial and commercial customers who return from a competitive service provider ("CSP") to a utility or default service provider to remain a customer of the utility or default service provider for a minimum stay period of 12 months. Section 56-577 E 2 of the Act creates an exemption to the 12-month minimum stay period for those customers who return to a utility or default service provider if the customer agrees to pay market-based costs for electric energy. The Commission is further directed to adopt a methodology for determining market-based costs, and to adopt rules and regulations to implement this new statutory exemption program.

Section 56-583 E 1 of the Act creates a similar exemption program that will allow large industrial and commercial customers, and aggregated customers subject to demand criteria established by the Commission, to avoid paying wires charges when they switch to a CSP if the customers agree to pay market-based costs for electric energy if they return to an incumbent electric utility or default service provider. The Commission is further directed to adopt a methodology for determining market-based

costs, and to adopt rules and regulations to implement this new statutory exemption to wires charges.

Pursuant to an Order Establishing Proceeding entered by the Commission on June 16, 2004, the Staff of the State Corporation Commission filed a report and proposed rules and regulations to implement the new exemption programs mandated by the Act. By Order dated December 6, 2004, the Commission directed investor owned electric utilities to file, on or before January 10, 2005, compliance plans and proposed market-based costs to implement the new exemption programs.

Copies of the Commission's Orders and the Staff report are available for public review between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia. Utility compliance plans to implement the new exemption programs will be available for public inspection on and after January 10, 2005. Copies of the Staff report and compliance plans may also be downloaded from the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

On or before February 7, 2005, any person desiring to file comments on the Staff report, proposed rules and regulations, and utility compliance plans may do so by filing such comments with the Clerk of the Commission at the address set forth below. Interested persons desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

Interested persons may also request a hearing on the proposed rules and regulations and any compliance plan filed by a utility by filing an original and fifteen (15) copies of the Request for Hearing on or before February 7, 2005. Requests for Hearing must include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter.

On or before February 7, 2005, any person desiring to participate as a Respondent addressing a utility's compliance plan shall file with the Clerk of the Commission at the address set forth below an original and fifteen (15) copies of a Notice of Participation as provided by the Commission's Rules of Practice and Procedure, 5 VAC 5-20-80. Respondents may request a hearing in their Notice of Participation by including a precise statement complying with the

requirements set forth above for Requests for Hearing.

All written communications to the Commission shall be directed to the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. PUE-2004-00068.

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(10) Within five (5) business days of the filing of this Order with the Clerk, the Commission Staff shall transmit electronically or mail copies of this Order to the interested persons and organizations that participated in the work group.

(11) On or before January 13, 2005, the Commission Staff shall file with the Clerk of the Commission proof of newspaper publication and proof of service required by Ordering Paragraphs (9) and (10).

(12) This matter shall be continued generally pending further Order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: the individuals listed on Appendix A attached hereto; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Economics and Finance, Energy Regulation, and Public Utility Accounting.

CHAPTER 313.

RULES GOVERNING EXEMPTIONS TO MINIMUM STAY REQUIREMENTS AND WIRE CHARGES.

20 VAC 5-313-10. Applicability.

A. *The existing Rules Governing Retail Access to Competitive Energy Services (20 VAC 5-312) remain enforceable unless further qualified by the following additional rules.*

B. *These transitory regulations are promulgated pursuant to the amended provisions of the Virginia Electric Utility Restructuring Act (§§ 56-577 E and 56-583 of the Code of Virginia). This chapter applies to suppliers of electric services including investor-owned local distribution companies and competitive service providers, and are in addition to the existing rules of 20 VAC 5-312. The provisions in this chapter shall be applicable to the provision of generation service to the qualifying customers electing exemption to the current minimum stay provisions or to payment of the current wires charges. Rules applicable to the minimum stay exemption program shall remain in force until the termination of capped rates as provided under statute or State Corporation Commission order. Rules applicable to the offering of the wires charges exemption program shall remain in force until the earlier of July 1, 2007, or the termination of any wires charges.*

20 VAC 5-313-20. Exemption to minimum stay provisions.

A. *This section applies to an investor-owned electric local distribution company imposing minimum stay provisions on certain customers as applicable under 20 VAC 5-312-80 Q*

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and 20 VAC 5-312-80 R and to competitive service providers serving such customers.

B. An investor-owned electric local distribution company shall offer any customer with an annual peak demand of 500 kW or greater that returns to the service of the local distribution company the option to accept the service at the established capped rates and abide by the current minimum stay requirements or to accept the service at market-based costs without the obligation of a minimum stay requirement.

C. The investor-owned electric local distribution company shall provide written notice, in a clear and conspicuous manner, as approved by the State Corporation Commission to qualified customers of the options identified in subsection B of this section.

D. The investor-owned electric local distribution company shall employ the methodology to determine its market-based costs as provided in 20 VAC 5-313-40 and approved by the State Corporation Commission in Case No. PUE-2004-00068 for any customer electing such option and subsequently returning to the local distribution company.

20 VAC 5-313-30. Exemption to wires charges.

A. This section applies to an investor-owned electric local distribution company imposing wires charges on its customers, except those customers participating in pilot programs approved by the State Corporation Commission in Case No. PUE-2003-00118, and to competitive service providers serving such customers.

B. The investor-owned electric local distribution company shall offer large industrial customers or large commercial customers, as well as any group of customers of any rate class aggregated together, subject to the demand criteria of subsection E of this section and the participation limits of subsection H of this section, and upon the customer's notice to participate at least 60 days in advance, the option to purchase retail electric energy from licensed competitive service providers without the obligation to pay any wires charges imposed by the utility in exchange for the customers' agreement to pay market-based costs upon any subsequent return to service of the local distribution company.

C. The investor-owned electric local distribution company shall provide written notice, in a clear and conspicuous manner, as approved by the staff of the State Corporation Commission, to qualified customers of the options identified in subsection B of this section and associated risks, particularly the customer's inability to ever return to service of the local distribution company at capped rates.

D. The investor-owned electric local distribution company shall employ the methodology to determine its market-based costs as provided in 20 VAC 5-313-40 and approved by the State Corporation Commission in Case No. PUE-2004-00068 for any customer electing such option and subsequently returning to the local distribution company.

E. An aggregator electing to serve a group of electric customers and acting on behalf of each customer and electing the option offered through subsection B of this section shall do so on behalf of its total aggregated load.

F. A contract of an aggregator and a competitive service provider serving such qualified customers shall contain a clear and conspicuous caption: "Customer's Right to Exemption of Wires charges," in bold face type of a minimum size of 10 points, disclosing any wires charges imposed by the local distribution company, including options to exempt such payment, and associated risks to exercise such options, including the inability to ever return to service of the local distribution company at capped rates.

G. An investor-owned electric local distribution company is entitled to 60 days' notice prior to the return to service of a qualified customer.

H. The election to be exempt from any wires charges is available to the first 1,000 MW or 8.0% of the investor-owned electric local distribution company's prior year Virginia adjusted peak-load.

I. Such exemption provisions are enforceable until the earlier of July 1, 2007, or the termination of any imposed wires charges, while the inability to return to capped rate service remains indefinitely upon exercising this option.

20 VAC 5-313-40. Methodology to determine market-based costs.

The following elements shall be considered to determine the appropriate market-based costs applied to certain customers electing to exempt the minimum stay requirements or wires charges:

1. Actual incremental energy expenses of procuring such electric energy based on real-time hourly prices calculated and published by the respective RTO for the appropriate price zone of the local distribution company;
2. Actual incremental capacity expenses of procuring such electric capacity based on prices calculated and published by the respective RTO for the currently defined capacity market;
3. Incremental administrative and incremental transaction costs associated with procuring such energy, including but not limited to:
 - a. Costs of transmission line losses; and
 - b. Costs of ancillary services; and
4. A reasonable margin to provide the service deemed justifiable by the State Corporation Commission.

VA.R. Doc. No. R05-92; Filed December 7, 2004, 2:20 p.m.



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For information concerning Final Regulations, see Information Page.

Symbol Key

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

TITLE 2. AGRICULTURE

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

Titles of Regulations: **2 VAC 5-500. Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory (REPEALED).**

2 VAC 5-501. Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk (adding 2 VAC 5-501-10 through 2 VAC 5-501-110).

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

Effective Date: January 26, 2005.

Agency Contact: John A. Beers, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 505, Richmond, VA 23219, telephone (804) 786-1452, FAX (804) 371-7792 or e-mail jbeers@vdacs.state.va.us.

Summary:

Due to the extensive amendments to this regulation, 2 VAC 5-500, Rules and Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory, is repealed and replaced by 2 VAC 5-501, Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk adopted concurrently. The amendments (i) make the regulations applicable to the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption; (ii) require permits for milk pickup trucks, milk transport tanks, laboratories, and persons testing milk samples for pay purposes, persons collecting official milk samples in dairy plants, and milk tank truck cleaning facilities; and (iii) establish administrative enforcement procedures for the agency to follow when summarily suspending a permit.

Substantive changes made since the proposed regulation was published include: (i) modifying the definition of a "dairy farm" to encompass only those farms selling or offering for sale any milk, dairy product, or milk product for human consumption; (ii) allowing sample dippers, sample dipper containers, and sanitizer to be provided by the operator of each dairy farm rather than requiring the contract hauler or subcontract hauler to provide the sample dipper, sample dipper container, and sanitizer on his bulk milk pickup tanker; and (iii) adding the requirement for persons with a bulk tank installed in their milkhouse to provide a switch and 220-volt grounded weatherproof electrical outlet as part of their milkroom facilities for use by the contract hauler.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:26 VA.R. 3693-3710 September 9, 2002, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

CHAPTER 501.

REGULATIONS GOVERNING THE COOLING, STORING, SAMPLING AND TRANSPORTING OF MILK.

2 VAC 5-501-10. Definitions.

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

"Bulk milk hauler" means any person who holds a permit issued by the Virginia Department of Agriculture and Consumer Services to collect official milk samples and transport: (i) raw milk from a dairy farm to a milk plant, receiving station, or transfer station; or (ii) raw milk products from one milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

"Bulk milk pickup tanker" means a vehicle, including the truck, tank, and those appurtenances necessary for its use, used by a bulk milk hauler or bulk milk sampler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.

"Bulk milk pickup tanker commingled milk" means the commingled raw milk from two or more dairy farms which has not been removed from the bulk milk pickup tanker.

"Bulk milk sampler" means any person who holds a permit issued by the Virginia Department of Agriculture and Consumer Services to collect, store, or transport official milk samples.

"Cancel" means to permanently nullify, void, or delete a permit issued by the Virginia Department of Agriculture and Consumer Services.

"Contract hauler" or "subcontract hauler" means any person who contracts; (i) to transport raw milk from a dairy farm to a milk plant, receiving station, or transfer station; or (ii) to transport raw milk or milk products between a milk plant, receiving station, or transfer station and another milk plant, receiving station, or transfer station.

"Dairy farm" means any place or premises where any cow, goat, sheep, water buffalo, or other mammal (except humans) is kept, from which any cow, goat, sheep, water buffalo, or other mammal (except humans) milk, dairy product, or milk

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product is [~~provided,~~] sold [] or offered for sale for human consumption.

"Dairy plant sampler" means any employee of: (i) a milk plant who is responsible for collecting official milk samples in the Commonwealth of Virginia; (ii) the Virginia Department of Agriculture and Consumer Services who is responsible for collecting raw milk or pasteurized milk product samples at a milk plant; or (iii) the Virginia Department of Health who is responsible for collecting raw milk or pasteurized milk product samples at a milk plant and who holds a permit issued by the Virginia Department of Agriculture and Consumer Services for the collection of official milk samples for regulatory purposes.

"Dairy product" means butter, natural or processed cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated whole or skim milk, condensed whole milk, and condensed plain or sweetened skim milk.

"Deny" means the Virginia Department of Agriculture and Consumer Services will not issue a permit to the applicant.

"Farm bulk cooling or holding tank" means any tank installed on a dairy farm for the purpose of cooling or storing raw milk.

"Milk" means the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other mammal (except humans) intended for human consumption excluding that obtained before and after birthing for such a period as may be necessary to render the milk practically colostrum-free.

"Milk plant " means any place, premises, or establishment where milk, milk products, or dairy products are collected, handled, processed, stored, pasteurized, aseptically processed, bottled, packaged, or prepared for distribution.

"Milk producer" means any person who operates a dairy farm and provides, sells, or offers any milk for human consumption.

"Milk product" means: (i) acidified lowfat milk, acidified milk, acidified milk product, acidified skim milk, acidified sour cream, acidified sour half-and-half, aseptically processed milk, aseptically processed milk product, buttermilk, coffee cream, concentrated milk, concentrated milk product, cottage cheese, cottage cheese dry curd, cream, cultured half-and-half, cultured milk, cultured lowfat milk, cultured skim milk, cultured sour cream, dry curd cottage cheese, eggnog, eggnog-flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half-and-half, heavy cream, lactose-reduced lowfat milk, lactose-reduced milk, lactose-reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat milk, lowfat yogurt, low-sodium lowfat milk, low-sodium milk, low-sodium skim milk, milk, nonfat milk, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, sheep milk, skim milk, sour cream, sour half-and-half, table cream, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, or yogurt; (ii) any of the following foods: milk, lowfat milk, or skim milk with added safe and suitable microbial organisms; or (iii) any food made with a food specified in (i) of this definition by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Milk products also include

those dairy foods made by modifying the federally standardized products listed above in accordance with 21 CFR 130.10 – Requirements for foods named by use of a nutrient content claim and a standardized term.

"Milk tank truck" means the term used to describe both a bulk milk pickup tanker and a milk transport tank.

"Milk tank truck cleaning facility" means any place, premise, or establishment, separate from a milk plant, receiving station, or transfer station where a bulk milk pickup tanker or milk transport tank is cleaned and sanitized.

"Milk transport tank" means a vehicle, including the truck and tank, used by a bulk milk hauler to transport bulk shipments of milk, milk product, or dairy product from a milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

"Official laboratory" means a facility where biological, chemical, or physical testing is performed that is operated or approved by the state regulatory authority.

"Official milk sample" means each sample of milk, milk product, or dairy product that is collected for compliance with requirements of this chapter by a person who holds a permit to collect milk, milk product, or dairy product samples issued by the state regulatory authority.

"Other mammals" means any mammal except humans, cows, goats, sheep, or water buffalo.

"Pay purpose laboratory" means a laboratory that conducts tests for the purpose of determining the composition of milk, milk product, cream, or dairy product as a basis for payment in buying or selling any milk, milk product, cream, or dairy product.

"Permit" means the written document issued by the Virginia Department of Agriculture and Consumer Services to a person qualified to be a bulk milk hauler, bulk milk sampler, contract hauler, subcontract hauler, dairy plant sampler, pay purpose tester, or to operate a pay purpose laboratory, bulk milk pickup tanker, or milk transport tank.

"Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, institution, or association.

"Raw" means unpasteurized.

"Receiving station" means any place, premises, or establishment where any milk, milk product, or dairy product is received, collected, handled, stored or cooled, and prepared for further transporting.

"Revoke" means to permanently annul, repeal, rescind, countermand, or abrogate the opportunity for any person or persons to hold a permit issued by the Virginia Department of Agriculture and Consumer Services.

"State regulatory authority" means the Virginia Department of Agriculture and Consumer Services, the agency having jurisdiction and control over the matters embraced within this chapter.

"Summarily suspend" means the immediate suspension of a permit issued by the state regulatory authority without the

permit holder being granted the opportunity to contest the action prior to the effective date and time of the suspension.

"Suspend" means to temporarily nullify, void, debar, or cease for a period of time a permit issued by the Virginia Department of Agriculture and Consumer Services.

"Transfer station" means any place, premises, or establishment where milk, dairy products, or milk products are transferred directly from one transport milk tank to another, or from one or more bulk milk pickup tankers to one or more transport milk tanks.

"Transport-commingled milk" means any raw milk, milk product, or dairy product that has been removed from one or more bulk milk pickup tankers or any silo, vat, or container in a milk plant and loaded into a milk transport tank.

"Transport tank operator" means any person who hauls transport-commingled milk.

"3-A Sanitary Standards" means the standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards Committees representing the International Association for Food Protection, the U. S. Public Health Service, and the Dairy Industry Committee and published by the International Association for Food Protection.

2 VAC 5-501-20 through 2 VAC 5-501-50. [No change from proposed.]

2 VAC 5-501-60. Construction and operation of farm bulk milk cooling or holding tanks, recording thermometers, interval timing devices, and other required milkhouse or milkroom facilities.

A. Each person who operates a dairy farm and installs one or more farm bulk cooling or holding tanks in his milkhouse shall provide the following facilities:

1. A milk hose port opening no larger than eight inches in diameter through a wall in the milkhouse closest to the area the bulk milk pickup tanker will be parked to receive the milk from each farm bulk cooling or holding tank;
2. The hose port shall be provided with a self-closing door which shall open to the outside;
3. The hose port shall be of sufficient height above the milkhouse floor and the outside apron to prevent flooding or draining of the milkhouse;
4. An outside apron constructed of concrete or other equally impervious material shall be provided on the outside of the milkhouse directly beneath the hose port to protect the milk-conducting equipment from contamination;
5. Each outside apron shall be a minimum of four inches thick if constructed of concrete and measure a minimum of two feet by two feet horizontally; [~~and~~]
6. Each outside apron constructed of a material other than concrete shall measure a minimum of two feet by two feet horizontally [-;]
7. A 220-volt grounded weatherproof electrical outlet installed on the outside of the milkroom or milkhouse near

the hoseport for the bulk milk hauler's use to power the milk pump on the bulk milk pickup tanker; and

8. A switch to control the electrical power to the 220-volt grounded weatherproof electrical outlet located on the inside of the milkroom or milkhouse near the outlet to the farm bulk cooling or holding tank.]

B. Each person who operates a dairy farm and installs one or more farm bulk cooling or holding tanks in his milkhouse or milkroom shall comply with the following requirements:

1. Each farm bulk cooling or holding tank shall comply with all the requirements contained in:
 - a. 3-A Sanitary Standards for Farm Milk Cooling and Holding Tanks, Document No. 13-09 (Nov. 1993); or
 - b. 3-A Sanitary Standards for Farm Milk Storage Tanks, Document No. 30-01 (Sept. 1984);
2. Each farm bulk cooling or holding tank shall be equipped with an indicating thermometer accurate to plus or minus 2.0°F and capable of registering the temperature of the milk in the tank before it reaches 10% of the tank's volume;
3. Each farm bulk cooling or holding tank shall be installed to comply with the following minimum clearance distances around, above, and below each farm bulk cooling or holding tank:
 - a. Three feet measured horizontally between a wash vat and the outermost portion of any farm bulk cooling or holding tank;
 - b. Three feet measured horizontally in a 180-degree arch from the front of the tank where the outlet valve is located;
 - c. Two feet measured horizontally from the sides and rear of any farm bulk cooling or holding tank to any wall, shelves, water heater, hand-basin, or other object;
 - d. Eighteen inches measured horizontally from the outermost portion of any farm bulk cooling or holding tank to any floor drain and the floor drain shall not be located underneath the tank;
 - e. Three feet measured vertically from the top of the manhole cover of any farm bulk cooling or holding tank to the ceiling;
 - f. Eight inches measured vertically from the floor underneath the bottom of any round farm bulk cooling or holding tank that measures greater than 72 inches in diameter;
 - g. Four inches measured vertically from the floor underneath the bottom of any round farm bulk cooling or holding tank that measures equal to or less than 72 inches in diameter; and
 - h. Six inches measured vertically from the floor underneath the bottom of any flat bottom farm bulk cooling or holding tank;

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4. Farm bulk cooling or holding tanks installed through a milkroom wall shall meet the following minimum requirements:
- The area between the farm bulk cooling or holding tank and the wall shall be tightly sealed;
 - All vents and openings on the farm bulk cooling or holding tank located outside the milkroom shall be protected from dust, insects, moisture, and other debris which might enter the tank;
 - All agitators located outside the milkroom shall be equipped with a tightly fitting seal between the bottom of the agitator motor and the top of the farm bulk cooling or holding tank;
5. Each person who operates a dairy farm shall ensure that each farm bulk cooling or holding tank is installed with a foundation of sufficient strength to support the tank when it is full;
6. Each person who operates a dairy farm shall obtain prior approval from the state regulatory authority for each farm bulk cooling or holding tank and its installation before it is installed on the person's dairy farm; and
7. Each person who operates a dairy farm shall ensure each farm bulk cooling or holding tank on his farm is installed, gauged, and a volume chart prepared in compliance with § 3.1-941.1 of the Code of Virginia. Each farm bulk cooling or holding tank and any gauge rod, surface gauge, gauge, or gauge tube and calibration chart associated with it shall be identified by serial number in a prominent manner.
- C. Each person who holds a grade "A" dairy farm permit and installs a farm bulk cooling or holding tank shall comply with the following:
- Each farm bulk cooling or holding tank shall be equipped with a recording thermometer;
 - Each recording thermometer shall be installed to comply with the following:
 - Each recording thermometer shall be installed in the milkhouse;
 - No recording thermometer may be installed on or attached to a farm bulk cooling or holding tank;
 - Each recording thermometer shall be installed: (i) on an inside wall of the milkhouse; (ii) on an outside wall of the milkhouse or milkroom if installed with one inch of rigid insulation between the back of the recording thermometer and the surface of the outside wall; or (iii) on metal brackets from the ceiling or floor;
 - Each recording thermometer sensor shall be installed on the farm bulk cooling or holding tank to record the temperature of the milk in the tank before the milk reaches [~~ten percent~~ 10%] of the tank's volume;
 - Standards for recording thermometers. Each recording thermometer installed on a farm bulk cooling or holding tank shall comply with the following minimum requirements:
 - The case for each recording thermometer shall be moisture proof under milkhouse conditions;
 - The case for each recording thermometer shall be UL rated NEMA 4X enclosure or equivalent as provided in ANSI/NEMA 250, Enclosures for Electrical Equipment (1000 Volts Maximum) dated August 30, 2001;
 - The case for each recording thermometer shall be equipped with a corrosion-resistant latching mechanism that keeps the recording thermometer tightly closed;
 - The recorder chart for each recording thermometer shall not exceed a maximum chart rotation time of 48 hours. Recorder charts for farm bulk cooling or holding tanks that are picked up every other day shall have a chart rotation time of 48 hours. Recorder charts for farm bulk cooling or holding tanks that are picked up every day may have a chart rotation time of 24 or 48 hours;
 - The recorder chart for each recording thermometer shall be marked with water resistant ink;
 - The scale on the recording chart shall cover a minimum of 30°F to 180°F, with the scale reversed to show cold temperatures at the outside of the chart for best resolution;
 - Each division on the recording chart shall represent a maximum of 1.0°F between 30°F and 60°F, with two degree divisions between 60°F and 180°F;
 - Spacing of divisions on the recorder chart shall be a minimum of 0.040 inches per 2.0°F, with the ink line easily distinguishable from the printed line;
 - The recording thermometer speed of response or sensing of temperature shall be a maximum of 20 seconds;
 - The recording thermometer shall be accurate to plus or minus 2.0°F;
 - The sensor for each recording thermometer shall be: (i) a resistance temperature detector (RTD) type sensor; (ii) constructed of stainless steel type 304 or type 316 on all exterior surfaces; (iii) hermetically sealed; (iv) accurate to 0.3°C; and (v) continuous run wire;
 - Each recording thermometer and sensor shall be calibrated and supplied as a package;
 - No capillary system containing any toxic gas or liquid shall be allowed to come into direct contact with any milk or milk product;
 - Other recording devices may be accepted by the state regulatory authority if they comply with the requirements of subdivisions 3 a through m of this subsection;
 - If a strip chart style recorder is used, it shall move not less than one inch per hour, and may be continuous for a maximum of 30 days; and
 - Recording thermometers may be manually wound or electrically operated;

4. Recording thermometer operation: Each recording thermometer installed on a farm bulk cooling or holding tank shall comply with the following minimum operating requirements:

- a. Each recording thermometer shall be provided with a means to seal the calibration and zeroing mechanism to provide evidence of unauthorized adjustment or tampering;
- b. Each recording thermometer shall be provided with a pin in the hub to prevent the recording chart from being rotated; and
- c. Each recording thermometer shall be properly grounded and short circuit protected;

5. Each person who operates a dairy farm and installs a recording thermometer on his farm bulk cooling or holding tank shall maintain a minimum of a 30-day supply of unused recorder charts designed for the specific recording thermometer he installed and maintain a minimum of the past 60 days of used charts for purposes of inspection;

6. Each person who operates a dairy farm and installs a recording thermometer on his farm bulk cooling or holding tank shall provide a moisture proof storage container in the milkhouse or milkroom for purpose of storing a supply of new charts and a minimum of 60 days of used charts;

D. No person may remove from the dairy farm any recorder chart that has been used once and removed from the recorder within the past 60 days unless he has obtained permission from the state regulatory authority. All recorder charts removed from any dairy farm by any person other than a representative of the state regulatory authority shall be returned to the dairy farm within ten days. All recorder charts shall be available to the state regulatory authority.

E. Handling of recording charts. Each bulk milk hauler shall comply with the following requirements when picking up milk from a dairy farm if the farm bulk cooling or holding tank is equipped with a recording thermometer:

1. Each milk hauler, in making a milk pickup, shall properly agitate the milk and remove the chart from the recorder;
2. Each milk hauler shall record the following information on each chart removed from the recorder:
 - a. The date and time of pickup; and
 - b. The signature of the milk hauler;
3. Each milk hauler shall store the used chart in the storage container supplied by the dairy farmer;
4. Each milk hauler shall obtain a new chart from the supply provided by the dairy farmer and record the following information in the chart:
 - a. The date; and
 - b. The patron number of the dairy farmer;
5. If a recorder chart is used for more than one pickup, each milk hauler shall identify each lot of milk on the chart with the date, time of pickup, and his signature;

6. Before removing any milk from the farm tank, each milk hauler shall check the recorder chart. If the recorder chart indicates that the milk temperature has varied in a manner that would preclude acceptance, he shall immediately notify his superior and the dairy farmer. If the milk is rejected, each milk hauler shall record this information on the chart. If the milk is picked up, each milk hauler shall sign the chart and record the date and time of pickup;

F. Maintenance of recording thermometers. Each person who operates a dairy farm and holds a grade "A" dairy farm permit shall be responsible for maintaining each of his recording thermometers in good repair and adjustment to include calibrating the recording thermometer to read accurately within plus or minus 2.0°F of the actual milk temperature in the farm bulk cooling or holding tank.

G. Sealing of recording thermometers: Each recording thermometer installed on a farm bulk cooling or holding tank shall be inspected and may be sealed by the state regulatory authority after it has been shown to be properly installed and calibrated.

H. Each person who holds a grade "A" dairy farm permit and installs a farm bulk cooling or holding tank shall:

1. Install on each farm bulk cooling or holding tank an interval timing device that automatically agitates the milk in the farm bulk tank for not less than five minutes every hour during the entire time milk is being cooled or stored in the tank;
2. Not install a manual switch capable of turning off the interval timing device on any farm bulk milk cooling or holding tank while any milk is being cooled or stored; and
3. Maintain in good repair and operating condition each interval timing device installed on his farm bulk cooling or holding tank.

2 VAC 5-501-70. [No change from proposed.]

2 VAC 5-501-80. Farm bulk milk pickup tanker and milk transport tank requirements.

A. Each contract hauler or subcontract hauler shall:

1. Use only a farm bulk milk pickup tanker or a milk transport tank that complies with all the requirements contained in 3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Product Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service, Document No. 05-14 (Nov. 1989), and that are maintained in good repair;
2. Ensure that all appurtenances of each farm bulk milk pickup tanker or each milk transport tank including any hoses, pumps, and fittings comply with all applicable 3-A Sanitary Standards (effective as of November 20, 2001) for construction and are maintained in good repair;
3. Provide sample racks for holding all milk samples collected in the sample cooler;
4. Provide a sample dipper or other sampling device of sanitary design that is maintained clean and in good repair;

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5. Provide milk sample storage coolers that have sufficient insulation to maintain proper milk temperatures under all conditions throughout the year;
6. Provide only sterile sample bags, tubes or bottles, properly stored to prevent contamination;
7. Provide a calibrated pocket thermometer certified as accurate within plus or minus 2.0°F to each bulk milk hauler in his employ and ensure the pocket thermometer is recertified a minimum of each six months thereafter;
8. Provide a United States Environmental Protection Agency approved and registered sanitizer for the sample dipper container;
9. Provide a suitable sanitizer test kit to each bulk milk hauler in his employ for use in checking the strength of sanitizing solutions;
10. Ensure that each appurtenance requiring flexibility for the milk transfer system to operate properly is free draining, supported to maintain a uniform slope and alignment, and easily disassembled and accessible for inspection without the use of tools;
11. Ensure that each farm bulk milk pickup tanker or a milk transport tank and their appurtenances are cleaned and sanitized prior to being used the first time, after each use thereafter, and each time 72 hours has elapsed since the last cleaning and sanitizing treatment;
12. Ensure that multiple milk pickups from dairy farms occur during a 24-hour period without washing and sanitizing the farm bulk milk pickup tanker only if a maximum of two hours elapses between the time of the last delivery and start of the next milk pickup;
13. Pickup any milk in a farm bulk milk pickup tanker or milk transport tank only if there exists a wash and sanitize record for the farm bulk milk pickup tanker or milk transport tank documenting that the tank has been washed and sanitized within the past 72 hours;
14. Install and use clamps on each milk pickup hose that are easily dismantled by hand without the use of tools;
15. Identify and maintain each farm bulk milk pickup tanker or milk transport tank with the identification numbers and letters assigned to each farm bulk milk pickup tanker or milk transport tank by the state regulatory agency. The identification shall be affixed to the left rear bulkhead of the tanker;
16. Provide a suitable enclosure in the rear milk hose or sample compartment of each farm bulk milk pickup tanker for storing inspection sheets capable of protecting the inspection sheets from excessive moisture, dust, soil, or light that might damage or render the inspection sheets illegible and so they will be available to any state or federal regulatory agent wherever the farm bulk milk pickup tanker might deliver;
17. Provide a suitable enclosure located within three feet of the tank outlet valve or located on top of one of the rear wheel fenders for each milk transport tank for storing

inspection sheets capable of protecting the inspection sheets from excessive moisture, dust, soil, or light that might damage or render the inspection sheets illegible and so they will be available to any state or federal regulatory agent wherever the milk transport tank might deliver;

18. Completely empty the farm bulk cooling or holding tank each time that milk is picked up;
19. Store the three most recent inspection reports for each farm bulk milk pickup tanker or transport tank in the protected enclosure provided on each farm bulk milk pickup tanker or transport tank at all times; and
20. Provide a means to lock or seal each opening into a bulk milk pickup tanker or milk transport tank for security purposes.

B. When picking up and transporting any milk in a bulk milk pickup tanker each bulk milk hauler shall:

1. Practice good hygiene, maintain a neat and clean appearance, and abstain from using tobacco products in any milkhouse;
2. Conduct all pickup and handling practices to prevent contamination of any milk contact surface;
3. Pass the milk transfer hose through the hose port and remove the cap from the transfer milk hose and set it where it will not become contaminated and then attach the transfer milk hose to the tank outlet valve;
4. Wash his hands thoroughly and dry his hands with a clean single-service towel or electric forced air hand dryer immediately prior to measuring or sampling the milk in the tank;
5. Examine the milk in the tank by sight and smell for any off odor or any other abnormalities that would render the milk unacceptable and reject the milk if necessary;
6. Record the milk producer's name, milk producer's identification number, the date and time of pickup, the temperature of the milk, the measuring rod reading, the poundage, the name of the purchasing organization, and the signature of the bulk milk hauler on the producer's weight ticket;
7. Check the temperature of the milk in each farm bulk cooling or holding tank at least once a month with an accurately calibrated pocket thermometer after it has been properly sanitized;
8. Turn off the milk tank agitator if it is running when they arrive at the milkhouse or milkroom and allow the surface of the milk to become quiescent;
9. Carefully insert the measuring rod, after it has been wiped dry with a single-service towel, into the tank and then read the measurement. Each bulk milk hauler shall repeat this procedure until two identical measurements are obtained and then shall record the measurement on the weight ticket;

10. Agitate the milk in each tank holding two thousand gallons or less milk a minimum of five minutes before collecting any milk sample;

11. Agitate the milk in each tank holding more than two thousand gallons of milk a minimum of ten minutes before collecting any milk sample;

12. While the tank is being agitated, bring the sample container, dipper, dipper container, and sanitizing agent, or single service sampling tubes into the milkhouse aseptically;

13. While the tank is being agitated, remove the cap from the tank outlet valve and examine for milk deposits or foreign matter and then sanitize if necessary;

14. Remove the sample dipper or sampling device from the sanitizing solution and rinse it in the milk from the tank at least twice before collecting any official milk sample;

15. Collect two representative samples from each tank after the milk has been properly agitated, transferring the milk from the sample dipper to the sample container away from the tank opening to avoid spilling any milk back into the tank, and filling the sample containers only three quarters full;

16. Rinse the sample dipper with water until it is free of visible milk and replace it in its carrying container;

17. Close the cover or lid of the bulk tank;

18. Identify each milk sample with the producer's patron or member number and the date of collection;

19. Collect at the first pickup for each load of milk two temperature samples and identify the temperature samples with the date, time, temperature of the milk, producer number, and name of the bulk milk hauler;

20. Place each milk sample collected immediately on ice in the sample storage cooler;

21. After collection of milk samples, open the outlet valve and start the pump to transfer the milk from the farm tank to the bulk milk pickup tanker;

22. Turn off the agitator once the level of milk in the tank has reached the level where over-agitation will occur;

23. Disconnect and cap the transfer hose after removing it from the outlet valve of the tank;

24. Observe the walls and bottom of the tank for foreign matter and extraneous material and record any objectionable observations on the weight ticket;

25. Rinse the entire inside of the tank with warm water while the tank outlet valve is open;

26. Use only sample containers and single-service sampling tubes that comply with all the requirements contained in *Standard Methods for the Examination of Dairy Products*, 16th Edition, 1992;

27. Cool and store all official milk samples to a temperature of 40°F or cooler, but not frozen;

28. Provide sufficient ice and water or other coolant in the sample storage cooler to maintain all milk samples at proper temperature;

29. Discard any milk that remains in the external transfer system that exceeds 45°F including any milk in pumps, hoses, and air elimination equipment or metering systems;

30. Protect samples from contamination and shall not bury the tops of sample containers in ice or bury sample containers above the milk level in the sample containers;

31. Keep all producer milk samples that represent the commingled milk on the load with the load of milk until the load of milk has been received by a milk plant, receiving station, or transfer station or if rejected by a milk plant, receiving station, or transfer station until the milk samples are collected for official laboratory testing to determine the disposition of the load of milk; and

32. Deliver each bulk milk pickup tanker of commingled milk to a milk plant, receiving station, or transfer station within 24 hours after the last milk pickup on the route for the bulk milk pickup tanker.

C. When sampling any milk from a bulk milk pickup tanker or transport tanker the dairy plant sampler shall:

1. Practice good hygiene, maintain a neat and clean appearance, and abstain from using tobacco products in the receiving area;

2. Conduct all sampling and handling practices to prevent contamination of any milk contact surface;

3. Wash his hands thoroughly and dry his hands with a clean single-service towel or acceptable air dryer immediately prior to sampling the milk in the tank;

4. Examine the milk in the tank by sight and smell for any off odor or any other abnormalities that would classify the milk as unacceptable and reject the milk if necessary;

5. Agitate for a period of time needed to blend the milk in each compartment to a homogenous state using odor-free, pressurized, filtered air or electrically driven stirring or recirculating equipment that has been properly sanitized before sampling or receiving;

6. Check the temperature of the milk in each compartment with a properly sanitized thermometer that has been checked against a standardized thermometer at least once every six months and certified accurate;

7. Reject any milk that has a temperature above 45°F;

8. Bring the sample container, properly constructed sample dipper, and sanitizing solution to the tanker aseptically after the milk is properly agitated;

9. Remove the sample dipper or sampling device from the sanitizing solution and rinse it in the milk from the tank at least twice before collecting any official milk sample;

10. Collect at least one representative sample from each compartment of the tanker, transferring the milk from the sample dipper to the sample container away from the tank

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opening to avoid spilling any milk back into the tank, and filling the sample container only three quarters full;

11. Rinse the sample dipper with water until it is free of visible milk and replace it in its carrying container or storage container;

12. Close the cover or lid for each compartment of the bulk milk tanker;

13. Identify each milk sample with the tanker number, compartment if the tanker is equipped with more than one compartment, and the date of collection;

14. Place each milk sample collected immediately on ice in a sample storage cooler or deliver it to the laboratory for immediate analysis;

15. Attach the milk transfer hose to the outlet valve of the milk tank truck and open the outlet valve of the milk tank truck before starting the pump to transfer the milk from the bulk milk pickup tanker to the milk plant storage facility or silo only after the collection of official milk samples;

16. Turn off the agitator once the level of milk in the tank has reached the level where over-agitation will occur;

17. Disconnect and cap the transfer hose after removing it from the outlet valve of the tank;

18. Observe the walls and bottom of the tank for foreign matter and extraneous material and record any objectionable observations on the plant receiving log;

19. Rinse the entire inside of the tanker with warm water after the tanker has been emptied and the external transfer system has been disconnected while the tanker outlet valve is open;

20. Use only sample containers and single-service sampling tubes that comply with all the requirements contained in *Standard Methods for the Examination of Dairy Products*, 16th Edition, 1992;

21. Cool and store all official milk samples to a temperature of 40°F or cooler, but not frozen;

22. Provide sufficient ice and water or other coolant in the sample storage cooler to maintain all milk samples at proper temperature;

23. Protect samples from contamination and not bury tops of sample containers in ice or bury samples above the milk level in the sample containers;

24. Promptly deliver samples and sample data to the laboratory; and

25. Discard any milk that remains in the external transfer system that exceeds 45°F including any milk in pumps, hoses, air elimination equipment, or metering systems.

D. Wash and sanitize records. Each bulk milk hauler shall:

1. Ensure each bulk milk pickup tanker or milk transport tank is properly cleaned and sanitized after unloading;

2. Ensure a cleaning and sanitizing tag is affixed to the outlet valve of the bulk milk pickup tanker or milk transport tank after it is washed;

3. Ensure when the bulk milk pickup tanker or milk transport tank is next washed, the previous cleaning and sanitizing tag is removed and stored at the location where the bulk milk pickup tanker or milk transport tank was washed; and

4. Ensure the following information is recorded on the wash and sanitize tag before it is attached to the outlet valve of the bulk milk pickup tanker or milk transport tank:

a. Identification number of the bulk milk pickup tanker or milk transport tank;

b. Date and time of day the bulk milk pickup tanker or milk transport tank was cleaned and sanitized;

c. Location where the bulk milk pickup tanker or milk transport tank was cleaned and sanitized; and

d. The signature of the person who cleaned and sanitized the bulk milk pickup tanker or milk transport tank.

E. Wash and sanitize records. Each person who operates a milk plant, receiving station, or transfer station and each dairy plant sampler responsible for sampling and receiving milk into a milk plant, receiving station, or transfer station shall:

1. Ensure each bulk milk pickup tanker and milk transport tank is properly cleaned and sanitized after unloading;

2. Ensure a cleaning and sanitizing tag is affixed to the outlet valve of the bulk milk pickup tanker or milk transport tank after it is washed;

3. Ensure when washing a bulk milk pickup tanker or milk transport tank, the previous cleaning and sanitizing tag is removed and stored at the location where the bulk milk pickup tanker or milk transport tank is washed; and

4. Record the following information on the wash and sanitize tag before it is attached to the outlet valve of the bulk milk pickup tanker or milk transport tank:

a. Identification number of the bulk milk pickup tanker or milk transport tank;

b. Date and time of day the bulk milk pickup tanker or milk transport tank was cleaned and sanitized;

c. Location where the bulk milk pickup tanker or milk transport tank was cleaned and sanitized; and

d. The signature of the person who cleaned and sanitized the bulk milk pickup tanker or milk transport tank.

F. Labeling and shipping documents. Each bulk milk hauler shall ensure that each shipping document or load manifest contains the following information for each bulk milk pickup tanker or milk transport tank:

1. The shipper's name, address, and permit number;

2. The Interstate Milk Shipper Bulk Tank Unit identification number for each Bulk Tank Unit on the load of milk or the Interstate Milk Shipper listed Plant Number;

- 3. The milk hauler permit number if the milk hauler is not an employee of the shipper;
- 4. The point of origin of the shipment;
- 5. The bulk milk pickup tanker or milk transport tank identification number;
- 6. The name of the product;
- 7. The weight of the product;
- 8. The temperature of the product when loaded;
- 9. The date of shipment;
- 10. The name of the supervising regulatory agency at the point of origin of shipment;
- 11. A statement as to whether the contents of the load are raw, pasteurized, or in the case of cream, lowfat, or skim milk whether it has been heat-treated;
- 12. The seal number on inlet, outlet, wash connections and vents, if applicable; and
- 13. The grade of the product.

G. Protection of bulk milk and chain of custody of milk samples.

- 1. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall ensure the proper protection of all milk and milk samples in his custody. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall seal or lock each opening into a bulk milk pickup tanker or milk transport tank including each manhole lid, vent, wash port, and door to the pump housing and sample storage box prior to leaving the bulk milk pickup tanker or milk transport tank unattended.
- 2. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall inspect the condition of the seals and locks placed on each opening into the bulk milk pickup tanker or milk transport tank upon his return after an absence to determine if the seals or locks have been tampered with.
- 3. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall report immediately to the state regulatory authority instances of tampering with the seals or locks.
- 4. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall hold a valid permit issued by the state regulatory authority for the collection of milk samples prior to collecting or transporting any milk or milk samples.

[H. Notwithstanding the provisions of subdivisions A 4 and A 8 of this section for each contract hauler or subcontract hauler to provide a sample dipper and approved sanitizer for the sample dipper container, the sample dipper, sample dipper container and approved sanitizer may be provided and stored

in the milkroom accessible to the contract hauler or subcontract hauler by the person operating the dairy farm where the contract hauler or subcontract hauler is picking up the milk.]

2 VAC 5-501-90 through 2 VAC 5-501-110. [No change from proposed.]

DOCUMENTS INCORPORATED BY REFERENCE [No change from proposed.]

VA.R. Doc. No. R01-166; Filed November 30, 2004, 1:54 p.m.

Titles of Regulations: **2 VAC 5-530. Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy Products to be Used for Human Food (REPEALED).**

2 VAC 5-531. Regulations Governing Milk for Manufacturing Purposes (adding 2 VAC 5-531-10 through 2 VAC 5-531-140).

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

Effective Date: January 26, 2005.

Agency Contact: John A. Beers, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 505, Richmond, VA 23219, telephone (804) 786-1452, FAX (804) 371-7792 or e-mail jbeers@vdacs.state.va.us.

Summary:

Due to the extensive amendments to this regulation, 2 VAC 5-530, Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy Products to be Used for Human Food, is repealed and 2 VAC 5-531, Regulations Governing Milk for Manufacturing Purposes, is adopted concurrently. The amendments (i) make the regulations applicable to the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption; (ii) make the regulations consistent with the USDA recommended requirements for milk for manufacturing purposes and processing plant purposes; and (iii) develop alternative requirements to foster the developing goats, sheep and water buffalo industries in Virginia.

The following amendments were made to the proposed regulation: 2 VAC 5-531-10, Definitions, was modified to include the following standardized cheeses and related products: asiago fresh cheese; asiago medium cheese; asiago old cheese; asiago soft cheese; blue cheese; brick cheese; brick cheese for manufacturing; caciocavallo siciliano cheese; cheddar cheese; cheddar cheese for manufacturing; club cheese; colby cheese; colby cheese for manufacturing; cold-pack cheese; cold-pack cheese food; cold-pack cheese food with fruits, vegetables, or meats; cook cheese; cream cheese; cream cheese with other foods; edam cheese; gammelost cheese; gorgonzola

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cheese; gouda cheese; granular and stirred curd cheese; granular cheese for manufacturing; grated cheese; grated American cheese food; gruyere cheese; hard cheeses; hard grating cheeses; high-moisture jack cheese; koch kaese; limburg cheese; low-moisture part-skim mozzarella and scamorza cheese; low-moisture mozzarella and scamorza cheese; low sodium cheddar cheese; low sodium colby cheese; monterey cheese and monterey jack cheese; mozzarella cheese and scamorza cheese; muenster and munster cheese; muenster and munster cheese for manufacturing; neufchatel cheese; nuworld cheese; parmesan and reggiano cheese; part-skim mozzarella and scamorza cheese; part-skim spiced cheeses; pasteurized blended cheese; pasteurized blended cheese with fruits, vegetables, or meats; pasteurized cheese spread; pasteurized cheese spread with fruits, vegetables, or meats; pasteurized neufchatel cheese spread with other foods; pasteurized process cheese; pasteurized process cheese food; pasteurized process cheese food with fruits, vegetables, or meats; pasteurized process cheese spread; pasteurized process cheese spread with fruits, vegetables, or meats; pasteurized process cheese with fruits, vegetables, or meats; pasteurized process pimento cheese; provolone cheese; romano cheese; roquefort cheese; samsoe cheese; sap sago cheese; semisoft cheeses; semisoft part-skim cheeses; skim milk cheese for manufacturing; soaked curd cheese; soft ripened cheeses; spiced cheeses; spiced, flavored standardized cheeses; swiss and emmentaler cheese; swiss cheese for manufacturing; washed curd cheese; and washed curd cheese for manufacturing.

A new section, 2 VAC 5-531-20, Standardized cheeses and related products, was added to establish requirements for certain standardized cheeses and related products that have a standard of identity under 21 CFR Part 133.

2 VAC 5-531-50 K was modified to require each permit holder operating a dairy plant to submit his recall plan for approval to the Virginia Department of Agriculture and Consumer Services by May 27, 2005, rather than "within 120 days after the effective date of this regulation."

2 VAC 5-531-50 O 3 was modified to require existing dairy plants holding permits on January 26, 2005 (the effective date of the regulation), to provide an officially designated laboratory for supplying load confirmation and producer traceback animal drug-residue results by July 26, 2005, rather than "a maximum of six months from the effective date of this regulation."

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.

CHAPTER 531.

REGULATIONS GOVERNING MILK FOR MANUFACTURING PURPOSES.

2 VAC 5-531-10. Definitions.

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

"Adulterated milk" means any milk that meets one or more of the conditions specified in § 402 of the Federal Food, Drug and Cosmetic Act, as amended (21 USC § 342).

"Adulterated dairy product" means any dairy product which meets one or more of the conditions specified in § 402 of the Federal Food, Drug and Cosmetic Act, as amended (21 USC § 342).

~~["Atmosphere relatively free from mold" means the air contains not more than 10 mold colonies per cubic foot of air as determined by the latest edition of Standard Methods For The Examination Of Dairy Products, published by American Public Health Association.~~

~~"Board" means the Board of Agriculture and Consumer Services.~~

"Asiago fresh cheese" means "asiago fresh cheese" as defined in 21 CFR 133.102.

"Asiago medium cheese" means "asiago medium cheese" as defined in 21 CFR 133.103.

"Asiago old cheese" means "asiago old cheese" as defined in 21 CFR 133.104

"Asiago soft cheese" means "asiago soft cheese" as defined in 21 CFR 133.102.

"Blue cheese" means "blue cheese" as defined in 21 CFR 133.106.

"Brick cheese" means "brick cheese" as defined in 21 CFR 133.108.

"Brick cheese for manufacturing" means "brick cheese for manufacturing" as defined in 21 CFR 133.109.

"Caciocavallo siciliano cheese" means "caciocavallo siciliano cheese" as defined in 21 CFR 133.111.]

"Cancel" means to permanently nullify, void, or delete a permit issued by the Virginia Department of Agriculture and Consumer Services.

"CFR" means the Code of Federal Regulations.

["Cheddar cheese" means "cheddar cheese" as defined in 21 CFR 133.113.

"Cheddar cheese for manufacturing" means "cheddar cheese for manufacturing" as defined in 21 CFR 133.114.]

"Cheese" means the consolidated curd of milk, used as food.

"C-I-P" or "Cleaned-In-Place" means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation of wash, rinse, and sanitizer solutions.

["Club cheese" means "club cheese" as defined in 21 CFR 133.123.

"Colby cheese" means "colby cheese" as defined in 21 CFR 133.118.

"Colby cheese for manufacturing" means "colby cheese for manufacturing" as defined in 21 CFR 133.119.

"Cold-pack cheese" means "cold-pack cheese" as defined in 21 CFR 133.123.

"Cold-pack cheese food" means "cold-pack cheese food" as defined in 21 CFR 133.124.

"Cold-pack cheese food with fruits, vegetables, or meats" means "cold-pack cheese food with fruits, vegetables, or meats" as defined in 21 CFR 133.125.

"Cook cheese" means "cook cheese" as defined in 21 CFR 133.127.

"Cream cheese" means "cream cheese" as defined in 21 CFR 133.133.

"Cream cheese with other foods" means "cream cheese with other foods" as defined in 21 CFR 133.134.]

"Dairy farm" means any premises where any cow, goat, sheep, water buffalo, or other mammal (except humans) are maintained and milked for the purpose of providing milk for manufacturing into dairy products as defined herein and intended for human consumption.

"Dairy plant" means any place, premises, or establishment where any milk or any dairy product is received or handled for processing or manufacturing or prepared for distribution.

"Dairy product" means butter, natural or processed cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated whole or skim milk, condensed whole milk and condensed plain or sweetened skim milk.

"Deny" means the Virginia Department of Agriculture and Consumer Services will not issue a permit to the applicant.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Drug" means (i) any article recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (ii) any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (iii) any article other than food intended to affect the structure or any function of the body of man or other animals; and (iv) any article intended for use as a component of any article specified in (i), (ii), or (iii) of this definition, but does not include devices or their components, parts, or accessories.

["Edam cheese" means "edam cheese" as defined in 21 CFR 133.138.]

"Evaluation of milk laboratories" means the Evaluation of Milk Laboratories, 1995 Revision, published by the Food and Drug Administration and contains the requirements milk and dairy testing laboratories must comply with in order to be included in

the Interstate Milk Shippers List – Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers. This publication is available from the Food and Drug Administration, Laboratory Quality Assurance Branch.

"Farm" means any premises where any cow, goat, sheep, water buffalo, or other mammal (except humans) are maintained and milked for the purpose of providing milk for manufacturing into dairy products as defined herein and intended for human consumption.

"Fresh" means the cheese or related dairy product (except Asiago Fresh Cheese) was: (i) made from pasteurized milk; (ii) not required to be aged by the standard of identity for the specific cheese product; (iii) not held longer than five days prior to being offered for sale; and (iv) never frozen or stored at temperatures below 35°F.

["Gammelost cheese" means "gammelost cheese" as defined in 21 CFR 133.140.]

"Good manufacturing practices" means "good manufacturing practices" as defined in 21 CFR 110.

["Gorgonzola cheese" means "gorgonzola cheese" as defined in 21 CFR 133.141.

"Gouda cheese" means "gouda cheese" as defined in 21 CFR 133.142.

"Granular and stirred curd cheese" means "granular and stirred curd cheese" as defined in 21 CFR 133.144.

"Granular cheese for manufacturing" means "granular cheese for manufacturing" as defined in 21 CFR 133.145.

"Grated American cheese food" means "grated American cheese food" as defined in 21 CFR 133.147.

"Grated cheeses" means "grated cheeses" as defined in 21 CFR 133.146.

"Gruyere cheese" means "gruyere cheese" as defined in 21 CFR 133.149.

"Hard cheeses" means "hard cheeses" as defined in 21 CFR 133.150.

"Hard grating cheeses" means "hard grating cheeses" as defined in 21 CFR 133.148.

"High-moisture jack cheese" means "high-moisture jack cheese" as defined in 21 CFR 133.154.]

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services qualified, trained, and authorized to perform dairy farm or plant inspections.

["Koch kaese" means "koch kaese" as defined in 21 CFR 133.127.

"Limburger cheese" means "limburger cheese" as defined in 21 CFR 133.152.

"Low-moisture part-skim mozzarella and scamorza cheese" means "low-moisture part-skim mozzarella and scamorza cheese" as defined in 21 CFR 133.158.

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"Low-moisture mozzarella and scamorza cheese" means "low-moisture mozzarella and scamorza cheese" as defined in 21 CFR 133.156.

"Low sodium cheddar cheese" means "low sodium cheddar cheese" as defined in 21 CFR 133.116.

"Low sodium colby cheese" means "low sodium colby cheese" as defined in 21 CFR 133.121.]

"Milk" means the normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other mammal (except humans) intended for human consumption.

"Milk for manufacturing purposes" means any milk produced for processing and manufacturing into a dairy product as defined herein and intended for human consumption.

"Milkhouse" means the building or room on a dairy farm in which there is conducted (i) the cooling, handling, and storing of milk; and (ii) the washing, sanitizing, and storing of milk containers and utensils.

"Milk product" means (i) acidified lowfat milk, acidified milk, acidified milk product, acidified skim milk, acidified sour cream, acidified sour half-and-half, aseptically processed milk, aseptically processed milk product, buttermilk, coffee cream, concentrated milk, concentrated milk product, cottage cheese, cottage cheese dry curd, cream, cultured half-and-half, cultured milk, cultured lowfat milk, cultured skim milk, cultured sour cream, dry curd cottage cheese, eggnog, eggnog-flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half-and-half, heavy cream, lactose-reduced lowfat milk, lactose-reduced milk, lactose-reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat milk, lowfat yogurt, low-sodium lowfat milk, low-sodium milk, low-sodium skim milk, milk, nonfat milk, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, sheep milk, skim milk, sour cream, sour half-and-half, table cream, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, or yogurt; (ii) any of the following foods: milk, lowfat milk, or skim milk with added safe and suitable microbial organisms; or (iii) any food made with a food specified in (i) of this definition by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Nothing in this definition shall be deemed to include any evaporated milk, evaporated skim milk, condensed milk (sweetened or unsweetened), infant formula, ice cream or other dessert, dietary product, dry milk product (except as defined herein), canned eggnog in a rigid metal container, or butter or cheese, except when butter or cheese is combined with other substances to produce any pasteurized or aseptically processed food as specified in this definition.

"Misbranded dairy product" means any dairy product that: (i) satisfies any of the conditions specified in § 403 of the Federal Food, Drug, and Cosmetic Act, as amended (21 USC § 343); (ii) does not conform to its definition; or (iii) is not labeled in accordance with [~~2 VAC 5-531-50~~ 2 VAC 5-531-60].

"Misbranded milk" means any milk that: (i) satisfies any of the conditions specified in § 403 of the Federal Food, Drug, and Cosmetic Act, as amended (21 USC § 343); (ii) does not conform to its definition; or (iii) is not labeled in accordance with [~~2 VAC 5-531-50~~ 2 VAC 5-531-60].

["Monterey cheese and monterey jack cheese" means "monterey cheese and monterey jack cheese" as defined in 21 CFR 133.153.

"Mozzarella cheese and scamorza cheese" means "mozzarella cheese and scamorza cheese" as defined in 21 CFR 133.155.

"Muenster and munster cheese" means "muenster and munster cheese" as defined in 21 CFR 133.160.

"Muenster and munster cheese for manufacturing" means "muenster and munster cheese for manufacturing" as defined in 21 CFR 133.161.

"Neufchatel cheese" means "neufchatel cheese" as defined in 21 CFR 133.162.

"Nuworld cheese" means "nuworld cheese" as defined in 21 CFR 133.164.]

"Nonstandardized cheese" means any cheese or related product which does not conform to a standard of identity for a specific cheese or related product established under 21 CFR 133. Nonstandardized cheese and related products are dairy foods manufactured in conformance with this chapter from the milk of cows, goats, sheep, water buffalo, or other mammals (except humans) by the addition of clotting agents (Rennet, clotting enzymes of mammal, plant, or microbial origin, vinegar, acid or any other agent that causes the clotting of milk and the formation of curd) and other safe and suitable ingredients.

["~~Official laboratory~~" means a biological, chemical, or physical laboratory operated by the Commonwealth of Virginia.]

"Officially designated laboratory" means a (i) commercial laboratory authorized by the Virginia Department of Agriculture and Consumer Services to examine milk and dairy products; or (ii) milk-industry laboratory authorized by the Virginia Department of Agriculture and Consumer Services to examine samples of milk for manufacturing purposes; and the laboratory is listed in the Interstate Milk Shippers List – Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers as an approved milk laboratory certified to test load and producer samples.

"Official methods" means Official Methods of Analysis of AOAC International, 17th Edition, Revision 1 (2002), a publication of the Association of Official Analytical Chemists International.

"Other mammals" means any mammal except humans, cows, goats, sheep, or water buffalo.

["Parmesan and reggiano cheese" means "parmesan and reggiano cheese" as defined in 21 CFR 133.165.

"Part-skim mozzarella and scamorza cheese" means "part-skim mozzarella and scamorza cheese" as defined in 21 CFR 133.157.

"Part-skim spiced cheeses" means "part-skim spiced cheeses" as defined in 21 CFR 133.191.]

"Pasteurization" or "pasteurized" means the process of heating every particle of milk, milk product, dairy product, or whey in equipment designed and operated in conformance with this chapter, to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time for the equipment indicated:

Temperature	Time	Equipment
145°F*	30 minutes	Vat Pasteurization
161°F*	15 seconds	High Temperature Short Time
191°F	1.0 second	High Temperature Short Time
194°F	0.5 second	High Temperature Short Time
201°F	0.1 second	High Temperature Short Time
204°F	0.05 second	High Temperature Short Time
212°F	0.01 second	High Temperature Short Time

*If: (i) the fat content of the milk, milk product, or dairy product is 10% or more; (ii) the milk, milk product, or dairy product contains added sweeteners; (iii) the product is condensed milk; or (iv) the dairy product is a condensed milk product, then "pasteurization" means increasing the specified temperature by 5.0°F.

*If the dairy product is cream for butter-making, then "pasteurization" means heating to at least 165°F and holding continuously in a vat pasteurizer for not less than 30 minutes or pasteurizing by the High Temperature Short Time method at a minimum temperature of not less than 185°F for not less than 15 seconds.

*If the milk product is eggnog, then "pasteurization" means heating to at least the following temperatures for the corresponding time specifications:

Temperature	Time	Equipment
155°F	30 minutes	Vat Pasteurization
175°F	25 seconds	High Temperature Short Time
180°F	15 seconds	High Temperature Short Time

["Pasteurized blended cheese" means "pasteurized blended cheese" as defined in 21 CFR 133.167.

"Pasteurized blended cheese with fruits, vegetables, or meats" means "pasteurized blended cheese with fruits, vegetables, or meats" as defined in 21 CFR 133.168.

"Pasteurized cheese spread" means pasteurized cheese spread" as defined in 21 CFR 133.175.

"Pasteurized cheese spread with fruits, vegetables, or meats" means "pasteurized cheese spread with fruits, vegetables, or meats" as defined in 21 CFR 133.176.

"Pasteurized neufchatel cheese spread with other foods" means "pasteurized neufchatel cheese spread with other foods" as defined in 21 CFR 133.178.]

"Pasteurized process cheese" means "pasteurized process cheese" as defined in 21 CFR 133.169.

["Pasteurized process cheese food" means "pasteurized process cheese food" as defined in 21 CFR 133.173.

"Pasteurized process cheese food with fruits, vegetables, or meats" means "pasteurized process cheese food with fruits, vegetables, or meats" as defined in 21 CFR 133.174.

"Pasteurized process cheese spread" means "pasteurized process cheese spread" as defined in 21 CFR 133.179.

"Pasteurized process cheese spread with fruits, vegetables, or meats" means "pasteurized process cheese spread with fruits, vegetables, or meats" as defined in 21 CFR 133.180.

"Pasteurized process cheese with fruits, vegetables, or meats" means "pasteurized process cheese with fruits, vegetables, or meats" as defined in 21 CFR 133.170.

"Pasteurized process pimento cheese" means "pasteurized process pimento cheese" as defined in 21 CFR 133.171.]

"Permit" means the written document issued by the Virginia Department of Agriculture and Consumer Services to the person who operates a (i) dairy farm producing milk for manufacturing purposes or (ii) dairy plant; after the Virginia Department of Agriculture and Consumer Services has inspected and approved the person's operation and determined the person's compliance with the provisions of this chapter.

"Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, or institution.

"Pit" means any excavated or naturally occurring space below the surface of the ground.

"Plant" means any place, premises, or establishment where any milk or any dairy product is received or handled for processing or manufacturing or prepared for distribution.

"Process" means to produce, manufacture, handle, package, reprocess, repack, or rework, and offer for sale or sell any manufactured dairy product in the Commonwealth of Virginia.

"Producer" means any person who exercises control over the production of the milk delivered to a processing plant or receiving station, and who receives payment for this product.

"Producer/processor" means any person who manufactures dairy products on the dairy farm entirely from his own milk production, or from his own milk combined with milk from one or more other producers.

["Provolone cheese" means "provolone cheese" as defined in 21 CFR 133.181.]

"Public" means any person who has the potential to be a consumer of a dairy product.

"Raw" means unpasteurized.

"Regulatory agency" means the Virginia Department of Agriculture and Consumer Services.

"Reprocess" means to obtain finished dairy products suitable for sale from unused finished dairy products previously manufactured, packaged, and made available for sale.

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"Revoke" means to permanently annul, repeal, rescind, countermand, or abrogate the opportunity for any person or persons to hold a permit issued by the Virginia Department of Agriculture and Consumer Services to produce milk for manufacturing purposes or to operate a dairy plant.

"Rework" means to obtain finished dairy products suitable for sale from used, imperfect or discarded dairy products or ingredients.

["Romano cheese" means "romano cheese" as defined in 21 CFR 133.183.

"Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk" means "roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk" as defined in 21 CFR 133.184.]

"Safe and suitable" means "safe and suitable" as defined in 21 CFR 130.3(d).

["Samsøe cheese" means "samsøe cheese" as defined in 21 CFR 133.185.]

"Sanitizing treatment" means subjection of a clean surface to steam, hot water, hot air, or a sanitizing solution in compliance with 21 CFR 178.1010 for the destruction of most human pathogens and other vegetative microorganisms to a level considered safe for product production.

["Sap sago cheese" means "sap sago cheese" as defined in 21 CFR 133.186.

"Semisoft cheeses" means "semisoft cheeses" as defined in 21 CFR 133.187.

"Semisoft part-skim cheeses" means "semisoft part-skim cheeses" as defined in 21 CFR 133.188.]

"Septage" means material accumulated in a pretreatment system or privy.

"Sewage" means water-carried and nonwater carried human excrement; kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

["Skim milk cheese for manufacturing" means "skim milk cheese for manufacturing" as defined in 21 CFR 133.189.]

"Small-scale cheese plant" means any cheese plant that (i) pasteurizes milk for cheese production in one or more vat pasteurizers with a combined total processing capacity of not more than fifty gallons of milk at one time; (ii) processes cheese from unpasteurized milk in lots not to exceed 200 gallons if the milk is from cows, buffalo, or water buffalo; or (iii) processes cheese from unpasteurized milk in lots not to exceed 50 gallons if the milk is from goats, sheep, or other mammals (except cows, buffalo, water buffalo, and humans).

["Soaked curd cheese" means "soaked curd cheese" as defined in 21 CFR 133.136.

"Soft ripened cheeses" means "soft ripened cheeses" as defined in 21 CFR 133.182.

"Spiced cheeses" means "spiced cheeses" as defined in 21 CFR 133.190.

"Spiced, flavored standardized cheeses" means "spiced, flavored standardized cheeses" as defined in 21 CFR 133.193.]

"Standard methods" means Standard Methods for the Examination of Dairy Products, a publication of the American Public Health Association.

["Standardized cheeses and related products" means cheeses and related cheese products that have a specific standard of identity established under 21 CFR Part 133.]

"Suspend" means to temporarily nullify, void, debar, or cease for a period of time a permit issued by the Virginia Department of Agriculture and Consumer Services.

["Swiss and emmentaler cheese" means "swiss and emmentaler cheese" as defined in 21 CFR 133.195.

"Swiss cheese for manufacturing" means "swiss cheese for manufacturing" as defined in 21 CFR 133.196.]

"Uniform Methods and Rules; Bovine Tuberculosis Eradication-effective January 22, 1999" means the minimum standards adopted for the maintenance of tuberculosis-free accredited herds of cattle, captive cervids, bison, and goats, and the maintenance of state status in the U.S. Department of Agriculture's tuberculosis eradication program and is available from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Center Building, Hyattsville, Maryland.

"Uniform Methods and Rules; Brucellosis Eradication-effective February 1, 1998" means the minimum standards for certifying herds, classifying states and areas, and detecting, controlling, and eradicating brucellosis, as well as, minimum brucellosis requirements for the intrastate and interstate movement of cattle and bison adopted by the U.S. Department of Agriculture and is available from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Center Building, Hyattsville, Maryland.

["Washed curd cheese" means "washed curd cheese" as defined in 21 CFR 133.136.

"Washed curd cheese for manufacturing" means "washed curd cheese for manufacturing" as defined in 21 CFR 133.137.]

"3-A Sanitary Standards" means the standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards Committees representing the International Association for Food Protection, the U. S. Public Health Service, and the Dairy Industry Committee and published by the International Association for Food Protection, effective as of November 20, 2001.

[2 VAC 5-531-20. Standardized cheeses and related products.

Standardized cheeses and related products shall comply with the specific standards of identity established for each cheese or related product under 21 CFR Part 133 and the requirements of this chapter. Standardized cheeses and

related products include: asiago fresh cheese; asiago medium cheese; asiago old cheese; asiago soft cheese; blue cheese; brick cheese; brick cheese for manufacturing; caciocavallo siciliano cheese; cheddar cheese; cheddar cheese for manufacturing; club cheese; colby cheese; colby cheese for manufacturing; cold-pack cheese; cold-pack cheese food; cold-pack cheese food with fruits, vegetables, or meats; cook cheese; cream cheese; cream cheese with other foods; edam cheese; gammelost cheese; gorgonzola cheese; gouda cheese; granular and stirred curd cheese; granular cheese for manufacturing; grated cheese; grated American cheese food; gruyere cheese; hard cheeses; hard grating cheeses; high-moisture jack cheese; koch kaese; limburg cheese; low-moisture part-skim mozzarella and scamorza cheese; low-moisture mozzarella and scamorza cheese; low sodium cheddar cheese; low sodium colby cheese; monterey cheese and monterey jack cheese; mozzarella cheese and scamorza cheese; muenster and munster cheese; muenster and munster cheese for manufacturing; neufchatel cheese; nuworld cheese; parmesan and reggiano cheese; part-skim mozzarella and scamorza cheese; part-skim spiced cheeses; pasteurized blended cheese; pasteurized blended cheese with fruits, vegetables, or meats; pasteurized cheese spread; pasteurized cheese spread with fruits, vegetables, or meats; pasteurized neufchatel cheese spread with other foods; pasteurized process cheese; pasteurized process cheese food; pasteurized process cheese food with fruits, vegetables, or meats; pasteurized process cheese spread; pasteurized process cheese spread with fruits, vegetables, or meats; pasteurized process cheese with fruits, vegetables, or meats; pasteurized process pimento cheese; provolone cheese; romano cheese; roquefort cheese; samsoc cheese; sap sago cheese; semisoft cheeses; semisoft part-skim cheeses; skim milk cheese for manufacturing; soaked curd cheese; soft ripened cheeses; spiced cheeses; spiced, flavored standardized cheeses; swiss and emmentaler cheese; swiss cheese for manufacturing; washed curd cheese; and washed curd cheese for manufacturing.]

[~~2 VAC 5-531-20.~~ 2 VAC 5-531-30.] Nonstandardized cheese and related products.

Nonstandardized cheese and related products shall be made only from pasteurized milk or dairy ingredients (milk, milk products, or dairy products) that have all been pasteurized in accordance with the requirements of this chapter.

[~~2 VAC 5-531-30.~~ 2 VAC 5-531-40.] Adulterated or misbranded milk or dairy products.

A. No person may produce, provide, sell, offer, expose for sale, or possess, any adulterated or misbranded milk for manufacturing purposes or dairy product.

B. Any person who produces, provides, sells, offers, exposes for sale, or possesses, any adulterated or misbranded milk for manufacturing purposes or dairy product shall be subject to the impoundment of the person's adulterated or misbranded milk for manufacturing purposes or dairy product by the Virginia Department of Agriculture and Consumer Services.

C. The Virginia Department of Agriculture and Consumer Services shall comply with the following administrative

procedures when impounding any adulterated or misbranded milk for manufacturing purposes or dairy product:

1. The Virginia Department of Agriculture and Consumer Services shall serve the person with a written impoundment notice. The written impoundment notice shall specify the violations and inform the person of the right to appear before the Virginia Department of Agriculture and Consumer Services in person, by counsel, or by other qualified representative at a fact-finding conference for the informal presentation of factual data, arguments, and proof to contest the written notice of violation;

2. The written impoundment notice shall include:

- a. The type of adulterated or misbranded milk for manufacturing purposes or dairy product;
- b. The size and number of separate units in the lot being impounded;
- c. The product code and sell by date for the lot of product if each exists;
- d. A statement directing the person to:

(1) Immediately remove from sale the entire lot of adulterated or misbranded milk for manufacturing purposes or dairy product;

(2) Isolate and identify as not for sale the entire lot of adulterated or misbranded milk for manufacturing purposes or dairy product in the person's storage area in a location separate from any storage accessible from a retail sales area;

(3) Comply with one of the following options:

(a) If the milk for manufacturing purposes or dairy product is adulterated: (i) the entire lot shall be destroyed or (ii) the entire lot shall be held and returned to the manufacturer, distributor, or producer; or

(b) If the milk for manufacturing purposes or dairy product is misbranded: (i) the entire lot shall be destroyed; (ii) the entire lot shall be held and returned to the manufacturer, distributor, or producer; or (iii) the entire lot shall be held and new labels affixed to each container in the lot which comply with all provisions for labeling of milk for manufacturing purposes or dairy products contained in this chapter prior to being offered for sale.

[~~2 VAC 5-531-40.~~ 2 VAC 5-531-50.] Permits.

A. No person may produce, provide, sell, offer for sale, or store in the Commonwealth of Virginia, or bring, send, or receive into the Commonwealth of Virginia, any milk for manufacturing purposes unless the person possesses a permit from the Virginia Department of Agriculture and Consumer Services.

B. No person may produce, process, manufacture, handle, package, reprocess, repackage, rework, offer for sale or sell any manufactured dairy product in the Commonwealth of Virginia unless the person possesses a permit from the

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Virginia Department of Agriculture and Consumer Services. The requirement for a permit shall not apply to (i) any person's establishment where a manufactured dairy product is served or sold at retail, so long as the manufactured dairy product is not produced, manufactured, reprocessed or reworked at the establishment; (ii) any person who distributes and does not process manufactured dairy product; or (iii) any person producing manufactured dairy product outside the Commonwealth of Virginia.

C. The Virginia Department of Agriculture and Consumer Services may cancel, suspend, or revoke the permit of any person, or may deny to any person a permit if:

1. The permit holder fails to engage daily in the business for which the permit is issued;
2. The permit holder does not daily produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth of Virginia milk for manufacturing purposes or dairy product;
3. The permit holder fails to provide at no cost to the Virginia Department of Agriculture and Consumer Services samples of milk for manufacturing purposes or dairy product in the person's possession for testing by the Virginia Department of Agriculture and Consumer Services;
4. The permit holder fails to provide on a daily basis milk for manufacturing purposes or dairy product in the person's possession for sampling and testing by the Virginia Department of Agriculture and Consumer Services;
5. The permit holder fails to comply with any requirement of this chapter, or of §§ 3.1-420 through 3.1-424, §§ 3.1-530.1 through 3.1-530.10 or §§ 3.1-531.1 through 3.1-545.1 of the Code of Virginia;
6. A public health hazard exists that affects the permit holder's milk for manufacturing purposes or dairy product;
7. The permit holder or any agent of the permit holder has obstructed or interfered with the Virginia Department of Agriculture and Consumer Services in the performance of its duties;
8. The permit holder or any agent of the permit holder knowingly supplies false or misleading information to the Virginia Department of Agriculture and Consumer Services: (i) in the permit holder's application for a permit; (ii) concerning the identity of the person or persons who will control the facility that is the subject of the permit; (iii) concerning the amount of milk for manufacturing purposes or dairy product which the permit holder produces, provides, manufactures, sells, offers for sale, or stores in the Commonwealth of Virginia, or brings, sends, or receives into the Commonwealth of Virginia and the distribution of the permit holder's milk for manufacturing purposes or dairy product; (iv) concerning any investigation conducted by the Virginia Department of Agriculture and Consumer Services; or (v) concerning the location of any part of the permit holder's operation that is subject to a permit;
9. The permit holder engages in fraudulent activity regarding: (i) the amount of milk for manufacturing purposes or dairy product the person offers to sell or sells; or (ii) the

collection of samples of the person's milk for manufacturing purposes or dairy product used to determine compliance with any provision of this chapter or as a basis for payment for milk for manufacturing purposes or dairy product.

10. Three of the most recent five bacteria counts, somatic cell counts, or cooling temperature determinations conducted on the permit holder's raw milk for manufacturing purposes exceed the standards specified in this chapter;
11. Three of the most recent five bacteria counts, coliform determinations, or cooling temperature determinations conducted on the permit holder's milk for manufacturing purposes or dairy product exceed the standards specified in this chapter;
12. Two of the most recent cryoscope tests conducted on the permit holder's milk for manufacturing purposes exceed the standards specified in this chapter and the most recent violative sample occurred within two years after the next most recent violative sample;
13. The most recent drug residue test on the permit holder's milk for manufacturing purposes or dairy product violates the standard specified in this chapter.
14. The most recent phosphatase test on the permit holder's dairy product violates the standard specified in this chapter;
15. The most recent chemical residue test or pesticide residue test on the permit holder's milk for manufacturing purposes or dairy product exceeds the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, 589, the tolerance level shall be deemed to be zero;
16. The permit holder fails to correct any deficiency that the Virginia Department of Agriculture and Consumer Services has cited in a written notice of intent to suspend the person's permit, as a violation of this chapter;
17. The permit holder's raw milk for manufacturing purposes is warmer than 50°F two hours after the completion of the first milking or the permit holder's raw milk for manufacturing purposes is warmer than 50°F during or after any subsequent milking;
18. The dairy farm permit holder's raw milk for manufacturing purposes is older than 76 hours;
19. The permit holder's equipment is covered or partially covered by an accumulation of milk solids, milk fat, or other residue;
20. The permit holder sells or offers for sale milk for manufacturing purposes or dairy product which violates any requirement of this chapter;

21. The permit holder's permit is suspended three times within a 12-month period for violation of the bacteria, coliform, cooling temperature, somatic cell, cryoscope, drug residue, maximum length of time for milk storage on the farm, phosphatase, chemical residue, pesticide residue standards, or other requirements specified in this chapter;

22. The authority in another state responsible for issuing permits has denied, suspended, or revoked the permit of the person in that state for any act or omission that would violate this chapter or the statutes under which this chapter was adopted, had the act or omission occurred in the Commonwealth of Virginia;

23. The Virginia Department of Agriculture and Consumer Services has previously revoked the person's permit to produce, provide, sell, offer for sale, or store in the Commonwealth of Virginia, or bring, send, or receive into the Commonwealth of Virginia, any milk for manufacturing purposes;

24. The Virginia Department of Agriculture and Consumer Services has previously revoked the person's permit to produce, process, manufacture, handle, package, reprocess, repackage, or rework, and offer for sale or sell any manufactured dairy product in the Commonwealth of Virginia;

25. The most recent coliform count on the permit holder's cheese violates the standard specified in this chapter; and

26. The most recent *Staphylococcus aureus* count on the permit holder's cheese violates the standard specified in this chapter.

D. The Virginia Department of Agriculture and Consumer Services may summarily suspend a permit for violation of any of the following subdivisions of subsection C of this section: 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 25, or 26.

E. The Virginia Department of Agriculture and Consumer Services may suspend from sale any dairy product in violation of the requirements of this chapter processed by any dairy plant permit holder in lieu of suspending the dairy plant permit holder's permit.

F. If the Virginia Department of Agriculture and Consumer Services suspends a permit holder's permit more than three times within any 12-month period, the permit holder's permit shall not be reinstated for a period of three days on the fourth suspension within any 12-month period and six days on the fifth suspension within any 12-month period with three days being added to the required suspension period for each additional suspension thereafter.

G. If the Virginia Department of Agriculture and Consumer Services issues two written notices of intent to suspend a person's permit for failure to correct the same deficiency within any 12-month period, the Virginia Department of Agriculture and Consumer Services may issue and enforce a written notice of intent to summarily suspend the person's permit at anytime within six months after the date the written notice of intent to summarily suspend is issued, to summarily suspend the person's permit if the same violation exist on any

inspection during the six month period specified in the written notice of intent to summarily suspend.

H. No permit holder may transfer any permit to another person or another location and no permit holder who has had their permit revoked by the Virginia Department of Agriculture and Consumer Services shall be eligible to hold a permit to produce milk for manufacturing purposes or a permit to operate a dairy plant at any time after the permit holder's permit is revoked.

I. Inspection of dairy farms and dairy plants.

1. No person who operates a dairy farm or dairy plant within the Commonwealth of Virginia may hold a permit until the dairy farm or dairy plant has been inspected and approved by the Virginia Department of Agriculture and Consumer Services;

2. Pasteurization equipment may be inspected and tested by any person who has demonstrated the knowledge, skills, and abilities to perform pasteurization inspections and been approved by the Virginia Department of Agriculture and Consumer Services to conduct inspections of vat pasteurizers or high temperature short time pasteurizers or both vat pasteurizers and high temperature short time pasteurizers. The Virginia Department of Agriculture and Consumer Services shall issue to all persons approved to inspect pasteurization equipment a letter of certification which shall expire 12 months from the date of issue unless renewed. The Virginia Department of Agriculture and Consumer Services may suspend the certification of any person who has been approved to inspect pasteurization equipment if the person fails to conduct the inspections and tests in accordance with the department's established policy and procedures for inspection of pasteurization equipment.

J. The examination of milk and dairy products.

1. The Virginia Department of Agriculture and Consumer Services shall collect during any consecutive six months at least four samples of raw milk for manufacturing purposes from each dairy farm that holds a permit, collected in at least four different months, except when three months show a month containing two sampling dates separated by at least 20 days. In the event the milk from a permitted dairy farm is picked up and delivered to a dairy plant which is located outside the Commonwealth of Virginia more than three times in any calendar month, the permit holder's milk marketing cooperative, broker, or person purchasing the permit holder's milk, shall be responsible to ensure the appropriate number of samples and tests are performed in Interstate Milk Shipper approved laboratories and to supply the following information for each permit holder's milk samples to the Virginia Department of Agriculture and Consumer Services at no cost:

- a. The name of the producer;
- b. The patron number of the producer;
- c. The name of the sampling operator;
- d. The name of the person who collected the sample;
- e. The location where the sample was received;

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- f. The date the sample was received;
 - g. The date, time, and temperature of the sample at time of collection;
 - h. The name of the test performed for each test result;
 - i. The reported laboratory result for each test performed; and
 - j. The name and address of the laboratory performing the testing.
2. The Virginia Department of Agriculture and Consumer Services shall collect samples of raw milk for manufacturing purposes for testing and analysis from each dairy farm holding a permit as it deems necessary.
3. The Virginia Department of Agriculture and Consumer Services shall collect samples of processed dairy products and ingredients for testing and analysis from each dairy plant holding a permit as it deems necessary.
- K. Each permit holder operating a dairy plant shall develop a recall plan that when implemented will effectively carry out his responsibility to protect the public health and well-being from milk and dairy products that present a risk of illness, injury, gross deception, or are otherwise defective. Each permit holder operating a dairy plant shall submit his recall plan for approval to the Virginia Department of Agriculture and Consumer Services [~~within 120 days after the effective date of this regulation~~ by May 27, 2005,] and prior to the issuance of any dairy plant permit thereafter. The Virginia Department of Agriculture and Consumer Services shall review and approve the recall plan or require the recall plan to be modified by the permit holder operating a dairy plant. Each approved recall plan shall be reviewed annually and whenever new products are introduced by the permit holder operating a dairy plant. Each permit holder operating a dairy plant shall modify his recall plan based on his review and forward the revised plan to the Virginia Department of Agriculture and Consumer Services for approval within 60 days after the completion of any review that requires the recall plan to be modified. Each recall plan shall include provisions to provide the following information to the Virginia Department of Agriculture and Consumer Services:
- 1. Identity of the product involved;
 - 2. Reason for the recall and the date and circumstances under which the product deficiency or possible deficiency was discovered;
 - 3. Evaluation of the risk associated with the deficiency or possible deficiency;
 - 4. Total amount of identified products produced and the time span of the production;
 - 5. Total amount of identified products estimated to be in distribution channels;
 - 6. Distribution information, including the number and identity of each person dairy products are sold to;
 - 7. Draft copy of the permit holder's proposed recall communication;
8. Proposed strategy for conducting the recall; and
9. Name and telephone number of the permit holder's representative who should be contacted concerning the recall.
- L. Each permit holder operating a dairy plant shall promptly notify each of its affected direct accounts about the recall and shall prepare the recall communication to:
- 1. Identify clearly the product, size, lot number(s), code(s) or serial number(s) and any other descriptive information to enable accurate and immediate identification of the product;
 - 2. Explain concisely the reason for the recall and the hazard involved, if any;
 - 3. Provide specific instructions on what should be done with respect to the recalled product;
 - 4. Provide a ready means for the recipient of the communication to report to the recalling firm whether it has any of the product;
 - 5. State that further distribution or use of any remaining product should cease immediately; and
 - 6. Where appropriate, state that the direct account should in turn notify its customers who received the product about the recall.
- M. Each permit holder operating a dairy plant shall provide to the Virginia Department of Agriculture and Consumer Services recall status reports as requested by the Virginia Department of Agriculture and Consumer Services until the recall is terminated. Each permit holder operating a dairy plant shall include in each recall status report the following information:
- 1. Number of consignees notified of the recall, and date and method of notification;
 - 2. Number of consignees responding to the recall communication and quantity of products on hand at the time it was received;
 - 3. Number and identity of consignees that did not respond to the recall communication;
 - 4. Number of products returned or corrected by each consignee contacted and the quantity of products accounted for;
 - 5. Number and results of effectiveness checks that were made; and
 - 6. Estimated time frames for completion of the recall.
- N. Each permit holder operating a dairy plant shall implement his recall plan within eight hours after receipt of written notification to do so by the Virginia Department of Agriculture and Consumer Services. In the event that the permit holder operating a dairy plant fails to implement his recall plan within eight hours after being notified to do so by the Virginia Department of Agriculture and Consumer Services, the department may prepare and issue the recall communication.
- O. Drug residue monitoring and farm surveillance.
- 1. Each permit holder operating a dairy plant shall:

a. Test all milk that the plant receives for residues of beta lactam drugs prior to processing any of the milk. Each permit holder shall test each bulk milk shipment using a sample collected from each tank truck after its arrival at the plant and prior to any further commingling. Each permit holder shall test each compartment from tank trucks with more than one compartment separately. Each permit holder shall test milk in cans using a sample formed separately at the receiving plant for each can milk producer included in the delivery, and the milk sample shall be representative of all milk received from each producer. Each permit holder operating a dairy plant which is classified as a producer/processor shall test for residues of beta lactam drugs in all milk that the dairy plant produces or receives for processing according to the requirements for sampling and testing bulk milk shipments and milk in cans stated in this subdivision;

b. Test each shipment of milk received for processing by screening test methods which have been Association of Official Analytical Chemists-(AOAC)-reviewed and Food and Drug Administration-(FDA)-accepted. In the event there are no AOAC reviewed and FDA accepted screening test methods for cow's milk, goat's milk, sheep's milk, water buffalo's milk, or milk from other mammals, the permit holder shall test for residues of beta lactam drugs with a screening test kit approved by the Virginia Department of Agriculture and Consumer Services. In lieu of any test specified in subdivision 1 b of this subsection a permit holder may use AOAC first-action and AOAC final-action tests methods. Nothing in subdivision 1 b of this subsection shall be deemed to include individual raw milk samples collected from each dairy farm included in any shipment of bulk tank raw milk for processing if the shipment of bulk tank raw milk for processing tests negative for animal drug residues;

c. Implement a random-sampling program when the commissioner of the FDA determines that a potential problem exists with animal drug residues or other contaminants in the milk supply. Each permit holder operating a dairy plant shall analyze the samples for the contaminant by a method determined by FDA to be effective in determining compliance with actionable levels or established tolerances. Each permit holder operating a dairy plant shall continue the random-sampling program until such time that the commissioner of the FDA is reasonably assured that the problem has been corrected. The sampling program shall represent and include during any consecutive six months, at least four samples collected in at least four separate months.

d. Retain each sample found to be positive for drug residues for a period of 120 hours after the sample test result is positive for drug residues for the use of the Virginia Department of Agriculture and Consumer Services unless directed otherwise by a representative of the Virginia Department of Agriculture and Consumer Services;

e. Abstain from selling or offering for sale any dairy product processed from milk received before results of drug screening tests are available and from milk which

later tests positive for drug residues. All the permit holder's milk commingled with any milk which tests positive for drug residues shall be deemed adulterated. Each permit holder operating a dairy plant shall report to the Virginia Department of Agriculture and Consumer Services instances of adulteration within one hour after testing reveals the milk is adulterated with animal drug residues;

f. Record the results of tests on samples of raw milk and retain such records for a period of 12 months, report records of all results of tests on samples of raw milk to the Virginia Department of Agriculture and Consumer Services by the fifteenth day of each month for the preceding month, and maintain and make available to the Virginia Department of Agriculture and Consumer Services for inspection and review at the permitted facility records of results of tests on samples of raw milk. Each record of results of tests on samples of raw milk required by this subdivision shall include:

- (1) The analyst's signature, date, time, and place where the test was performed;
- (2) The registration identification of each pickup tanker of bulk raw milk or raw milk sampled;
- (3) The test method used;
- (4) The Interstate Milk Shipper Bulk Tank Unit identification number for each Grade A milk supply included on each pickup tanker of bulk raw milk tested if the milk is Grade A; and
- (5) A statement whether the test results were positive or negative. If the results were positive, the permit holder shall also record:
 - (a) The identity of each producer contributing to the load from which the positive sample of raw milk was taken;
 - (b) The name of the person notified at the Virginia Department of Agriculture and Consumer Services of the positive test results;
 - (c) The date and time of day the person at the Virginia Department of Agriculture and Consumer Services was notified of the positive test results; and
 - (d) The method of notification of the Virginia Department of Agriculture and Consumer Services;

g. Immediately notify the Virginia Department of Agriculture and Consumer Services of any shipment of milk for processing when the shipment of milk is found to be positive for drug residues;

h. Test each producer sample of milk to determine the farm of origin, represented by each sample of milk which tests positive for drug residues, and immediately report to the Virginia Department of Agriculture and Consumer Services the result of each producer sample representing the raw milk for manufacturing purposes found to be positive for drug residues;

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i. Provide by facsimile machine to the Virginia Department of Agriculture and Consumer Services copies of load manifests, producer weight tickets, laboratory worksheets where the results of laboratory tests are originally recorded, and records from electronic readers documenting the results for samples tested for all positive loads; and

j. Immediately discontinue receiving shipments of raw milk from the permit holder whose milk tests positive for drug residues until subsequent tests approved by the Virginia Department of Agriculture and Consumer Services are no longer positive for drug residues;

2. Each permit holder whose milk tests positive for drug residues shall dispose of such milk in a manner that removes it from the human food chain or in any manner approved by the Food and Drug Administration; and

3. Each permit holder operating a dairy plant that receives any milk that could require load confirmation or producer traceback as a result of a positive animal drug residue on a load of milk delivered at the plant shall provide to the Virginia Department of Agriculture and Consumer Services results of animal drug-residue tests from an officially designated laboratory. Each officially designated laboratory shall be listed in the IMS List – Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers as an approved milk laboratory certified to test load and producer samples. All laboratory results from officially designated laboratories shall be reported to the Virginia Department of Agriculture and Consumer Services within six hours of the initial presumptive positive result at the plant. Existing dairy plants holding permits on [~~the effective date of this regulation~~ January 26, 2005,] shall have [~~a maximum of six months from the effective date of this regulation~~ until July 26, 2005,] to comply with the requirement of this section.

P. Each officially designated laboratory shall comply with the requirements for certification and listing contained in the Evaluation of Milk Laboratories, 1995 revision.

Q. Each permit holder who operates a dairy plant and each person who distributes dairy products shall furnish the Virginia Department of Agriculture and Consumer Services upon request:

1. A statement of the quantities of milk and dairy products purchased or sold by the dairy plant or distributor; and

2. A list of all sources from which the dairy plant or distributor received any milk or dairy product.

R. No person holding a permit to produce milk for manufacturing purposes may operate a dairy farm that receives on the dairy farm raw or untreated sewage or septage from any source.

S. No person holding a permit to produce milk for manufacturing purposes shall feed their lactating cows, goats, sheep, water buffalo, or other mammals any unprocessed poultry litter or other unprocessed body discharges from any animal.

T. No person holding a permit to produce milk for manufacturing purposes may place or hold in his milk storage

tank any milk except that milk that was obtained from cows, goats, sheep, water buffalo, or other mammals milked at the permit holder's dairy farm; any milk that did not enter the milk storage tank through the milking and milk-handling equipment on the permit holder's dairy farm during the milking of the permit holder's cows, goats, sheep, water buffalo or other mammals; any milk that has been held without refrigeration; or any milk that has been exposed to chemical or physical contamination.

U. No person holding a permit to produce milk for manufacturing purposes may provide their milking cows, goats, sheep, water buffalo, or other mammals any feed separately or in combination that contains an aflatoxin residue greater than 20 parts per billion.

V. No person holding a permit to produce milk for manufacturing purposes may sell or offer for sale any milk for manufacturing purposes if it contains an aflatoxin residue equal to or greater than 0.50 parts per billion.

W. No person may hold a permit to produce milk for manufacturing purposes if any part of their facilities, equipment, storage, or processing area (except toilet rooms), requiring inspection is accessed through any room used for domestic purposes or part of any room used for domestic purposes. Toilet rooms used for domestic purposes shall be approved as complying with the requirements of this chapter only if (i) the toilet room is located within 300 feet of the milking barn, milking parlor, or milk room and (ii) all labor utilized in the milkroom, milking parlor or milking barn, and animal housing areas is provided by members of the permit holder's immediate family.

X. No person may hold a permit to produce, process, manufacture, handle, package, reprocess, repackage, or rework, and offer for sale or sell any manufactured dairy product in the Commonwealth of Virginia if any part of his facilities, equipment, storage, or processing area (except toilet rooms), requiring inspection is accessed through any room used for domestic purposes or part of any room used for domestic purposes. Toilet rooms used for domestic purposes shall be approved as complying with the requirements of this chapter only if (i) the toilet room is located within 300 feet of the processing facilities and (ii) all labor utilized in the processing facilities is provided by members of the permit holder's immediate family.

Y. Each person who holds a permit to produce milk for manufacturing purposes or a permit to operate a dairy plant and who freezes and stores any milk for use in the production of any dairy product shall:

1. Cool each day's morning milking to 40°F or cooler, without freezing, within two hours after milking;

2. Abstain from freezing each day's morning milking until completion of the same day's evening milking;

3. Freeze the milk from each milking or each day separately, in single-use, food-grade, plastic bags or other suitable food grade disposable containers;

4. Identify each single-use, food-grade, plastic bag or other suitable food-grade disposable container containing any

frozen milk with the date it was produced, the number of milkings, the number of containers in the lot, the permit number of the dairy farm or dairy plant, and the name of the person who packaged and froze the milk;

5. Cool and store all frozen containers of milk at a temperature of 0°F or below until ready for use;

6. Thaw each container of frozen milk prior to use in a refrigerator adjusted to a maximum temperature of 40°F or thaw each container of frozen milk within two hours using a cool water bath;

7. Abstain from re-using any single-use, food grade, plastic bag or other suitable food-grade disposable container; and

8. Protect from contamination the frozen milk in each single-use, food-grade, plastic bag or other suitable food-grade disposable container during the thawing process.

[~~2 VAC 5-531-50.~~ 2 VAC 5-531-60. Labeling.]

No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth of Virginia, or bring, send into, or receive into the Commonwealth of Virginia any milk or dairy product that is not labeled in compliance with the following:

1. The permit holder's dairy products shall be labeled in accordance with the requirements of the Federal Food, Drug and Cosmetic Act, as amended, the Fair Packaging and Labeling Act, the Nutrition Labeling and Education Act, and regulations developed thereunder;

2. The permit holder shall label or mark all containers and packages enclosing any dairy products with:

a. The name of the dairy product as established under the standard of identity for the dairy product, if there is a standard of identity for the dairy product, and if there is no standard of identity for the dairy product, a name that is not false or misleading;

b. The identity of the plant where the permit holder's dairy product is processed by specifying the street address, city, state, and zip code of the plant; and

c. Information, marks, pictures, graphics, or words appearing on the label of the dairy product which are not misleading;

3. The permit holder shall label or mark all containers and packages enclosing any dairy products intended for sale to the final consumer with a "sell by date" which shall not interfere with the legibility of other labeling required for the dairy product and shall be expressed by: the first three letters in the name of the month, followed by or preceded by the numeral or numerals constituting the calendar date after which the product shall not be sold or expressed numerically by the number of the month followed by the number of the day. For example, June 1 shall be expressed "JUN 1," "1 JUN," "06 01," or "06-01";

4. No person may sell or offer for sale to the final consumer any dairy product in container or package form that does not bear a "sell by date";

5. No person may sell or offer for sale to the final consumer any dairy product in container or package form after the "sell by date" shown on the package;

6. No person may change, remove, or replace the "sell by date" on any dairy product in container or package form after the "sell by date" is initially affixed to the package;

7. The requirements of subdivisions 3, 4 and 5 of this section pertaining to the "sell by date" shall not apply to any dairy products which are not to be sold in the Commonwealth of Virginia;

8. No person may sell or offer for sale any cheese that is frozen or has ever been frozen unless it is labeled with the words "Previously Frozen" or "Frozen" as the case may be, in text and type at least as large and bold as the name of the cheese. The words "Previously Frozen" or "Frozen" shall appear directly above or below the name of the cheese product without any intervening material or graphics everywhere it appears on the label for the cheese product;

9. No person may freeze any cheese unless the person labels the cheese as "Frozen" before it is placed in cold storage;

10. No person may label any dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated whole milk, evaporated skim milk, condensed whole milk, condensed plain milk, or sweetened skim milk as "fresh";

11. No person may label or advertise any cheese made from unpasteurized milk as "fresh";

12. No person may label or advertise any cheese which is or has been previously frozen or stored at temperatures below 35°F as "fresh"; and

13. No person may label or advertise any cheese (except Asiago Fresh Cheese) that is required to be aged a minimum of 60 days above 35°F or that was held longer than 10 days from the date of production as "fresh."

[~~2 VAC 5-531-60.~~ 2 VAC 5-531-70.] Standards for milk and dairy products.

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth of Virginia, or bring, send, or receive into the Commonwealth of Virginia, any milk for manufacturing purposes or dairy products which do not comply with the following:

1. Milk for manufacturing purposes and dairy products shall be produced and processed to conform with the chemical, bacteriological, somatic cell, cryoscope, maximum length of time for milk storage on the farm, and temperature standards as identified in this section, and with the requirements of this chapter;

2. No process or manipulation other than pasteurization or processing methods integral with pasteurization and refrigeration may be applied to milk for manufacturing purposes or dairy products for the purpose of removing or deactivating microorganisms unless alternative procedures to pasteurization are approved in writing by the FDA and the Virginia Department of Agriculture and Consumer Services;

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3. Milk for manufacturing purposes shall comply with the following standards:

a. The temperature of milk for manufacturing purposes shall be cooled to 40°F or cooler, but not frozen, within two hours after milking and the temperature after the first or any subsequent milking shall not be warmer than 50°F;

b. The bacteria count of milk for manufacturing purposes shall not exceed 500,000 bacteria per milliliter prior to commingling with any other milk; and the bacteria count of milk that is commingled shall not exceed 1,000,000 bacteria per milliliter prior to pasteurization;

c. Milk for manufacturing purposes shall freeze at or below -0.530° Hortvet;

d. Milk for manufacturing purposes shall test negative for animal drug residues by any method evaluated by the FDA and found acceptable for detecting drug residues in raw milk at current safe or tolerance levels and shall have no positive drug residues by detection methods reported to the Virginia Department of Agriculture and Consumer Services by dairy plants;

e. The somatic cell count of unpasteurized cow's milk, sheep's milk, water buffalo's milk, or the milk from other mammals intended for human consumption, except goat's milk, shall not exceed 750,000 somatic cells per milliliter. The somatic cell count of raw goat's milk shall not exceed 1,000,000 somatic cells per milliliter;

f. Raw cow's milk, goat's milk, sheep's milk, water buffalo's milk, or the milk from other mammals intended for human consumption shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, or 589, the tolerance level shall be deemed to be zero; and

g. The maximum length of time any milk for manufacturing purposes may be stored on the farm prior to processing or pickup for delivery to a processing plant shall not exceed 76 hours from the end of the first milking to the time of pickup or the start of processing. Milk for manufacturing purposes that is older than 76 hours shall be deemed to be a public health hazard and shall not be offered for sale or sold;

4. Dairy products in final package form for direct human consumption shall comply with the following standards:

a. All dairy products in final package form for direct human consumption shall:

(1) Have been pasteurized in accordance with the requirements of this chapter;

(2) Have been made from dairy ingredients (milk or dairy products) that have all been pasteurized in accordance with the requirements of this chapter; or

(3) In the case of cheese, the cheese has been aged above 35°F for a minimum of 60 days or the minimum number of days specified under the standards of identity for the specific variety of cheese;

b. The phenol value of test samples of pasteurized finished product shall be no greater than the maximum specified for the particular product as determined and specified by (i) any phosphatase test method prescribed in the Official Methods of Analysis of AOAC International, 17th Edition, Revision 1 (2002) published by the Association of Official Analytical Chemists; (ii) the Fluorometer test method; (iii) the Charm ALP test method; or (iv) other equivalent method as determined by the Virginia Department of Agriculture and Consumer Services. A phenol value greater than the maximum specified for the particular product shall mean that the product was not properly pasteurized. A phenol value less than the maximum specified for the particular product shall not be interpreted to mean that the product was properly pasteurized, unless there is evidence of proper pasteurization equipment in conformance with this chapter and records to determine an adequate pasteurization process has been completed;

c. Dairy products shall test negative for animal drug residues by any method which has been evaluated by the FDA and found acceptable for detecting drug residues in raw milk, pasteurized milk, or dairy products in final package form intended for human consumption at current safe or tolerance levels;

d. Dairy products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, 589, the tolerance level shall be deemed to be zero; and

e. Dairy products shall contain no detectable level of pathogenic organisms or more than 4.6 *Escherichia coli* organisms per gram of dairy product.

5. Cheese and cheese products shall comply with the following:

a. The coliform count for any cheese or cheese product made from pasteurized milk shall not exceed 100 coliform organisms per gram;

b. The coliform count for any cheese or cheese product made from unpasteurized milk shall not exceed 500 coliform organisms per gram;

c. The *Staphylococcus aureus* count for any cheese or cheese product made from pasteurized milk shall not exceed 100 *Staphylococcus aureus* organisms per gram; and

d. The *Staphylococcus aureus* count for any cheese or cheese product made from unpasteurized milk shall not exceed 1,000 *Staphylococcus aureus* organisms per gram.

B. Sanitation requirements to produce milk for manufacturing purposes.

1. Each person who holds a permit to produce milk for manufacturing purposes shall comply with the following:

a. Abnormal milk. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Milk his cows, goats, sheep, water buffalo, or other mammals which show evidence of the secretion of abnormal milk from one or more mammary glands (based upon bacteriological, chemical, or physical examination) last or with separate equipment and discard those lacteal secretions;

(2) Milk his cows, goats, sheep, water buffalo, or other mammals treated with, or which have consumed chemical, medicinal, or radioactive agents which are capable of being secreted by the mammary gland and which may be deleterious to human health last or with separate equipment and discard those lacteal secretions in a manner which will not pollute the environment or any human food.

b. Milking barn, stable, or parlor-construction. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Provide on the person's dairy farm a milking barn, stable, or parlor in which the animals being milked shall be housed during milking time; and

(2) Provide on the permit holder's dairy farm a milking barn, stable, or parlor which shall:

(a) Have floors constructed of concrete or equally impervious material;

(b) Have walls and a ceiling which are smooth, painted, or finished in an approved manner, and in good repair and have a ceiling which is dust tight;

(c) Have separate stalls or pens for horses, calves, bulls, kids, bucks, rams, and lambs;

(d) Have natural and artificial light, well distributed for day or night milking;

(e) Have sufficient air space and air circulation to prevent condensation and excessive odors; and

(f) Not be overcrowded.

c. Milking barn, stable, or parlor-cleanliness. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Keep the interior of the milking barn, stable, or parlor clean;

(2) Keep the floors, walls, windows, pipelines, and equipment in the milking barn, stable, or parlor free of filth or litter and clean;

(3) Keep swine and fowl out of the milking barn, stable, and parlor;

(4) Use only milk stools that are not padded and are constructed to be easily cleaned; and

(5) Keep surcingles, milk stools, and antikickers clean and stored above the floor.

d. Cow yard, goat yard, sheep yard, water buffalo yard, or yard for other mammals. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Provide and maintain the cow yard, goat yard, sheep yard, water buffalo yard, or yard for other mammals, to be graded and drained, and to have no standing pools of water or accumulations of organic wastes;

(2) In the cow loafing, goat loafing, sheep loafing, water buffalo loafing, loafing area for other mammals, cattle-housing, sheep-housing, goat-housing, water buffalo-housing or area of housing for other mammals remove cow droppings, sheep droppings, goat droppings, water buffalo droppings, other mammals droppings and remove soiled bedding or add clean bedding at sufficiently frequent intervals to prevent the soiling of the cow's, sheep's, goat's, water buffalo's or other mammals' udders and flanks;

(3) Ensure that waste feed does not accumulate in the goat yard, cow yard, sheep yard, water buffalo yard, yard for other mammals, cow loafing, sheep loafing, goat loafing, water buffalo loafing, loafing area for other mammals, cattle-housing, sheep-housing, goat-housing, water buffalo-housing or housing for other mammals area;

(4) Maintain any manure packs to be properly drained and to provide a reasonably firm footing; and

(5) Keep swine and fowl out of the cow yard, sheep yard, goat yard, water buffalo yard, yard for other mammals, cow loafing, sheep loafing, goat loafing, water buffalo loafing, loafing area for other mammals, cattle-housing, sheep-housing, goat-housing area, water buffalo-housing, or other mammal-housing area.

e. Milkhouse or milkroom construction and facilities. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Provide a milkhouse or milkroom of sufficient size in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted. Existing farms producing and shipping milk for manufacturing purposes on July 1, 2001, shall be exempt from the requirement of this subdivision to provide a separate milkhouse or

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milkroom from their milking barn, stable, or parlor until July 1, 2006, or until the first permit issued after [~~the effective date of this regulation~~ January 26, 2005,] on each of these existing farms is canceled or revoked;

(2) Provide a milkhouse with a smooth floor, constructed of concrete or equally impervious material graded to drain, and maintained in good repair;

(3) Dispose of in a sanitary manner all liquid waste generated in the milkhouse;

(4) Provide one or more floor drains in the milkhouse, which shall be accessible, and trapped if connected to a sanitary sewer system;

(5) Provide in the milkhouse walls and ceilings constructed of a smooth material, in good repair, well painted, or finished in an equally suitable manner;

(6) Provide adequate natural or artificial light and ventilation in the milkhouse;

(7) Use the milkhouse for no other purpose than milkhouse operations;

(8) Provide no direct opening from the milkhouse into any barn, stable, or into any room used for domestic purposes, other than a direct opening between the milkhouse and milking barn, stable, or parlor provided with a tight-fitting, self-closing, solid door, provided the door has been hinged to be single or double acting;

(9) Provide in the milkhouse water under pressure which has been piped into the milkhouse;

(10) Provide in the milkhouse a two-compartment wash vat and adequate hot water heating facilities;

(11) Provide a suitable shelter for the receipt of milk when the permit holder uses a transportation tank for the cooling and storage of milk on the permit holder's dairy farm, provided that the shelter shall be adjacent to, but not a part of, the milkroom, and shall comply with the requirements of the milkroom with respect to construction, light, drainage, insect and rodent control, and general maintenance;

(12) Locate the permit holder's farm bulk tank in the milkhouse or milkroom so that all areas are accessible for cleaning and servicing. The farm bulk tank shall not be located over a floor drain or under a ventilator; and

(13) Provide a platform or slab of sufficient size, constructed of concrete or other impervious material outside the milkhouse, properly centered under a suitable hoseport opening in the wall for making connections between the bulk milk tank and the pick-up truck. The opening of the hoseport shall be fitted with a tight, self-closing door. The driveway leading to and from the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at the point of loading outside the milkhouse or milkroom.

f. Milkhouse or milkroom cleanliness. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Keep clean the floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, equipment, and other milkroom equipment in the milkroom;

(2) Place in the milkroom only those articles directly related to milkroom activities; and

(3) Keep the milkroom free of trash, animals, insects, and fowl.

g. Toilets. Each person who holds a permit to produce raw milk for manufacturing purposes shall:

(1) Provide on the person's dairy farm one or more toilets, which shall be conveniently located, properly constructed and operated, and maintained in a sanitary manner;

(2) Prevent the access of flies to the waste contained in or from the toilet;

(3) Prevent the waste contained in or from the toilet from polluting the soil surface or contaminating any water supply; and

(4) Assure that there is no direct opening from the toilet into any milkroom.

h. Water supply. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Provide water for milkhouse and milking operations from a water supply properly located, protected, and operated. The water supply shall be easily accessible, adequate, and of a safe, sanitary quality;

(2) Ensure that any well casing which is part of a water supply that provides water for any milkhouse or milking operation is not located closer to any source of contamination which may contaminate the water supply than is specified as follows:

(a) No permit holder may locate a well casing closer than 10 feet to a pit;

(b) No permit holder may locate a well casing closer than 10 feet to any sewer pipe, floor drain, or other pipe which may back up;

(c) No permit holder may locate a well casing closer than 50 feet to any above-ground gas, oil, petroleum, or chemical storage tank;

(d) No permit holder may locate a well casing closer than 50 feet to any accumulated animal manure or allow any animal manure closer than 50 feet to a well casing;

(e) No permit holder may locate a well casing closer than 50 feet to any area to which livestock has access; or animal-holding area, feedlot, or loafing area on dirt;

(f) No permit holder may locate a well casing closer than 50 feet to any pit not drained to the surface of the ground. Nothing in this requirement shall apply to a residential basement;

(g) From and after [~~the effective date of this regulation~~ January 26, 2005], no permit holder may locate a well casing closer than 100 feet to any pit privy. Existing well casings located on farms producing and shipping milk for manufacturing purposes on July 1, 2001, shall be exempt from the 100-foot distance requirement of this subdivision until July 1, 2006, or until the first permit issued after [~~the effective date of this regulation~~ January 26, 2005,] on each of these existing farms is canceled or revoked;

(h) No permit holder may locate a well casing closer than 100 feet to any animal-manure disposal area;

(i) No permit holder may locate a well casing closer than 100 feet to any cess pool;

(j) No permit holder may locate a well casing closer than 100 feet to any dry well;

(k) No permit holder may locate a well casing closer than 100 feet to any structure that stores animal manure;

(l) No permit holder may locate a well casing closer than 100 feet to any septic tank or drain field; and

(m) No permit holder may locate a well casing closer than 100 feet to any underground or partially-buried gas, oil, petroleum, or chemical storage tank;

(3) Construct the water supply so that the well casing terminates at least two feet above the highest-known flood plane for the location in which the water supply is located; and

(4) Construct the water supply so that no potable water supply pipe attached to the water supply is located closer than 10 feet measured horizontally to any sewer pipe, soil pipe, or drain.

i. Utensils and equipment-construction. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Provide multiuse containers, equipment, and utensils for use in the handling, storage, or transportation of any milk, which multiuse containers, equipment, and utensils, shall be made of smooth, nonabsorbent, corrosion-resistant, and nontoxic materials; constructed to be easily cleaned; and in good repair;

(2) Provide new or replacement multiuse containers, equipment, and utensils for use in the handling, storage, or transportation of any milk which comply with all applicable 3-A Sanitary Standards and 3-A Accepted Practices;

(3) Provide and use only new or replacement can lids of the umbrella type;

(4) Provide milk pails which are constructed to be seamless and of the hooded type if the permit holder does hand milking and stripping;

(5) Abstain from using multiple-use woven material for straining any milk;

(6) Use only single-service articles which have been manufactured, packaged, transported, stored, and handled in a sanitary manner;

(7) Abstain from reusing any article intended for single-service use;

(8) Install and use only farm bulk tanks that meet all the requirements of 3-A Sanitary Standards for Farm Milk Cooling and Storage Systems; Farm Milk Storage Tanks; and 3-A Sanitary Accepted Practices for Farm Milk Cooling and Storage Systems;

(9) Install and use only sanitary piping that complies with all the requirements of 3-A Accepted Practices for Design, Fabrication, and Installation of Milking and Milk Handling Equipment; and

(10) Provide and use only transportation tanks which comply with all of the requirements of 3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Product Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service;

j. Utensils and equipment; cleaning. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Clean after each use the product-contact surfaces of all multiuse containers, multiuse equipment, and multiuse utensils used in the handling, storage, or transportation of any milk; and

(2) Abstain from selling or offering for sale milk which has passed through any equipment, if the milk-contact surfaces of the equipment are no longer visible, or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds, or other soils. Any milk which passes through equipment, the milk-contact surfaces of which are no longer visible or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds, or other soils, shall be deemed adulterated.

k. Utensils and equipment; sanitization. Each person who holds a permit to produce milk for manufacturing purposes shall sanitize before each use the product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of any milk.

l. Utensils and equipment; storage. Each person who holds a permit to produce milk for manufacturing purposes shall store containers, utensils, and equipment used in the handling, storage, or transportation of any milk in a sanitizing solution, or store the containers, utensils, and equipment used in the handling, storage, or transportation of any milk to ensure complete drainage and protection from contamination prior to use. Nothing in

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this subdivision shall be deemed to prohibit a permit holder from storing in a milking barn or milking parlor a milk pipeline or the following pipeline milking equipment: milker claw, inflation, weigh jar, meter, milk hose, milk receiver, tubular cooler, plate cooler, or milk pump; if the milk pipeline and pipeline milking equipment specified in this subdivision is designed for mechanical cleaning; and designed, installed, and operated to protect the milk, dairy product and solution-contact surfaces from contamination at all times.

m. Milking; flanks, udders, and teats. Each person who holds a permit to produce milk for manufacturing purposes shall:

- (1) Milk all cows, goats, sheep, water buffalo, or other mammals in a milking barn, stable, or parlor;
- (2) Trim the hair from the udder and tail of all milking cows, goats, sheep, water buffalo, or other mammals to facilitate cleaning of the udder and tail;
- (3) Keep the flanks, udders, bellies, and tails of all milking cows, goats, sheep, water buffalo, or other mammals free of visible dirt;
- (4) Keep the hair on the udders of all milking cows, goats, sheep, water buffalo, or other mammals to a length that the hair on the udder of any cow, goat, sheep, water buffalo, or other mammal can not be incorporated with the teat in the inflation during milking;
- (5) Abstain from milking any cow, goat, sheep, water buffalo, or other mammal whose udder or teats are not clean and dry;
- (6) Treat with a sanitizing solution, just prior to milking, the teats of each milking cow, goat, sheep, water buffalo, or other mammal, and dry the teats of each milking cow, goat, sheep, water buffalo, or other mammal before milking; and
- (7) Milk all cows, goats, sheep, water buffalo, or other mammals with dry hands.

n. Protection from contamination. Each person who holds a permit to produce milk for manufacturing purposes shall:

- (1) Locate and operate the milking and milkhouse operations, equipment, and facilities to prevent overcrowding and any contamination of the milk, equipment, containers, or utensils;
- (2) Separate pipelines and equipment used to contain or conduct milk and dairy products during processing from tanks or circuits containing cleaning or sanitizing solution, or both;
- (3) Discard all milk which has overflowed, leaked, been spilled or improperly handled;
- (4) Transfer immediately from the milking barn, stable, or parlor to the milkhouse each pail or container of milk;
- (5) Properly cover all pails, cans, and other equipment containing milk during transfer and storage;

(6) Handle all containers, utensils, and equipment in such a manner to prevent the contamination of any milk-contact surface of any containers, utensils, or equipment after the containers, utensils, or equipment have been sanitized; and

(7) Use air under pressure for the agitation or movement of milk, or use air under pressure that is directed at any milk contact surface that is free of oil, dust, rust, excessive moisture, extraneous materials, or odor.

o. Drug and chemical control. Each person who holds a permit to produce milk for manufacturing purposes shall:

- (1) Ensure cleaners and sanitizers purchased in containers from the manufacturer or distributor properly identify the contents, or if bulk cleaners and sanitizers are transferred from the manufacturer's or distributor's container, that the transfer only occur into a dedicated end-use container which is specifically designed, maintained, and labeled according to the manufacturer's specifications for that specific product;
- (2) Abstain from cleaning any equipment used to administer medicinals or drugs in the wash vats in the milkroom;
- (3) Store any equipment used to administer medicinals or drugs so as not to contaminate any milk or milk contact surfaces of equipment;
- (4) Store all drugs and medicinals in such a manner that neither the drugs nor the medicinals can contaminate any milk or the dairy product-contact surface of any equipment, containers or utensils;
- (5) Abstain from using unapproved or improperly labeled medicinals or drugs to treat any dairy animal or store unapproved or improperly labeled medicinals or drugs in the milkhouse, milking barn, stable, or parlor. Except for topical antiseptics, wound dressings, vaccines, and other biologics (unless intended for direct injection into the teat), and dosage form vitamins and mineral products, a drug or medicinal is properly labeled only if the drug or medicinal is labeled with the following:

- (a) For over-the-counter medicinals or drugs, the name and address of the manufacturer or distributor, or for prescription and extra-label use medicinals or drugs, the name of the veterinary practitioner dispensing the product;
 - (b) Directions for use of the drug or medicinal and the prescribed holding time;
 - (c) Any cautionary statement for the drug or medicinal, if needed; and
 - (d) The active ingredient or ingredients in the drug or medicinal;
- (6) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins

and mineral products, segregate all medicinals and drugs used for lactating cows, goats, sheep, water buffalo and other mammals (except humans) from any medicinals and drugs used for nonlactating cows, goats, sheep, water buffalo and other mammals (except humans);

(7) Except for topical antiseptics, wound dressings, (unless intended for direct injection into the teat) vaccines and other biologics, and dosage form vitamins and mineral products, provide separate shelves in a cabinet, refrigerator, or other storage facility for the storage of all medicinals and drugs for treatment of nonlactating dairy animals separate from those medicinals or drugs used for lactating dairy animals;

(8) Store topical antiseptics, wound dressings, (unless intended for direct injection into the teat) vaccines and other biologics, and dosage-form vitamins and mineral products in a manner that does not contaminate any milk or the milk-product surfaces of any containers or utensils;

(9) Store all drugs labeled for use in nondairy animals in the milking barn, stable, or parlor; and

(10) Abstain from storing any herbicides, fertilizers, pesticides, or insecticides that are not labeled for use in the milkhouse, milkroom, milking barn, stable or parlor in the permit holder's milkhouse, milkroom, milking barn, stable, or parlor.

p. Personnel; hand-washing facilities. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Provide hand-washing facilities that are convenient to the milkhouse, milking barn, stable, parlor, and flush toilet; and

(2) Provide hand-washing facilities that include separate hot and cold running water, soap or detergent, and individual sanitary towels.

q. Personnel; cleanliness. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Ensure each person who milks or performs any milkhouse function washes the person's hands clean and dries the person's hands with an individual sanitary towel immediately before milking, before performing any milkhouse function, and immediately after the interruption of milking or performing any milkhouse function; and

(2) Ensure each person who milks or performs any milkhouse function wears clean outer garments while milking or handling any milk, milk containers, utensils, or equipment. Every person shall wear clean outer garments while handling any milk, milk containers, utensils, or equipment;

r. Raw milk cooling. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Cool to 40°F or cooler (but not freeze), all milk in farm bulk tanks, within two hours after the permit holder completes each milking; and ensure that the temperature of the permit holder's milk is not warmer than 50°F after the first milking or any subsequent milking. Milk for manufacturing purposes which is warmer than a temperature of 50°F two hours after the first milking or any subsequent milking shall be deemed a public health hazard and shall not be offered for sale, sold, or used for human consumption;

(2) Agitate all milk in farm bulk tanks for not less than five minutes at least once every hour and ensure that the milk in the farm's bulk milk cooling or holding tank covers the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking. Milk which does not cover the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking shall be deemed a public health hazard and shall not be offered for sale, sold, or used for human consumption; and

(3) Cool to 40°F or cooler (but not freeze), all milk in cans or other containers approved by the Regulatory Agency, within two hours after the permit holder completes milking; and ensure that the temperature of the permit holder's milk in cans or other containers approved by the regulatory agency is not warmer than 50°F at any time thereafter; or deliver the milk in cans or other containers approved by the regulatory agency to a dairy processing plant within two hours after the completion of milking. Milk in cans or other containers approved by the regulatory agency which is warmer than a temperature of 50°F two hours after the completion of milking shall be deemed a public health hazard and shall not be offered for sale or sold.

s. Insect and rodent control. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) Keep the areas surrounding the milkhouse, milking barn, milking stable, milking parlor, cattle housing, sheep housing, goat housing, water buffalo housing, housing area for other mammals, cattle loafing, sheep loafing, goat loafing, water buffalo loafing, loafing area for other mammals, water supply, or other facilities on the permit holder's dairy farm neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents;

(2) Maintain and manage manure packs in loafing areas, stables without stanchions, pen stables, resting barns, wandering sheds, and free-stall housing to be properly bedded and to prevent fly breeding;

(3) Maintain the milkroom free of insects, rodents, and other animals;

(4) Screen or otherwise protect the milkroom against the entrance of insects, rodents, vermin, or other animals;

(5) Provide outer milkhouse doors that are tight fitting and self-closing;

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(6) Provide screen doors that open outward only on any milkhouse;

(7) Take effective measures to prevent the contamination of any milk, containers, equipment, and utensils by insects, rodents, and other animals and by chemicals used to control insects, rodents, and other animals;

(8) Use only insecticides and rodenticides approved for use by the U.S. Environmental Protection Agency;

(9) Use insecticides and rodenticides in accordance with the manufacturer's label directions and in such a manner to prevent the contamination of milk, milk containers, equipment, utensils, feed, or water;

(10) Provide covered boxes, bins, or separate storage facilities for ground, chopped, or concentrated feed; and

(11) Store any feed in the milking portion of the milking barn only and in such a manner as it will not attract birds, flies, insects or rodents.

C. Sanitation requirements for dairy plants. Each person who holds a permit to manufacture dairy products shall comply with the following:

1. Premises. Each person who holds a permit to manufacture dairy products shall:

a. Maintain their plant premises in a clean and orderly condition and free from strong or foul odors, smoke, or excessive air pollution;

b. Construct and maintain driveways and adjacent plant traffic areas with concrete, asphalt, or similar material to keep dust and mud to a minimum;

c. Maintain the adjacent surroundings free from refuse, rubbish, and waste materials to prevent harborage of rodents, insects, and other vermin;

d. Construct and maintain a drainage system which will allow rapid drainage of all water from plant buildings and driveways, including surface water around the plant and on the premises, and all such water shall be disposed of in such a manner to prevent a nuisance or health hazard.

2. Buildings. Each person who holds a permit to manufacture dairy products shall:

a. Provide buildings of sound construction and maintain those buildings in good repair to prevent the entrance or harboring of rodents, birds, insects, vermin, dogs, cats and other animals;

b. Provide tight metal collars for all service pipe openings through outside walls, or shall effectively seal around the openings;

c. Protect or screen against the entrance of flies and other insects, rodents, birds, dust, and dirt all openings to the outer air including doors, windows, skylights, and transoms.

d. Provide and maintain each outside door opening into a processing room in good condition, properly fitted, and tightly self-closing;

e. Ensure that each hinged, outside screen door opens outward and is self closing;

f. Maintain each door and window to be clean and in good repair;

g. Construct and maintain each outside conveyor opening and other special-type outside openings to effectively protect and prevent the entrance of flies and rodents, by the use of doors, screens, flaps, fans, or tunnels;

h. Cover outside openings for sanitary pipelines when not in use;

i. Construct each window sill to be slanted downward at a 45 degree angle;

j. Construct each wall, ceiling, partition, and post of rooms in which milk or dairy products are processed, manufactured, handled, packaged, or stored (except dry storage of packaged finished products and supplies) or in which utensils are washed and stored, to be smoothly finished with a material of light color, which is substantially impervious to moisture and kept clean; and

k. Refinish each wall, ceiling, partition, and post of rooms in which milk or dairy products are processed, manufactured, handled, packaged, or stored (except dry storage of packaged finished products and supplies) or in which utensils are washed and stored as often as necessary to maintain a neat, clean surface;

l. Floors. Each person who holds a permit to manufacture dairy products shall:

(1) Construct the floor of each room in which milk or dairy products are processed, manufactured, packaged, or stored or in which utensils are washed with tile properly laid with impervious joint material, concrete, or other equally impervious material;

(2) Construct and maintain the floors of each room in which milk or dairy products are processed, manufactured, packaged, or stored or in which utensils are washed to be smooth, in good repair, graded to one or more drains so that there will be no pools of standing water or dairy products after flushing, and the opening to each drain shall be equipped with a trap properly constructed and kept in good repair;

(3) Not use bell-type traps on floors;

(4) Install the plumbing to prevent the backup of sewage into the drain lines and onto the floor of the plant; and

(5) Construct the floors in each room where new containers and supplies and certain packaged finished products are stored with sound, smooth, wood which shall be maintained clean.

m. Lighting and ventilation. Each person who holds a permit to manufacture dairy products shall:

(1) Provide ample light, natural, artificial, or both, of good quality and well distributed in each room and area of the building;

(2) Provide each room in which dairy products are manufactured or packaged or where utensils are washed with at least 30 foot-candles of light intensity on all working surfaces and at least 50 foot-candles of light intensity in areas where dairy products are graded or examined for condition and quality;

(3) Provide in each room in which dairy products are not manufactured or packaged or where utensils are not washed with at least five foot-candles of light intensity when measured at a distance of 30 inches from the floor;

(4) Protect from breakage each light bulb, fluorescent tube, fixture, skylight, or other glass suspended over each product area where contamination of product by broken glass is possible;

(5) Provide adequate heating, ventilation, or air conditioning for each room and compartment to permit maintenance of sanitary conditions;

(6) Provide exhaust or inlet fans, vents, hoods, or temperature and humidity control facilities where and when needed, to minimize or eliminate undesirable room temperatures, objectionable odors, moisture condensation, or mold;

(7) Provide each inlet fan with an adequate air filtering device to eliminate dirt and dust from incoming air;

(8) Clean each ventilation system periodically as needed and maintain each ventilation system in good repair; and

(9) Screen or provide each exhaust outlet with self-closing louvers to prevent the entrance of insects when not in use.

n. Rooms and compartments. Each person who holds a permit to manufacture dairy products shall:

(1) Design, construct, and maintain each room and compartment in which any raw material, packaging, ingredient supplies, or dairy products are handled, manufactured, packaged, or stored to ensure desirable room temperatures and clean and orderly operating conditions free from objectionable odors and vapors;

(2) Separate each enclosed bulk milk receiving room from any of the processing rooms by a partition;

(3) Separate each room for receiving can milk from any of the processing rooms by a partition (partial or complete), by arrangement of equipment, or by allowing enough distance between receiving and processing operations to prevent contamination of milk or dairy products during manufacturing and handling;

(4) Maintain each processing room free from equipment and materials not regularly used;

(5) Coolers and freezers. Each person who holds a permit to manufacture dairy products shall:

(a) Maintain each cooler and freezer where dairy products are stored to be clean, reasonably dry, and maintained at the proper uniform temperature and humidity to protect the dairy products and minimize the growth of mold;

(b) Maintain adequate circulation of air at all times in each cooler and freezer where dairy products are stored;

(c) Maintain each cooler and freezer where dairy products are stored to be free from rodents, insects, and animals;

(d) Maintain each shelf in each cooler or freezer to be clean and dry; and

(e) Install refrigeration units with provisions for collecting and disposing of condensate.

(6) Supply room. Each person who holds a permit to manufacture dairy products shall:

(a) Maintain each supply room used for storing packaging materials, containers, and miscellaneous ingredients to be clean, dry, orderly, free from insects, rodents, and mold, and in good repair;

(b) Store each item in the store room so it is protected from dust, dirt, or other extraneous matter and so arranged off the floor on racks, shelves, or pallets to permit access to the supplies and cleaning and inspection of the room; and

(c) Ensure that insecticides, rodenticides, cleaning compounds, and other nonfood products are properly labeled and segregated and stored in a separate room or cabinet away from any milk, dairy products, ingredients, or packaging supplies.

(7) Boiler and tool rooms. Each person who holds a permit to manufacture dairy products shall:

(a) Construct and provide each boiler and tool room to be separate from any room where milk or dairy products are processed, manufactured, packaged, handled, or stored; and

(b) Keep boiler and tool rooms orderly and reasonably free from dust and dirt.

(8) Toilet and dressing rooms. Each person who holds a permit to manufacture dairy products shall:

(a) Provide adequate toilet and dressing room facilities that are conveniently located;

(b) Ensure that each toilet room does not open directly into any room in which milk or dairy products are processed, manufactured, packaged, or stored;

(c) Provide self-closing doors for each toilet room;

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(d) Provide each toilet room with a mechanical means of ventilation or screened openings to the outside air;

(e) Maintain each toilet room fixture so that it is clean and in good repair;

(f) Furnish each employee with a locker or other suitable facility and shall keep clean and orderly each locker and dressing room;

(g) Provide adequate hand-washing facilities with hot and cold running water and mix valve in each toilet and dressing room; and

(h) Post legible signs conspicuously in each toilet and dressing room directing employees to wash their hands before returning to work.

(9) *Laboratory.* Each person who holds a permit to manufacture dairy products shall provide and maintain an adequately equipped laboratory properly staffed with qualified and trained personnel for quality control and analytical testing consistent with the size and type of plant and the volume of dairy products manufactured. A central laboratory serving more than one plant may be acceptable if conveniently located to the dairy plants and if samples and results can be transmitted without undue delay;

(10) *Starter facilities.* Each person who holds a permit to manufacture dairy products shall provide adequate sanitary facilities for the handling of starter cultures.

o. *Water supply.* Each person who holds a permit to manufacture dairy products shall:

(1) Provide an ample supply of both hot and cold water of safe and sanitary quality, with adequate facilities for its proper distribution throughout the plant, and protection against contamination and pollution.

(2) Separate with an air gap all waterlines carrying the sanitary water supply from water to feed a boiler or condenser, and ensure the boiler or condenser equipment is so constructed and controlled to preclude contamination of product contact surfaces;

(3) Ensure that there is no cross connection between the potable water supply and any unsafe or questionable water supply, or any other source of pollution through which contamination of the potable water supply is possible;

(4) Perform a bacteriological examination of the sanitary water supply at least twice a year and more often when follow-up sampling is needed after nonconforming results are reported to determine purity and suitability for use in manufacturing dairy products. Each bacteriological examination of the sanitary water supply shall be performed in a commercial, industry, federal or state laboratory certified by the U.S. Environmental Protection Agency for water testing;

(5) Keep on file the results of all water tests at the plant for which the test was performed;

(6) Comply with the regulations of the Virginia Department of Health on the water supply's location, construction, and operation;

(7) Provide water from any well for dairy plant operations from a water supply properly located, protected, and operated. The water supply shall be easily accessible, adequate, and of a safe, sanitary quality;

(8) Assure that any well casing which is part of a water supply that provides water for any dairy plant operation is not located closer to any source of contamination which may contaminate the water supply than is specified as follows:

(a) No permit holder may locate a well casing closer than 10 feet to a pit;

(b) No permit holder may locate a well casing closer than 10 feet to any sewer pipe, floor drain, or other pipe which may back up;

(c) No permit holder may locate a well casing closer than 50 feet to any above-ground gas, oil, petroleum, or chemical storage tank;

(d) No permit holder may locate a well casing closer than 50 feet to any accumulated animal manure;

(e) No permit holder may locate a well casing closer than 50 feet to any area to which livestock have access; or animal-holding area, feedlot, or loafing area on dirt;

(f) No permit holder may locate a well casing closer than 50 feet to any pit not drained to the surface of the ground;

(g) No permit holder may locate a well casing closer than 100 feet to any pit privy;

(h) No permit holder may locate a well casing closer than 100 feet to any animal-manure disposal area;

(i) No permit holder may locate a well casing closer than 100 feet to any cess pool;

(j) No permit holder may locate a well casing closer than 100 feet to any dry well;

(k) No permit holder may locate a well casing closer than 100 feet to any structure which stores animal manure;

(l) No permit holder may locate a well casing closer than 100 feet to any septic tank or drain field; and

(m) No permit holder may locate a well casing closer than 100 feet to any underground or partially-buried gas, oil, petroleum, or chemical storage tank;

(9) Construct the water supply so that the well casing terminates at least two feet above the highest-known flood level in the flood plane for the location in which the water supply is located;

(10) Construct the water supply so that no potable water supply pipe attached to the water supply is located closer than 10 feet measured horizontally to any sewer pipe, soil pipe, or drain.

p. Drinking water facilities. Each person who holds a permit to manufacture dairy products shall provide conveniently located drinking water facilities of a sanitary type in the plant;

q. Hand-washing facilities. Each person who holds a permit to manufacture dairy products shall:

(1) Provide convenient hand-washing facilities, including hot and cold running water, mix valve, soap or other detergents, and sanitary single-service towels or air dryers in each room where any dairy product is handled, processed, packaged or stored;

(2) Provide convenient hand-washing facilities located in or adjacent to each toilet and dress-ing room and also at each other place in the plant as may be essential to the cleanliness of all personnel handling milk or dairy products;

(3) Not allow employees to use vats for washing equipment or utensils as handwashing facilities;

(4) Provide self-closing metal or plastic containers for used towels and other wastes;

r. Steam. Each person who holds a permit to manufacture dairy products shall [;:]

(1) Supply steam in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment;

(2) Ensure that culinary steam used in direct contact with milk or dairy products is free from harmful substances or extraneous material and only nontoxic boiler compounds are used, or a secondary steam generator shall be used in which soft water is converted to steam and no boiler compounds are used;

(3) Use steam traps, strainers, and condensate traps wherever applicable to ensure a satisfactory and safe steam supply; and

(4) Use culinary steam that complies with 3-A Accepted Practices for a Method of Producing Steam of Culinary Quality;

s. Air under pressure. Each person who holds a permit to manufacture dairy products shall [;:]

(1) Comply with the requirements contained in the 3-A Accepted Practices for Supplying Air Under Pressure in Contact with Milk, Milk Products, and Product Contact Surfaces; and

(2) Ensure that the air used at the point of application is free from volatile substances, volatiles which may impart any flavor or odor to the products, and extraneous or harmful substances;

t. Disposal of waste. Each person who holds a permit to manufacture dairy products shall [;:]

(1) Properly dispose of all dairy wastes from the plant and premises;

(2) Construct the sewer system with sufficient slope and capacity to readily remove all wastes from the various processing operations;

(3) Utilize a public sewer where available, to properly dispose of all liquid wastes and effluent;

(4) Where a public sewer is not available, properly dispose of all wastes so as not to contaminate any milk equipment or to create a nuisance or public health hazard;

(5) Provide containers used for the collection and holding of wastes constructed of metal, plastic, or other equally impervious material and keep covered with tight-fitting lids and place outside the plant on a concrete slab or on a rack raised at least 12 inches. Alternatively, waste containers may be kept inside a suitably enclosed, clean and fly-proof room;

(6) Dispose of solid wastes regularly and clean all waste containers thoroughly before reuse;

(7) Ensure the accumulation of dry wastepaper and cardboard is kept to a minimum;

(8) Ensure that any accumulation of dry wastepaper and cardboard is burned at the plant in a properly constructed incinerator, or compressed or bagged and hauled away;

3. Equipment and utensils. Each person who holds a permit to manufacture dairy products shall [;:]

a. Use only equipment and utensils made for the processing of milk and manufacture of dairy products that are constructed to be readily de-mountable where necessary for cleaning and sanitizing;

b. Use only utensils and equipment such as holding tanks, pasteurizers, coolers, vats, agitators, pumps, sanitary piping, and fittings or any specialized equipment the product contact surfaces of which are constructed of stainless steel, or other equally corrosion-resistant material;

c. Use only nonmetallic parts, other than glass, having product contact surfaces that meet 3-A Sanitary Standards for Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment;

d. Design and install all equipment and piping to be easily accessible for cleaning, and shall keep all equipment and piping in good repair, free from cracks and corroded surfaces;

e. Install any new equipment or rearrange any existing equipment to be set away from any wall or spaced in such a manner to facilitate proper cleaning and to maintain good housekeeping;

f. Ensure that all parts or interior surfaces of equipment, pipes (except certain piping cleaned in place) or fittings,

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including valves and connections, are accessible for inspection;

g. Use only milk and dairy product pumps that are of a sanitary type and easily dismantled for cleaning or are designed and constructed to allow effective cleaning in place;

h. Install only C-I-P systems that comply with the 3-A Sanitary Practices for Permanently Installed Sanitary Product and Solution Pipelines and Cleaning Systems Used in Milk Product Processing Plants;

i. Use only weigh cans and receiving tanks that meet all applicable 3-A Sanitary Standards and are easily accessible for cleaning both inside and outside and are elevated above the floor and protected sufficiently with the necessary covers or baffles to prevent contamination from splash, condensate, and drippage. Where necessary, to provide easy access for cleaning of floors and adjacent wall areas, the receiving tank shall be equipped with wheels or casters to allow easy removal;

j. Use only can washers that have sufficient capacity and ability to discharge a clean, dry can and cover, and use only cans and covers that are kept tinned in accordance with the instructions of the manufacturer;

k. Install water and steam lines supplying the can washer that maintain a reasonably uniform pressure and, if necessary, are equipped with pressure regulating valves;

l. Use only storage tanks or vats that are fully enclosed or tightly covered, well insulated, and that comply with the following:

(1) The entire interior surface, agitator and all appurtenances shall be accessible for thorough cleaning and inspection;

(2) Any opening at the top of the tank or vat including the entrance of the shaft shall be suitably protected against the entrance of dust, moisture, insects, oil, or grease;

(3) The sight glasses, if used, shall be sound, clean, and in good repair;

(4) Vats which have hinged covers shall be so designed that moisture or dust on the surface cannot enter the vat when the covers are raised;

(5) If the storage tanks or vats are equipped with air agitation, the system shall be an approved type and installed in accordance with the 3-A Accepted Practices for Supplying Air Under Pressure in Contact with Milk, Milk Products, and Product Contact Surfaces;

(6) Storage tanks or vats intended to hold product for longer than eight hours shall be equipped with adequate refrigeration or have adequate insulation, or both;

(7) Each storage tank or vat shall meet the appropriate 3-A Sanitary Standards and shall be equipped with a thermometer in good operating order;

m. Use only separators, the product contact surfaces of which are free from rust and pits, and insofar as practicable, are constructed of stainless steel or other equally noncorrosive metal;

n. Install and use only noncoil type batch pasteurizers that comply with all requirements contained in 3-A Sanitary Standards for NonCoil Type Batch Pasteurizers for Milk and Milk Products;

o. Install and use only high-temperature, short-time pasteurizers that comply with the following:

(1) When pasteurization is intended or required, an approved timing pump or device recorder-controller, automatic flow diversion valve and holding tube or its equivalent, if not a part of the existing equipment, shall be installed on all High-Temperature Short-Time (HTST) equipment used for pasteurization to ensure complete pasteurization;

(2) The entire facility shall meet the 3-A Accepted Practices for the Sanitary Construction, Installation, Testing, and Operation of High-Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems;

(3) After the HTST unit has been tested according to the 3-A Accepted Practices, the timing pump or device and the recorder controller shall be sealed at the correct setting to ensure pasteurization;

(4) Sealing of the HTST unit shall be performed only by a representative of the Virginia Department of Agriculture and Consumer Services or a person accepted by the Virginia Department of Agriculture and Consumer Services as properly trained and experienced to be able to seal HTST units;

(5) The HTST pasteurizer shall be tested by the department or by a person certified by the department to perform pasteurizer tests initially upon installation and whenever any alteration or replacement is made which affects the proper operation of the instrument or device;

(6) When direct steam pasteurizers are used, the steam, prior to entering the milk or dairy product, shall be conducted through a steam strainer and a steam purifier equipped with a steam trap and only steam meeting all the requirements contained in 3-A Accepted Practices Method of Producing Steam of Culinary Quality, shall be used;

p. Install and use thermometers and recorders that comply with the following [;]

(1) Indicating thermometers. Long-stem indicating thermometers which are accurate within 0.5°F, plus or minus, for the applicable temperature range shall be provided for checking the temperature of pasteurization and cooling of products in vats and checking the accuracy of recording thermometers;

(2) Short-stem indicating thermometers, which are accurate within 0.5°F, plus or minus, for the applicable

temperature range, shall be installed in the proper stationary position in all HTST and dome-type pasteurizers;

(3) Storage tanks where temperature readings are required shall have thermometers which are accurate within 2.0°F, plus or minus;

(4) Air-space indicating thermometers, where applicable, which are accurate within 1.0°F, plus or minus, for the proper temperature range, shall also be installed above the surface of the products pasteurized in vats, to make certain that the temperature of the foam and air above the products pasteurized also received the required minimum temperature treatment;

(5) HTST recording thermometers that are accurate within 1.0°F, plus or minus, for the applicable temperature range, shall be used on each heat treating, pasteurizing, or sterilizing unit to record the heating process;

(6) Additional use of recording thermometers accurate within 2.0°F, plus or minus, may be required at the discretion of the Virginia Department of Agriculture and Consumer Services where a record of temperature or time of cooling and holding is necessary to establish compliance with the requirements of this chapter or to ensure the safety of a milk or dairy product;

q. Install and use only surface coolers that comply with the following [:]

(1) Surface coolers shall be equipped with hinged or removable covers for the protection of the product;

(2) The edges of the fins on all surface coolers shall be so designed to divert condensate on nonproduct contact surfaces away from product contact surfaces;

(3) All gaskets or swivel connections on surface coolers shall be leak proof;

r. Install and use only plate-type heat exchangers that comply with the following:

(1) Plate-type heat exchangers shall meet the 3-A Sanitary Standards for Plate-Type Heat Exchangers for Milk and Milk Products;

(2) All gaskets on plate-type heat exchangers shall be tight and kept in good operating order;

(3) Plates on plate-type heat exchangers shall be opened for inspection by the permit holder at least once each six months to determine if the equipment is clean and in satisfactory condition and at the direction of the Virginia Department of Agriculture and Consumer Services;

(4) A cleaning regimen for each plate-type heat exchanger shall be posted to ensure proper cleaning procedures between inspections;

s. Install and use only internal return tubular heat exchangers that comply with the 3-A Sanitary Standards for Tubular Heat Exchangers for Milk and Milk Products;

t. Install and use only pumps used for milk and dairy products that comply with the following:

(1) All pumps used for milk and dairy products shall be of the sanitary type and constructed to meet 3-A Sanitary Standards for Centrifugal and Positive Rotary Pumps for Milk and Milk Products;

(2) Unless pumps used for milk and dairy products are specifically designed for effective cleaning in place, they shall be disassembled and thoroughly cleaned after each use;

u. Install and use only homogenizers and high pressure pumps of the plunger type that comply with the 3-A Sanitary Standards for Homogenizers and Reciprocating Pumps;

v. Install and use only equipment and replacements, including all plastic parts and rubber and rubber-like materials for parts and gaskets having product contact surfaces, that comply with 3-A Sanitary Standards. If 3-A Sanitary Standards have not been developed for the equipment, such equipment and replacements shall meet the general requirements of this subsection;

w. Install and use only a vacuum chamber for flavor control which complies with the following:

(1) Each vacuum chamber shall be made of stainless steel;

(2) Each vacuum chamber shall be constructed to facilitate cleaning and all product contact surfaces shall be accessible for inspection;

(3) Each vacuum chamber shall be equipped with a vacuum breaker and a check valve at the product discharge line;

(4) Only steam which meets the requirements for culinary steam shall be used in the vacuum chamber;

(5) The incoming steam supply for each vacuum chamber shall be regulated by an automatic solenoid valve which will cut off the steam supply in the event the flow diversion valve of the HTST pasteurizer is not in the forward flow position;

(6) Condensers when used with a vacuum chamber shall be equipped with a water level control and an automatic safety shutoff valve;

4. Personnel cleanliness. Each person who holds a permit to manufacture dairy products shall provide training and ensure that each plant employee complies with the following:

a. Each employee shall wash his hands before beginning work and immediately before returning to work after using toilet facilities, eating, smoking, or otherwise soiling his hands;

b. Each employee shall keep his hands clean and follow good hygienic practices while on duty;

c. Each employee shall be prohibited from expectorating or using tobacco in any form in each room or

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compartment where any milk, dairy product, or supplies are prepared, stored, or otherwise handled;

d. Each employee engaged in receiving, testing, processing, manufacturing, packaging, or handling dairy products shall wear clean white or light-colored washable outer garments and caps (paper caps or hair nets are acceptable);

5. **Personnel health.** Each person who holds a permit to manufacture dairy products shall ensure that each employee complies with the following:

a. No person afflicted with a communicable disease shall be permitted in any room or compartment where milk or dairy products are prepared, manufactured, or otherwise handled;

b. No person who has a discharging or infected wound, sore or lesion on hands, arms, or other exposed portion of the body shall work in any dairy processing rooms or in any capacity resulting in contact with milk or dairy products;

c. Each employee whose work brings him in contact with the processing or handling of dairy products, containers, or equipment shall have a medical and physical examination by a Virginia licensed physician or by the local department of health at the time of employment and medical certificates attesting the fact that the employee when examined was free from communicable disease shall be kept on file at the plant office;

d. Each employee returning to work following illness from a communicable disease shall have a certificate from the attending physician establishing proof of complete recovery, and medical certificates attesting the fact that the employee when last examined was free from communicable disease shall be kept on file at the plant office;

6. **Protection and transport of raw milk and cream.** Each person who holds a permit to manufacture dairy products shall ensure that each employee protects and transports all raw milk and cream in compliance with the following:

a. Milk cans used in transporting milk from each dairy farm to the dairy plant shall be of seamless construction with umbrella lids, constructed to be easily cleaned, and shall be inspected, repaired, and replaced as necessary to exclude the use of cans and lids with open seams, cracks, rust, milkstone, or other unsanitary condition;

b. Each vehicle used for the transportation of can milk or cream shall be of the enclosed type, constructed and operated to protect the product from extreme temperature, dust, or other adverse conditions, and it shall be kept clean. Decking boards or racks shall be provided where more than one tier of cans is carried. Cans or bulk tanks on vehicles used for the transportation of milk from the farm to the plant shall not be used for any other purpose;

c. The exterior shell of each transport tank shall be clean and free from open seams or cracks which would permit liquid to enter the jacket. The interior shell shall be

stainless steel and so constructed that it will not buckle, sag, or prevent complete drainage. All product contact surfaces shall be smooth, easily cleaned, and maintained in good repair. Each pump and hose cabinet shall be fully enclosed with tight fitting doors and the inlet and outlet shall be provided with dust covers to give adequate protection from road dust. Each transport tank shall meet 3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Product Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service;

d. Enclosed or covered facilities shall be available for washing and sanitizing of transport tanks, piping and accessories at all plants that receive or ship milk or dairy products in transport tanks;

e. Milk shall be transferred under sanitary conditions from farm bulk tanks through stainless steel piping or tubing approved by the Virginia Department of Agriculture and Consumer Services. The sanitary piping and tubing shall be capped when not in use;

7. **Raw product storage.** Each person who holds a permit to manufacture dairy products shall hold and process all milk in compliance with the following:

a. All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration;

b. Drip milk from can washers or any other source may not be used for the manufacture of dairy products;

c. Bulk milk in storage tanks within the dairy plant shall be handled in such a manner to minimize bacterial increase and shall be maintained at 45°F or lower until processing begins;

d. All bulk milk in storage tanks within the dairy plant shall be handled in such a manner to minimize bacterial increase and shall be maintained at 45°F or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices;

8. **Pasteurization or sterilization.** Each person who holds a permit to manufacture dairy products shall pasteurize or sterilize all milk and dairy products in compliance with the following:

a. When pasteurization or sterilization is intended or required, or when a product is designated "pasteurized" or "sterilized" every particle of the product shall be subjected to such temperatures and holding periods as will ensure proper pasteurization or sterilization of the product;

b. The heat treatment by either process shall be sufficient to ensure public health safety and to ensure adequate keeping quality, yet retain the most desirable flavor and body characteristics of the finished product;

c. The phenol value of test samples of pasteurized finished product shall be no greater than the maximum specified for the particular product as determined and specified by (i) the phosphatase test method prescribed in

Official Methods of Analysis of AOAC International, 17th Edition, Revision 1 (2002); (ii) the Fluorometer test method; (iii) the Charm ALP test method; or (iv) other equivalent method as determined by the Virginia Department of Agriculture and Consumer Services;

9. *Composition and wholesomeness.* Each person who holds a permit to manufacture dairy products shall ensure the composition and wholesomeness of all of their milk and dairy products by complying with the following requirements:

a. Each permit holder shall take all necessary precautions to prevent contamination or adulteration of the milk or dairy products during manufacturing;

b. Each permit holder shall allow the inspection of all substances and ingredients used in the processing or manufacturing of any dairy product, and all substances and ingredients used in the processing or manufacturing of any dairy product shall be wholesome and practically free from impurities;

c. Each permit holder's finished product shall comply with the requirements of the Federal Food, Drug, and Cosmetic Act regarding their composition and wholesomeness;

10. *Cleaning and sanitizing treatment.* Each person who holds a permit to manufacture dairy products shall ensure that their cleaning and sanitizing treatments are effective by complying with the following requirements:

a. *Equipment and utensils.* The equipment, sanitary piping, and utensils used in receiving and processing of the milk and manufacturing and handling of the product shall be maintained in a sanitary condition. Sanitary seal assemblies shall be removable on all agitators, pumps, and vats, and shall be inspected at regular intervals and kept clean. Unless other provisions are recommended in the following supplemental subsections, all equipment not designed for C-I-P cleaning shall be disassembled after each day's use for thorough cleaning. Dairy cleaners, detergents, wetting agents, sanitizing agents, or other similar materials which will not contaminate or adversely affect the milk or dairy products may be used. Steel wool or metal sponges may not be used in the cleaning of any dairy equipment or utensils. All product contact surfaces shall be subjected to an effective sanitizing treatment immediately prior to use, except where dry cleaning is permitted as determined by the department. Utensils and portable equipment used in processing and manufacturing operations shall be stored above the floor in clean, dry locations and in a self-draining position on racks constructed of impervious, corrosion-resistant material;

b. *C-I-P cleaning, including spray-ball systems,* shall be used only on equipment and pipeline systems which have been designed and engineered for that purpose. When such cleaning is used, careful attention shall be given to the proper procedures to ensure satisfactory cleaning. All C-I-P installations and cleaning procedures shall be in accordance with 3-A Accepted Practices for Permanently

Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants. The established cleaning procedure shall be posted and followed. Following the circulation of the cleaning solution the equipment and lines shall be thoroughly rinsed with lukewarm water and checked for effectiveness of cleaning. All caps, plugs, special fittings, valve seats, cross ends, pumps, plates, and tee ends shall be opened or removed and brushed clean. Immediately prior to starting the product flow, the product contact surfaces shall be given bactericidal treatment;

c. *Milk cans and can washers.* Milk cans and lids shall be cleaned, sanitized, and dried before returning to producers. Inspection and repair or replacement of cans and lids shall be adequate to exclude from use cans and lids showing open seams, cracks, rust condition, milkstone, or any unsanitary condition;

d. *Washers* shall be maintained in a clean and satisfactory operating condition and kept free from accumulation of scale or debris which will adversely affect the efficiency of the washer;

e. *Milk transport tanks.* A covered or enclosed wash dock and cleaning and sanitizing facilities shall be available to each plant that receives or ships any milk in tanks. Milk transport tanks, sanitary piping, fittings, and pumps shall be cleaned and sanitized at least once each day, after use: provided that if they are not to be used immediately after emptying a load of milk, they shall be washed promptly after use and given sanitizing treatment immediately before use. After being washed and sanitized, each tank shall be identified by a tag attached to the outlet valve bearing the following information: plant and specific location where cleaned, date and time of day of washing and sanitizing, and name of person who washed and name of person who sanitized the tank. The tag shall not be removed until the tank is again washed and sanitized;

f. *Building.* Each window, glass, partition, and skylight shall be washed as often as necessary to keep them clean. Cracked or broken glass shall be replaced promptly. The walls, ceilings, and doors shall be kept free from soil and unsightly conditions. The shelves and ledges shall be kept free from dust and debris. The material picked up by the vacuum cleaners shall be disposed of by burning or other proper methods to destroy any insects that might be present;

11. *Insect and rodent control program.* Each person who holds a permit to manufacture dairy products shall initiate and maintain an insect and rodent control program that complies with the following requirements:

a. In addition to any commercial pest control service, if one is utilized, a specially designated employee shall be made responsible for the performance of a regularly scheduled insect and rodent control program;

b. *Poisonous substances, insecticides, and rodenticides* shall be properly labeled, and shall be handled, stored,

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and used in such a manner as not to create a public health hazard.

12. *Plant records.* Each person who holds a permit to manufacture dairy products shall create, record, and maintain plant records in compliance with the following requirements:

a. Adequate plant records shall be maintained of all required tests on all raw milk receipts;

b. All records shall be available for examination by the inspector at all reasonable times;

c. The following are the records which shall be maintained for examination at the plant or receiving station where performed:

(1) Pasteurization recorder charts: retain for 12 months;

(2) Water supply test certificate: retain current copy for six months; and

(3) Employee health certificate: retain most recent copy until employee is no longer employed by plant;

d. Any milk or dairy product shall be deemed to have not been pasteurized if records of the pasteurization process are absent or incomplete;

e. Any milk or dairy product which has not been pasteurized and pasteurization was intended by the permit holder or required by this chapter shall be deemed a public health hazard and may not be offered for sale, sold, or provided to any person for human consumption;

13. *Packaging and general identification.* Each person who holds a permit to manufacture dairy products shall package and identify all products in compliance with the following requirements:

a. *Containers.* The size, style, and type of packaging used for dairy products shall be commercially acceptable containers and packaging materials which will satisfactorily cover and protect the quality of the contents during handling, shipping, and storage in regular channels of trade and under normal conditions of handling. The weights and shape within each size or style shall be as nearly uniform as is practical;

b. *Packaging materials for dairy products* shall be selected which will provide sufficiently low permeability to air and vapor to prevent the formation of mold growth and surface oxidation. In addition, the wrapper shall be resistant to puncturing, tearing, cracking, or breaking under normal conditions of handling, shipping, and storage. When special-type packaging is used, the instructions of the manufacturer shall be closely followed regarding its application and method of closure;

c. *Packaging and repackaging.* Packaging dairy products or cutting and repackaging all styles of dairy products shall be conducted under rigid sanitary conditions. The atmosphere of the packaging rooms, the equipment, and packaging material shall be practically free from mold and bacterial contamination. Methods for checking the level of contamination shall be as prescribed by the sixteenth

edition of Standard Methods For The Examination Of Dairy Products;

d. *General identification.* All commercial bulk packages containing dairy products manufactured under the provisions of this subsection shall be legibly marked with the name of the product, net weight, name and address of processor or manufacturer or other assigned plant identification, lot number, and meet the requirements of [~~2-VAC-5-531-50~~ 2 VAC 5-531-60]. Dairy products in final package form intended for distribution to the final consumer shall be legibly marked with the name of the product, net weight, plant identification number if one has been assigned, name and address of packer, manufacturer, or distributor, and the requirements of [~~2-VAC-5-531-50~~ 2 VAC 5-531-60];

14. *Storage of finished dairy products.* Each person who holds a permit to manufacture dairy products shall store finished dairy products in compliance with the following requirements:

a. *Dry storage.* The dairy product shall be stored off of the floor at least 18 inches from the wall in aisles, rows, or subsections and lots, in such a manner to be orderly and easily accessible for inspection. Each room shall be kept clean. Care shall be taken in the storage of any other product foreign to dairy products in the same room, in order to prevent impairment or damage to the dairy product from mold, absorbed odors, rodents, vermin or insect infestation. Control of humidity and temperature shall be maintained at all times, consistent with good manufacturing practices, to prevent conditions detrimental to the product and container;

b. *Refrigerated storage.* The finished dairy product shall be placed on shelves, dunnage, or pallets and properly identified. It shall be stored under temperatures that will best maintain the quality of the dairy product. The dairy product may not be exposed to anything from which it might absorb any foreign odors or become contaminated;

D. Each person who holds a dairy plant permit for manufacturing, processing and packaging instant nonfat dry milk, nonfat dry milk, dry whole milk, dry buttermilk, dry whey, or other dry dairy products shall comply with all of the following requirements:

1. *Rooms and compartments for dry storage of dairy product.* Storage rooms for the dry storage of product shall be adequate in size, kept clean, orderly, free from rodents, insects, and mold, and maintained in good repair. They shall be adequately lighted and ventilated. The ceilings, walls, beams, and floors shall be free from structural defects and inaccessible false areas which may harbor insects;

2. *Packaging room for bulk products.* A separate room or area shall be provided for filling bulk bins, drums, bags, or other bulk containers and shall be constructed in accordance with subdivisions C 2 a through n of this section. The number of control panels and switchboxes in this area shall be kept to a minimum. Control panels shall be mounted a sufficient distance from the walls to facilitate cleaning or shall be mounted in the wall and provided with

tight-fitting removable doors to facilitate cleaning. An adequate exhaust system shall be provided to minimize the accumulation of dry dairy product dust within the packaging room and, where needed, a dust collector shall be provided and properly maintained to keep roofs and outside areas free of dry dairy product. Only the quantity of packaging materials that are used within one day's operation may be kept in the packaging area. These materials shall be kept on metal racks or tables at least six inches off the floor. Unnecessary fixtures, equipment, or false areas which may collect dust and harbor insects, shall not be allowed in the packaging room;

3. Hopper or dump room. A separate room shall be provided for the transfer of bulk dry dairy products from bags or drums to the hoppers and conveyors which lead to the fillers. This room shall be constructed in accordance with subdivisions C 2 a through n of this section. Areas and facilities provided for the transfer of dry dairy products from portable bulk bins will be acceptable if gasketed surfaces or direct connections are used that appreciably eliminate the escape of product into the area;

4. Repackaging room. A separate room shall be provided for the filling of small packages and shall be constructed in accordance with subdivisions C 2 a through n of this section;

5. Equipment and utensils.

General construction, repair, and installation. All equipment and utensils necessary to the manufacture of dry dairy products, including pasteurizer, timing pump or timing device, flow diversion valve and recorder controller, shall meet the general requirements as outlined in subdivision C 3 of this section. In addition, for certain other equipment the following requirements shall be met [;:]

a. Preheaters. Each preheater shall be of stainless steel or other equally corrosion-resistant material, easily cleanable, accessible for inspection, and shall be equipped with suitable automatic temperature controls;

b. Hotwells. Each hotwell shall be enclosed or covered and equipped with indicating thermometers either in the hotwell or in the hot milk inlet line to the hotwell and, if used for holding high heat products, they shall also have recorders;

c. Evaporators or vacuum pans. Each open-type evaporator and each vacuum pan shall be equipped with an automatic condenser water level control, barometric leg, or constructed to prevent water from entering the product, and shall meet all applicable 3-A Sanitary Standards. When enclosed-type condensers are used, no special controls are needed to prevent water from entering the product;

d. Surge tanks. If surge tanks are used for hot milk and temperatures of product including foam being held in the surge tank during processing are not maintained at a minimum of 150°F, then two or more surge tanks shall be installed with cross connections to permit flushing and cleaning during operation. Covers easily removable for cleaning shall be provided and used at all times.

e. High pressure pumps and lines. High pressure lines may be cleaned in place and shall be of such construction that deadends, valves, and the high pressure pumps can be disassembled for hand cleaning. Each high pressure pump shall comply with 3-A Sanitary Standards for Homogenizers and Reciprocating Pumps;

f. Dryers. Spray dryers. Each spray dryer shall be of a continuous discharge type and all product contact surfaces shall be of stainless steel or other equally corrosion-resistant material. Each joint and seam in the product contact surface shall be welded and ground smooth. Each dryer shall be constructed to facilitate ease in cleaning and inspection. Sight glasses or ports of sufficient size shall be located at strategic positions. Each dryer shall be equipped with suitable air intake filters and with air intake and exhaust recording thermometers. The filter system shall consist of filtering media or devices that will effectively, and in accordance with good manufacturing practices, prevent the entrance of foreign substances into the drying chamber. The filtering system shall be cleaned or component parts replaced as often as necessary to maintain a clean and adequate air supply. In each gas-fired dryer, precautions shall be taken to ensure complete combustion. Air shall be drawn into the dryer from sources free from odors, smoke, dust, or dirt;

g. Roller dryers. The drums of each roller dryer shall be smooth, readily cleanable, and free of pits and rusts. The knives shall be maintained in such condition so as not to cause scoring of the drums. The end boards shall have an impervious surface and be readily cleanable. They shall be provided with a means of adjustment to prevent leakage and accumulation of milk solids. The stack, hood, the drip pan inside of the hood and related shields shall be constructed of stainless steel and be readily cleanable. The lower edge of the hood shall be constructed to prevent condensate from entering the product zone. The hood shall be properly located and the stack of adequate capacity to remove the vapors. The stack shall be closed when the dryer is not in operation. The augers shall be of stainless steel or properly plated and readily cleanable. The auger troughs and related shields shall be of stainless steel and be readily cleanable. All air entering the dryer room shall be filtered to eliminate dust and dirt. The filter system shall consist of filtering media or a device that will effectively, and in accordance with good manufacturing practices, prevent the entrance of foreign substances into the drying room. The filtering system shall be cleaned or component parts replaced as often as necessary to maintain a clean and adequate air supply. All dryer adjustments shall be made and the dryer operating normally before food grade powder can be collected from the dryer;

h. Collectors and conveyors. Each collector shall be made of stainless steel or equally noncorrosive material and constructed to facilitate cleaning and inspection. Each filter sack collector, if used, shall be in good condition and the system shall be of such construction that all parts are accessible for cleaning and inspection. Each conveyor shall be of stainless steel or equally

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corrosion-resistant material and shall be constructed to facilitate thorough cleaning and inspection;

i. *Dry dairy product cooling equipment.* Cooling equipment shall be provided with sufficient capacity to cool the dry dairy product to 110°F or lower immediately after removal from the dryer and prior to packaging. If bulk bins are used, the dry dairy product shall be cooled to approximately 90°F but shall be not more than 110°F. A dry air supply with effective filtering shall be provided where air cooling and conveying is used;

j. *Special treatment equipment.* All special equipment such as instant systems, flakers, pulverizers, or hammer mills used to further process dry dairy products shall be of sanitary construction, and all parts shall be accessible for cleaning and inspection;

k. *Sifters.* Each sifter used for dry milk and dry dairy products shall meet all the requirements contained in 3-A Sanitary Standards for Sifters for Dry Milk and Dry Milk Products. The mesh size of sifter screen used for various dry dairy products shall be those recommended in the appendix of the 3-A Sanitary Standards for Sifters for Dry Milk and Dry Milk Products;

l. *Portable and stationary bulk bins.* Each bulk bin shall be constructed of stainless steel, aluminum, or other equally corrosion resistant materials, free from cracks and seams, and must have an interior surface that is relatively smooth and easily cleanable. All product contact surfaces shall be easily accessible for cleaning;

m. *Automatic sampling device.* If automatic sampling devices are used, they shall be constructed in such a manner to prevent contamination of the product, and all parts must be readily accessible for cleaning;

n. *Dump hoppers, screens, mixers, and conveyors.* The product contact surfaces of dump hoppers, screens, mixers, and conveyors which are used in the process of transferring dry products from bulk containers to fillers for small packages or containers, shall be of stainless steel or equally corrosion-resistant material and designed to prevent contamination. All parts shall be accessible for cleaning. Each dump hopper shall be of such height above floor level to prevent foreign material or spilled product from entering the hopper;

o. *Filler and packaging equipment.* All filling and packaging equipment shall be of sanitary construction and all parts, including valves and filler heads, accessible for cleaning;

p. *Heavy-duty vacuum cleaners.* Each plant handling dry dairy products shall be equipped with a heavy-duty industrial vacuum cleaner. Regular scheduling shall be established for its use in vacuuming applicable areas;

6. *Clothing and shoe covers.* Clean clothing and shoe covers shall be provided exclusively for the purpose of cleaning the interior of the drier when it is necessary to enter the drier to perform the cleaning operation;

7. *Operations and operating procedures.*

a. *Pasteurization.*

(1) All milk, buttermilk, and whey used in the manufacture of dry dairy products shall be pasteurized at the plant where dried, except that condensed whey and acidified buttermilk containing 40% or more solids may be transported to another plant for drying without repasteurization. Milk or skim milk to be used in the manufacture of nonfat dry milk shall be heated prior to condensing to at least the minimum pasteurization temperature of 161°F for at least 15 seconds or its equivalent in bacterial destruction. Condensed skim milk made from pasteurized skim milk may be transported to a drying plant, provided that it shall be effectively repasteurized at the drying plant, prior to drying, at not less than 175°F for 25 seconds or its equivalent in bacterial destruction;

(2) All buttermilk or cream from which it is derived shall be pasteurized prior to condensing at a temperature of 185°F for 15 seconds or its equivalent in bacterial destruction;

(3) All cheese whey or milk from which it is derived shall be pasteurized prior to condensing at a temperature of 161°F for 15 seconds or its equivalent in bacterial destruction;

b. *Condensed surge supply.* Each surge tank or balance tank used between the evaporator and dryer shall be used to hold only the minimum amount of condensed product necessary for a uniform flow to the dryer. Such tanks holding product at temperatures below 150°F shall be completely emptied and washed after each four hours of operation or less. Alternate tanks shall be provided to permit continuous operation during washing of tanks;

c. *Condensed storage tanks [∓]*

(1) Excess production of condensed dairy product over that which the dryer will take continuously from the pans shall be bypassed through a cooler into a storage tank at 50°F or lower and held at this temperature until used;

(2) Dairy product cut-off points shall be made at least every 24 hours and the tank completely emptied, washed, and sanitized before reuse;

d. *Drying.* Each dryer should be operated at not more than the manufacturer's rated capacity for the highest-quality dry product consistent with the most efficient operation. This does not preclude the remodeling or redesigning of dryers after installation when properly engineered and designed. The dry products shall be removed from the drying chamber continuously during the drying process;

e. *Cooling dry products.* Prior to packaging and immediately following removal from the drying chamber the dry product shall be cooled to a temperature not exceeding 110°F;

f. *Packaging, repackaging and storage.*

(1) *Containers.* Packages or containers used for the packaging of nonfat dry milk or other dry dairy products shall be any clean, sound, commercially accepted container or packaging material which will satisfactorily protect the contents through the regular channels of trade, without significant impairment of quality with respect to flavor, wholesomeness, or moisture content under normal conditions of handling. In no instance will containers which have previously been used for nonfood items or food which would be deleterious to the dairy product be allowed to be used for the bulk handling of dairy products;

(2) *Filling.* Empty containers shall be protected at all times from possible contamination, and containers which are to be lined shall not be prepared more than one hour in advance of filling. Every precaution shall be taken during the filling operation to minimize product dust and spillage. When necessary a mechanical shaker shall be provided; the tapping or pounding of containers shall be prohibited. The containers shall be closed immediately after filling, and the exteriors shall be vacuumed or brushed when necessary to render them practically free of product remnants before being transferred from the filling room to the palleting or dry storage areas.

(3) *Repackaging.* The entire repackaging operation shall be conducted in a sanitary manner with all precautions taken to prevent contamination and to minimize dust. All exterior surfaces of individual containers shall be practically free of product before over-wrapping or packing in shipping containers. The flow shall be kept free of dust accumulation, waste, cartons, liners, or other refuse. Conveyors, packaging and carton-making equipment shall be vacuumed frequently during the operating day to prevent the accumulation of dust. No bottles or glass materials of any kind shall be permitted in the repackaging or hopper room. The inlet openings of all hoppers and bins shall be of minimum size, screened, and placed well above the floor level. The room and all packaging equipment shall be cleaned as often as necessary to maintain a sanitary operation. Close attention shall be given to cleaning points of equipment where residues of the dry product may accumulate. A thorough cleanup, including windows, doors, walls, light fixtures, and ledges, shall be performed as frequently as is necessary to maintain a high standard of cleanliness and sanitation. All waste dry dairy products including dribble product at the fillers shall be identified as not for human consumption and destroyed or used as animal feed;

(4) *Storage.*

(a) *Product.* All packaged dry dairy product shall be stored or so arranged in aisles, rows, or subsections and lots at least 18 inches from any wall and in such a manner to be orderly, easily accessible for inspection and for cleaning of the room. All bags and small containers of product shall be placed on pallets elevated approximately six inches from the floor. The

storage room shall be kept clean and dry and all openings protected against entrance of insects and rodents;

(b) *Supplies.* All supplies shall be placed on dunnage or pallets and arranged in an orderly manner for accessibility and cleaning of the room. Supplies shall be kept enclosed in their original wrapping material until used. After removal of supplies from their original containers, they shall be kept in an enclosed metal cabinet, bin, or on shelving and if supplies are not enclosed they shall be protected from powder and dust or other contamination. The room shall be vacuumed and kept clean and orderly;

(5) *Product adulteration.* All necessary precautions shall be taken throughout the entire operation to prevent the adulteration of one product with another. The commingling of one type of liquid or dry product with another shall be considered an adulteration of that product. This does not prohibit the normal standardization of like products in accordance with good manufacturing practices or the production of specific products for special uses, provided applicable labeling requirements are met;

(6) *Checking quality.* All milk, dairy products, and dry dairy products shall be subject to inspection and analysis by the dairy plant for quality and condition throughout each processing operation. Line samples shall be taken periodically as an aid to quality control in addition to the regular routine analysis made on the finished products;

(7) *Requirements for instant nonfat dry milk [;:] sampling and testing.* All instant nonfat dry milk offered for sale shall be sampled and tested by the regulatory agency at least once each month to ensure that the product meets the requirements of [~~2 VAC 5-531-60 D 7 f 8~~ subdivision D 7 f (8) of this section]. In addition, the dry milk plant shall have each sub-lot of approximately 4,000 pounds tested and analyzed prior to being packaged or offered for sale. Instant nonfat dry milk not meeting the requirements of [~~2 VAC 5-531-60 D 7 f 8~~ subdivision D 7 f (8) of this section] shall not be offered as Extra Grade;

(8) *Requirements for Extra Grade instant nonfat dry milk:*

(a) *Flavor and odor.* The flavor and odor shall be sweet, pleasing, and desirable but may possess the following flavors to a slight degree: Chalky, cooked, feed, flat;

(b) *Physical appearance.* The physical appearance shall possess a uniform white color to light cream color; shall be reasonably free flowing and free from lumps except those that readily break up with very slight pressure;

(c) *Bacterial estimate.* The standard plate count shall not be more than 10,000 per gram;

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(d) *Coliform count.* The coliform count shall not be more than 10 per gram;

(e) *Milkfat content.* The milkfat shall not be more than 1.25%;

(f) *Moisture count.* The moisture shall not be more than 4.5%;

(g) *Scorched particle content.* Scorched particles shall not be more than 15 mg;

(h) *Solubility index.* The solubility index shall not be more than 1 ml;

(i) *Titrateable acidity.* The titrateable acidity shall not be more than 0.15%;

(j) *Dispersibility.* The dispersibility shall not be less than 85% by the Modified Moats-Dabbah Method;

(k) *Direct microscopic clump count.* The direct microscopic clump count shall not be more than 75 million per gram;

(9) *Cleaning of dryers, conveyors, sifters, and storage bins.* Each dryer, conveyor, sifter, and storage bin shall be cleaned as often as is necessary to maintain the equipment in a clean and sanitary condition. The kind of cleaning procedure either wet or dry and the frequency of cleaning shall be based upon observation of actual operating results and conditions;

(10) *Insect and rodent control program.* In addition to any commercial pest control service, if one is utilized, a specially designated employee shall be made responsible for the performance of an effective insect and rodent control program. The insect and rodent control program shall be considered effective only if evidence of insects and rodents is absent on inspection of plant premises and facilities;

E. Each person who holds a permit to manufacturer dairy products and who manufactures, processes, or packages butter and related products shall comply with the following requirements:

1. Rooms and compartments.

a. *Coolers and freezers.* The coolers and freezers shall be equipped with facilities for maintaining proper temperature and humidity conditions, consistent with good manufacturing practices for the applicable product, to protect the quality and condition of the products during storage or during tempering prior to further processing. Coolers and freezers shall be kept clean, orderly, free from insects, rodents, and mold, and maintained in good repair. They shall be adequately lighted and proper circulation of air shall be maintained at all times. The floors, walls, and ceilings shall be of such construction to permit thorough cleaning;

b. *Churn rooms.* Churn rooms in addition to proper construction and sanitation shall be so equipped that the air is kept free from odors and vapors and extreme temperatures by means of adequate ventilation and exhaust systems or air conditioning and heating facilities;

c. *Print and bulk packaging rooms.* Rooms used for packaging print or bulk butter and related products shall, in addition to proper construction and sanitation, provide an atmosphere relatively free from mold (no more than 10 mold colonies per cubic foot of air), dust, or other airborne contamination and be maintained at a reasonable room temperature;

d. Equipment and utensils.

(1) *General construction, repair, and installation.* All equipment and utensils necessary to the manufacture of butter and related products shall meet the general requirements specified in subdivision C 3 of this section. In addition, for certain other equipment, the [~~following~~] requirements [of subdivisions (2) through (8) of this subdivision 1 d] shall be met;

(2) *Continuous churn.* All product contact surfaces shall be of noncorrosive material. All nonmetallic product contact surfaces shall comply with 3-A Standards for Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment and 3-A Standards for Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment. All product contact surfaces shall be readily accessible for cleaning and inspection;

(3) *Conventional churn.* Churns shall be constructed of aluminum, stainless steel, or other equally corrosion-resistant metal, free from cracks, and in good repair. All gasket material shall be fat resistant, nontoxic, and reasonably durable. Seals around the doors shall be tight;

(4) *Bulk butter trucks, boats, and packers.* Bulk butter trucks, boats, and packers shall be constructed of aluminum, stainless steel or other equally corrosion resistant metal, free from cracks and seams and must have a surface that is relatively smooth and easily cleanable;

(5) *Butter, frozen or plastic cream melting machine.* Shavers, shredders, or melting machines used for rapid melting of butter, frozen or plastic cream shall be of stainless steel or other equally corrosion resistant metal, sanitary construction, and readily cleanable;

(6) *Printing equipment.* All printing equipment shall be designed to be readily de-mountable for cleaning of product contact surfaces. All product contact surfaces shall be aluminum, stainless steel, or other equally corrosion resistant metal, or plastic, rubber, and rubber like material which meet 3-A Sanitary Standards, except that conveyors may be constructed of material which can be cleaned and maintained in good repair;

(7) *Brine tanks.* Brine tanks used for the treating of parchment liners shall be constructed of noncorrosive material and have a safe and adequate means of heating the salt solution to a temperature sufficient to bring the salt solution to a boil and to maintain the boiling salt solution continuously thereafter for the treatment of the parchment liners. The brine tank shall be provided with a drainage outlet;

(8) Starter vats. Bulk starter vats shall be of stainless steel or equally corrosion-resistant metal and constructed according to applicable 3-A Sanitary Standards. The vats shall be in good repair, equipped with tight-fitting lids, and have effective temperature controls;

e. Operations and operating procedures.

(1) Pasteurization. The milk or cream shall be pasteurized at the plant where the milk or cream is processed into the finished product.

(2) Cream for butter making [∷]

(a) The cream for butter-making shall be pasteurized at a temperature of not less than 165°F and held continuously in a vat at such temperature for not less than 30 minutes; or pasteurized by the HTST method at a minimum temperature of not less than 185°F for not less than 15 seconds; or by any other equivalent time and temperature combination. Additional heat treatment above the minimum pasteurization requirement is advisable to ensure improved keeping-quality characteristics;

(b) Adequate pasteurization control shall be used and the diversion valve shall be set to divert at no less than 185°F with a 15 second holding time or its equivalent in time and temperature to assure pasteurization. If the vat or holding method of pasteurization is used, vat covers shall be closed prior to the holding period to ensure temperature of air space reaching the minimum temperature before holding time starts. Covers shall also be kept closed during the holding and cooling period;

(3) Cream for plastic or frozen cream. The pasteurization of cream for plastic or frozen cream shall be accomplished in the same manner as in [~~2-VAC-5-531-60-E-1 (e) (2) (a)~~ subdivision E 1 (e) (2) (a) of this section], except, that the temperature for the vat method shall be not less than 170°F for not less than 30 minutes, or pasteurized by the HTST method at a minimum temperature of not less than 190°F for not less than 15 seconds;

(4) Composition and wholesomeness. All ingredients used in the manufacture of butter and related products shall be subject to inspection and shall be wholesome and practically free from impurities. Chlorinating facilities shall be provided for butter wash water and all other necessary precautions shall be taken to prevent contamination of products. All finished products shall comply with the requirements of the Federal Food, Drug, and Cosmetic Act regarding their composition and wholesomeness;

(5) Containers. Containers used for the packaging of butter and related products shall be commercially acceptable containers or packaging material that will satisfactorily protect the quality of the contents in regular channels of trade. Caps or covers which extend over the lip of the container shall be used on all cups or tubs containing two pounds or less, to protect the

product from contamination during subsequent handling;

(6) Liners and wrappers.

(a) Supplies of parchment liners, wrappers, and other packaging material shall be protected against dust, mold, and other possible contamination;

(b) Prior to use, parchment liners for bulk butter packages shall be completely immersed in a boiling salt solution in a suitable container constructed of stainless steel or other equally noncorrosive material. The liners shall be maintained in the solution for not less than 30 minutes. The solution should consist of at least 15 pounds of salt for every 85 pounds of water and shall be strengthened or changed as frequently as necessary to keep the solution full strength and in good condition;

(c) Other liners such as polyethylene shall be treated or handled in such a manner to prevent contamination of the liner prior to filling;

(7) Filling bulk butter containers. The lined butter containers shall be protected from possible contamination prior to filling;

(8) Printing and packaging. Printing and packaging of consumer size containers of butter shall be conducted under sanitary conditions;

(9) General identification. Commercial bulk shipping containers shall be legibly marked with the name of the product, net weight, name and address of manufacturer, processor, or distributor or other assigned plant identification (manufacturer's lot number, churn number, etc.) and any other identification that may be required. Packages of plastic or frozen cream shall be marked with the percentage of milkfat;

(10) Storage of finished product in coolers. All products shall be kept under refrigeration at temperatures of 45°F or lower after packaging and until ready for distribution or shipment. The products shall not be placed directly on floors or exposed to foreign odors or conditions, such as drippage due to condensation, which might cause package or product damage;

(11) Storage of finished product in freezer [∷]

(a) Sharp freezers. Plastic cream or frozen cream intended for storage shall be placed in quick freezer rooms immediately after packaging for rapid and complete freezing within 24 hours. The packages shall be piled or spaced in such a manner that air can freely circulate between and around the packages. The rooms shall be maintained at -10°F or lower and shall be equipped to provide sufficient high-velocity air circulation for rapid freezing. After the products have been completely frozen, they may be transferred to a freezer storage room for continued storage;

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(b) Freezer storage. The room shall be maintained at a temperature of 0°F or lower. Adequate air circulation is desirable. Butter intended to be held for more than 30 days shall be placed in a freezer room within one hour after packaging. If not frozen, before being placed in the freezer, the packages shall be spaced in a manner to permit rapid freezing and re-piled, if necessary, at a later time [∴ .]

F. Each person who holds a permit to manufacture dairy products and manufactures or packages any cheese shall comply with the following requirements:

1. Rooms and compartments [∴ .]

a. Starter room. If starter cultures are propagated in the dairy plant separate and dedicated starter rooms or areas shall be provided that are properly equipped and maintained for the propagation and handling of starter cultures. All necessary precautions shall be taken to prevent contamination of the starter, room, equipment, and the air therein;

b. Make room. A separate room in which the cheese is manufactured shall be provided in each dairy plant that is of adequate size with the cheese vats adequately spaced to permit movement around the cheese vats and presses for proper cleaning and satisfactory working conditions. Ventilation sufficient to prevent condensation shall be provided;

c. Drying room. If cheese is to be paraffined, a separate drying room of adequate size shall be provided in the dairy plant to accommodate the maximum possible production of cheese on any given day for the specific dairy plant. Adequate shelving and air circulation shall be provided for proper drying. Suitable temperature and humidity control facilities shall be provided;

d. Paraffining room. For rind cheese, a separate room or compartment in the dairy plant shall be provided for paraffining and boxing the cheese. The room or compartment shall be of adequate size to accommodate the maximum possible amount of cheese needing to be paraffined on any given day for the specific dairy plant and the temperature of the paraffining room shall be maintained within 5.0°F, plus or minus of the temperature of the drying room to avoid sweating of the cheese prior to paraffining;

e. Rindless block wrapping area. For rindless blocks of cheese a separate room shall be provided in the dairy plant for wrapping and boxing of the cheese. The room shall be free from dust, condensation, mold, or other conditions which may contaminate the surface of the cheese or contribute to an unsatisfactory packaging of the cheese;

f. Coolers or curing rooms. Separate curing rooms or coolers shall be provided in each dairy plant where cheese is held for curing or storage. Each cooler and curing room shall be clean and maintained at the proper uniform temperature and humidity to adequately protect the cheese. Proper circulation of air shall be maintained

at all times. The rooms shall be free from rodents, insects, and pests. The shelves shall be kept clean and dry;

g. Cutting and packaging rooms. When packages of cheese are cut and wrapped, separate rooms shall be provided in the dairy plant: (i) for the cleaning and preparation of the bulk cheese; and (ii) for the cutting and wrapping operation. The rooms shall be well lighted, ventilated, and provided with filtered air. Air movement shall be outward to minimize the entrance of unfiltered air into the cutting and packaging room;

2. Equipment and utensils [∴ .]

a. General construction, repair, and installation. All equipment and utensils necessary to the manufacture of cheese and related products shall meet the same general requirements as outlined in [~~2-VAC-5-531-60-C-3~~ subdivision C 3 of this section]. In addition, for certain other equipment the [following] requirements [of subdivisions b through i of this subdivision 2] shall be met;

b. Starter vats. Bulk starter vats shall be of stainless steel or equally corrosion-resistant metal and shall be in good repair, equipped with tight-fitting lids and have adequate temperature controls such as valves and indicating or recording thermometers, or both. All starter vats shall be constructed according to the applicable 3-A Sanitary Standards;

c. Cheese vats [∴ .]

(1) The outer jacket of vats used for making cheese shall be of metal construction, smooth, corrosion-resistant, and easily cleanable with adequate jacket capacity for uniform heating. The inner liner shall be minimum 16-gage stainless steel or other equally corrosion-resistant metal, properly pitched from side to center and from rear to front for adequate drainage. The inner liner shall be smooth, free from excessive dents or creases and shall extend over the edge of the outer jacket. The outer jacket shall be constructed of stainless steel or other metal which can be kept clean and sanitary. The junction of the liner and outer jackets shall be constructed to prevent milk or cheese from entering the inner jacket.

(2) The vat shall be equipped with a sanitary outlet valve. Adjustable valves shall be provided and properly maintained to control the application of heat to the vat;

d. Mechanical agitators. The mechanical agitators shall be of sanitary construction. The carriage and track shall be constructed to prevent the dropping of dirt or grease into the vat. Metal blades, forks, or stirrers shall be constructed of stainless steel or of material approved in the 3-A Sanitary Standards for Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment or 3-A Sanitary Standards for Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment and shall be free from rough or sharp edges which might scratch the equipment or remove metal particles;

e. *Curd mill and miscellaneous equipment.* Knives, hand rakes, shovels, paddles, strainers, and miscellaneous equipment shall be stainless steel or of material approved in the 3-A Sanitary Standards for Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment or 3-A Sanitary Standards for Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment. The product contact surfaces of the curd mill shall be of stainless steel. All pieces of equipment shall be constructed so that they can be kept clean. The wires in the curd knives shall be stainless steel, kept tight, and kept in good repair;

f. *Hoops, forms, and followers.* The hoops, forms, and followers shall be constructed of stainless steel or heavy tinned steel. If tinned, they shall be kept tinned and free from rust. All hoops, forms, and followers shall be kept in good repair. Drums or other special forms used to press and store cheese shall be clean and sanitary;

g. *Press.* The cheese press shall be constructed of stainless steel and all joints welded and all surfaces, seams, and openings readily cleanable. The pressure device shall be the continuous type. Press cloths shall be maintained in good repair and in a sanitary condition. Single-service press cloths shall be used only once;

h. *Rindless cheese press.* The press used to heat seal the wrapper applied to rindless cheese shall have square interior corners, a reasonably smooth interior surface, and have controls that shall provide uniform pressure and heat to all surfaces;

i. *Paraffin tanks.* The metal tank shall be adequate in size, have wood rather than metal racks to support the cheese, have heat controls, and an indicating thermometer. The cheese wax shall be kept clean;

3. Operations and operating procedures [.]

a. Cheese from pasteurized milk [÷]

(1) If the cheese is labeled as pasteurized, the milk from which it is made shall be pasteurized by subjecting every particle of milk to a minimum temperature of 161°F for not less than 15 seconds in HTST Equipment or the milk shall be pasteurized by subjecting every particle of milk to a minimum temperature of 145°F for not less than 30 minutes in vat pasteurization equipment;

(2) HTST pasteurization units shall be equipped with the proper controls and equipment to assure pasteurization. If the milk is held for more than two hours between time of receipt or heat treatment and setting, it shall be cooled to 45°F or lower until time of setting;

(3) Cheese from unpasteurized milk. If the cheese is labeled as "heat treated," "unpasteurized," "raw milk," or "for manufacturing," the milk may be raw or heated at temperatures below pasteurization. If the milk is held for more than two hours between time of receipt or heat treatment and setting, it shall be cooled to 45°F or lower until time of setting;

(4) Whey disposal [÷]

(a) Adequate sanitary facilities shall be provided for the disposal of whey. If outside, necessary precautions shall be taken to minimize flies, insects, and development of objectionable odors;

(b) Whey or whey products intended for human food shall at all times be handled in a sanitary manner in accordance with the procedures of this chapter for handling of milk and dairy products;

(5) *Packaging and repackaging.* Packaging rindless cheese or cutting and repackaging all styles of bulk cheese shall be conducted under sanitary conditions. The atmosphere of the packaging rooms, the equipment, and the packaging material shall be practically free from mold and bacterial contamination;

(6) *General identification.* Each bulk cheese shall be legibly marked with the name of the product, code or date of manufacture, vat number, and officially designated code number or name and address of manufacturer. Each consumer sized container shall be plainly marked with the name and address of the manufacturer, packer, or distributor, net weight of the contents, name of product, and code or date of manufacture;

(7) Required records for the aging of cheese [÷]

(a) Adequate records shall be maintained for the aging of all cheese to demonstrate that each and every unit and lot of the cheese has been held at or above 35°F for a minimum of 60 days or for the number of days specified in the standards of identity for the particular variety of cheese;

(b) Each and every unit and lot of cheese shall be identified or coded in a way to allow the traceback of the cheese from the final consumer to the dairy processor and provide a direct means of determining the conditions under which it was aged;

(c) The following records shall be maintained to document the aging of each batch or lot or unit of cheese produced:

(i) The date and time each lot of cheese is produced;

(ii) The number and size or weight of each unit of cheese made from each lot;

(iii) The production code or identification assigned for each specific lot of cheese;

(iv) The date and time for each unit and lot of cheese that the aging process was started;

(v) The date and time for each unit and lot of cheese that the aging process was ended;

(vi) The signature of the person recording each entry in the records;

(vii) The aging temperature for each cheese;

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(viii) A daily log for each aging room or aging area which records the date, time, and actual temperature of the aging room or aging area a minimum of once each day;

(d) The absence of complete records documenting that the aging of any unit or lot of cheese was continuously in compliance with the time and temperature requirements for aging of the cheese shall deem the cheese to not have been properly aged;

(e) Any cheese which has not been properly aged shall be deemed a public health hazard and may not be offered for sale, sold, or provided to any person for human consumption [∴]

G. Each person who holds a permit to manufacture dairy products and manufactures, processes or packages pasteurized process cheese and related products shall comply with the following requirements:

1. Equipment and utensils [∴]

a. General construction, repair, and installation. The equipment and utensils used for the handling and processing of cheese products shall be as specified in [~~2-VAC 5-531-60 C-3~~ subdivision C 3 of this section]. In addition, for certain other equipment the [following] requirements [of subdivisions b through e of this subdivision 1] shall be met;

b. Conveyors. Conveyors shall be constructed of material which can be properly cleaned, will not rust, or otherwise contaminate the cheese and shall be maintained in good repair;

c. Grinders or shredders. The grinders or shredders used in the preparation of the trimmed and cleaned natural cheese for the cookers shall be adequate in size. Product contact surfaces shall be of corrosion resistant material and constructed to prevent contamination of the cheese and to allow thorough cleaning of all parts and product contact surfaces;

d. Cookers. The cookers shall be the steam jacketed or direct steam type. They shall be constructed of stainless steel or other equally corrosion-resistant material. All product contact surfaces shall be readily accessible for cleaning. Each cooker shall be equipped with an indicating thermometer and a temperature recording device. The recording thermometer stem may be placed in the cooker if satisfactory time charts are used; if satisfactory time charts are not used, the stem shall be placed in the hotwell or filler hopper. Steam check valves on direct steam type cookers shall be mounted flush with the cooker wall, constructed of stainless steel, and designed to prevent the backup of product into the steam line, or the steam line shall be constructed of stainless steel pipes and fittings which can be readily cleaned. If direct steam is applied to the product, only culinary steam shall be used;

e. Fillers. The hoppers of each filler shall be covered but the cover may have sight ports. If necessary, the hopper

may have an agitator to prevent buildup on side walls. The filler valves and head shall be kept in good repair and capable of accurate measurements;

2. Operations and operating procedures [∴]

a. Trimming and cleaning. The natural cheese shall be cleaned free of all nonedible portions. Paraffin and bandages, as well as, rind surface, mold, unclean areas, or any other part which is unwholesome or unappetizing shall be removed;

b. Cooking the batch. Each batch of cheese within the cooker, including the optional ingredients, shall be thoroughly commingled and the contents pasteurized at a temperature of at least 158°F and held at that temperature for not less than 30 seconds. All necessary precautions shall be taken to prevent the entrance of cheese particles or ingredients after the cooker batch of cheese has reached the final heating temperature. After holding the temperature for the required period of time, the hot cheese shall be emptied from the cooker as quickly as possible;

c. Forming containers. Containers either lined or unlined shall be assembled and stored in a sanitary manner to prevent contamination. The handling of containers by filler crews shall be done with extreme care and observance of personal cleanliness. Pre-forming and assembling of pouch liners and containers shall be kept to a minimum and the supply rotated to limit the length of time exposed to possible contamination prior to filling;

d. Filling containers. Hot fluid cheese from the cookers shall be held in hot wells or hoppers to assure a constant and even supply of processed cheese to the filler or slice former. Filler valves shall effectively measure the desired amount of product into the pouch or containers in a sanitary manner and shall cut off sharply without drip or drag of cheese across the opening. An effective system shall be used to maintain accurate and precise weight control. Damaged or unsatisfactory packages shall be removed from production, and the cheese may be salvaged into sanitary containers and added back to cookers, destroyed or sold as animal feed;

H. Each person who holds a permit to manufacturer dairy products and manufactures, processes, or packages evaporated, condensed, or sterilized dairy products shall comply with the following requirements:

1. Equipment and utensils [∴]

a. General construction, repair, and installation. The equipment and utensils used for processing and packaging evaporated, condensed, or sterilized dairy products shall be as specified in [~~2-VAC 5-531-60 C-3~~ subdivision C 3 of this section]. In addition, for certain other equipment, the [following] requirements [of subdivisions b through e of this subdivision 1] shall be met;

b. Evaporators and vacuum pans. All equipment used in the removal of moisture from milk or dairy products for the purpose of concentrating the solids shall meet the

requirements of 3-A Sanitary Standards for Milk and Milk Products Evaporators and Vacuum Pans. All new or used replacements for this type of equipment shall meet the appropriate 3-A Sanitary Standards;

c. *Fillers.* Both gravity and vacuum-type fillers shall be of sanitary design, and all product contact surfaces, if metal, shall be made of stainless steel or other equally corrosion-resistant material; except that certain evaporated milk fillers having brass parts may be approved if free from corroded surfaces and kept in good repair. Nonmetallic product contact surfaces shall meet the requirements for 3-A Sanitary Standards for Rubber and Rubberlike Materials or for 3-A Sanitary Standards for Multiple-Use Plastic Materials. Fillers shall be designed so that they will not contaminate or detract from the quality of the product being packaged;

d. *Batch or continuous in-container sterilizers.* Each batch or continuous in-container sterilizer shall be equipped with accurate temperature controls and effective valves for regulating the sterilization process. The equipment shall be maintained in such a manner to ensure control of the length of time of processing and to minimize the number of damaged containers;

e. *Homogenizers.* Homogenizers where applicable shall be used to reduce the size of the fat particles and to evenly disperse them in the product. Homogenizers shall meet all the applicable 3-A Sanitary Standards;

2. Operations and operating procedures [∴]

a. *Preheat, pasteurization.* When pasteurization is intended or required by either the vat method, HTST method, or by the Ultra High Temperature (UHT) method it shall be accomplished by systems and equipment meeting the requirements outlined in [~~2-VAC-5-531-60-C-3~~ subdivision C 3 of this section];

b. *Sterilization.* The complete destruction of all living organisms shall be performed in one of the following methods: (i) the complete in-container method, by heating the container and contents to a range of 212°F to 280°F for a sufficient time to sterilize the dairy product; (ii) by a continuous flow Ultra High Temperature Short Time (UHTST) process at temperatures of 280°F and above for a sufficient time to sterilize the dairy product, then packaged aseptically; or (iii) the product is first sterilized according to UHTST methods as in [~~subdivision (b)~~ clause 2 b (ii)] of this subsection, then packaged and given further heat treatment to complete the sterilization process;

3. Filling containers [∴]

a. *The filling of small containers with product shall be done in a sanitary manner. The containers shall not contaminate or detract from the quality of the product in any way. After filling, the container shall be hermetically sealed;*

b. *Bulk containers for unsterilized product shall be suitable and adequate to protect the product in storage or transit. The bulk container (including bulk tankers) shall*

be cleaned and sanitized before filling and filled and closed in a sanitary manner;

4. *Aseptic filling.* A previously sterilized dairy product shall be filled under conditions which prevent contamination of the product by living organisms or spores. The container, prior to being filled, shall be sterilized and maintained in a sterile condition. The container shall be sealed in a manner that prevents contamination of the product; and

5. *Storage.* Proper facilities shall be provided for the storage and handling of finished product.

[~~2-VAC-5-531-70.~~ 2 VAC 5-531-80.] Requirements for small-scale cheese plants.

A. Each person whose dairy plant qualifies as a small-scale cheese plant as defined in this regulation shall be exempt from complying with the provisions of:

1. [~~2-VAC-5-531-40-O~~ 2 VAC 5-531-50 O] to test all milk for residues of beta lactam drugs prior to processing;

2. [~~2-VAC-5-531-60-C-1-b~~ 2 VAC 5-531-70 C 1 b] to construct and maintain driveways and adjacent plant traffic areas with concrete, asphalt, or similar material to keep dust and mud to a minimum;

3. [~~2-VAC-5-531-60-C-2-n(3)~~ 2 VAC 5-531-70 C 2 n (3)] for a room to receive milk in cans separate from any room in which dairy products are processed if the person receives all their milk during times when no dairy products are being processed, handled, packaged, or exposed to contamination;

4. [~~2-VAC-5-531-60-C-2-n(8)-(a)~~ 2 VAC 5-531-70 C 2 n (8) (a)] to provide dressing room facilities;

5. [~~2-VAC-5-531-60-C-2-n(8)-(f)~~ 2 VAC 5-531-70 C 2 n (8) (f)] to provide each employee with a locker;

6. [~~2-VAC-5-531-60-C-2-n(9)~~ 2 VAC 5-531-70 C 2 n (9)] to provide and maintain an adequately equipped laboratory;

7. [~~2-VAC-5-531-60-C-2-n(10)~~ 2 VAC 5-531-70 C 2 n (10)] and [~~2-VAC-5-531-60-F-1-a~~ 2 VAC 5-531-70 F 1 a] to provide separate and adequate sanitary facilities for the handling of starter cultures if the person purchases all of the starter culture used;

8. [~~2-VAC-5-531-60-C-2-p~~ 2 VAC 5-531-70 C 2 p] to provide drinking water facilities in the plant;

9. [~~2-VAC-5-531-60-F-1-d~~ 2 VAC 5-531-70 F 1 d] to provide a separate paraffining room for cheese that is being paraffined if no other milk or cheese is being processed, handled, packaged, or exposed to contamination in the processing room at the same time the cheese is being paraffined;

10. [~~2-VAC-5-531-60-F-1-e~~ 2 VAC 5-531-70 F 1 e] to provide a separate rindless block wrapping area if no other milk or cheese is being processed, handled, packaged, or exposed to contamination in the processing room at the same time the cheese is being wrapped;

11. [~~2-VAC-5-531-60-F-1-f~~ 2 VAC 5-531-70 F 1 f] to provide separate cooling or curing rooms if all cheese is cooled or

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cured in operating refrigerators with tightly closing doors or other suitable equipment for maintaining the appropriate temperature and humidity;

12. [~~2 VAC 5-531-60 F 1 g~~ 2 VAC 5-531-70 F 1 g] to provide separate rooms for the cleaning and preparation of bulk cheese from rooms used for cutting and wrapping of cheese if no other milk or cheese is being processed, handled, or exposed to contamination in the processing room at the same time the cheese is being cleaned or wrapped;

13. [~~2 VAC 5-531-60 F 2 f~~ 2 VAC 5-531-70 F 2 f] to provide hoops and followers constructed of stainless steel or heavy tinned steel. Hoops and followers may be constructed of food grade plastic; and

14. [~~2 VAC 5-531-60 F 2 g~~ 2 VAC 5-531-70 F 2 g] to provide and use only a cheese press constructed of stainless steel. The cheese press may be constructed of food grade plastic if kept in good condition;

B. Each person whose dairy plant qualifies as a small-scale cheese plant shall comply with the following provisions:

1. Maintain driveways and adjacent plant traffic areas with gravel or other suitable material to keep dust and mud to a minimum;

2. If separate rooms are not provided for receiving milk, paraffining cheese, wrapping cheese, or cleaning and preparing cheese, the processing room shall be thoroughly cleaned and all product contact surfaces sanitized after the completion of each of these processes and prior to proceeding to any other step in the processing, handling, or packaging of any milk or dairy product;

3. Ensure that each person processing, handling, or packaging any cheese, milk, or dairy products, or in the processing area of his dairy plant is wearing clean outer garments, shoes, and hair covering prior to entering the processing area; and

4. Ensure that no person who has been milking cows, goats, sheep, water buffalo, or other mammals may enter the processing area of a dairy plant before changing to clean clothes.

[~~2 VAC 5-531-80.~~ 2 VAC 5-531-90.] Animal health.

[~~A.~~] No person may produce, provide, manufacture, sell, offer for sale, store in the Commonwealth of Virginia, or, bring, send, or receive into the Commonwealth of Virginia any milk for manufacturing purposes unless the person complies with the following requirements:

1. Milk for manufacturing purposes shall be from animals that are maintained in a healthy condition and which are properly fed and kept;

2. Cow, goat, bison, and water buffalo milk for manufacturing purposes and all cows, goats, bison, or water buffalo added to each herd the milk from which is intended to be used for manufacturing purposes shall be from a herd that complies with the Uniform Methods and Rules; Bovine Tuberculosis Eradication-effective January 22, 1999, 9 CFR

Part 77, and each herd shall be located in a Modified Accredited Tuberculosis Area or an Area Accredited Free of Bovine Tuberculosis as defined in Uniform Methods and Rules; Tuberculosis Eradication-effective January 22, 1999, and certified by the U.S. Department of Agriculture or shall have passed an annual tuberculosis test;

3. Sheep milk and the milk from other mammals for manufacturing purposes shall be from a flock or group of animals that have all been individually tested and have passed an annual tuberculosis test [-;]

4. Cow, bison, and water buffalo milk for manufacturing purposes and each cow, bison, or water buffalo added to each herd the milk from which is intended to be used for manufacturing purposes shall be from a herd that complies with Uniform Methods and Rules; Brucellosis Eradication-effective February 1, 1998, 9 CFR Part 78; and the following:

a. Each herd shall be located in a Certified Brucellosis-Free Area or a Modified Certified Brucellosis Area as defined in Uniform Methods and Rules; Brucellosis Eradication-effective February 1, 1998, and certified by the United States Department of Agriculture and enrolled in a testing program for the Certified Brucellosis-Free Area or the Modified Certified Brucellosis Area; or

b. Each herd shall meet the requirements for an individually certified herd as defined in Uniform Methods and Rules; Brucellosis Eradication-effective February 1, 1998; or

c. Each herd shall participate in a milk ring testing program meeting the requirements specified in Uniform Methods and Rules; Brucellosis Eradication-effective February 1, 1998, in a state that conducts a milk ring testing program at least twice per year at approximately equal intervals, and any herd with a positive milk ring test result shall be blood tested within 30 days after the date of the positive milk ring test; or

d. Each cow, bison, and water buffalo in the herd shall be individually tested by an "official" blood test as defined in Uniform Methods and Rules; Brucellosis Eradication for the detection of brucellosis annually;

5. Goat's milk, sheep's milk, and the milk from other mammals for manufacturing purposes shall:

a. Be from a herd or flock which has passed an annual whole-herd or whole-flock brucellosis test; or

b. Be from a herd or flock that participates in a milk ring testing program meeting the requirements specified by the United States Department of Agriculture for goats, sheep, or the milk from other mammals in a state that conducts a milk ring testing program at least two times per year at approximately equal intervals, and any herd or flock with a positive milk ring test result shall be blood tested within 30 days after the date of the positive milk ring tests; and

6. For diseases of cows, sheep, goats, bison, water buffalo, or other mammals which might affect human health, other than brucellosis and tuberculosis, the Virginia Department

of Agriculture and Consumer Services may require physical, chemical, or bacteriological examinations or other tests as may be deemed necessary by a licensed veterinarian or a veterinarian employed by the Virginia Department of Agriculture and Consumer Services to diagnose the disease. Each permit holder shall dispose of any diseased animals disclosed by testing in a manner which prevents the spread of the disease to other animals or humans.

[~~2 VAC 5-531-90.~~ 2 VAC 5-531-100.] Construction plans for dairy farms and dairy plants.

No permit holder may construct, reconstruct, or modify a milkhouse, milking barn, stable, parlor, transfer station, receiving station, or dairy plant regulated under this chapter without submitting to the Virginia Department of Agriculture and Consumer Services written plans for review and approval before construction work is begun.

[~~2 VAC 5-531-100.~~ 2 VAC 5-531-110.] Dairy products which may be sold.

From and after [~~the effective date of this regulation~~ January 26, 2005,] no person may produce, provide, manufacture, sell, offer for sale, expose for sale, or store in the Commonwealth of Virginia, or bring, send, or receive into the Commonwealth of Virginia any manufactured dairy product in final package form for direct human consumption unless (i) the product has been pasteurized in accordance with the requirements of this chapter; (ii) the product is made from dairy ingredients (milk, milk products, or dairy products) that have all been pasteurized in accordance with the requirements of this chapter; or (iii) in the case of cheese, the cheese complies with a standard of identity under 21 CFR Part 133 that allows for the cheese to be aged above 35°F for a minimum of 60 days or the minimum number of days specified under the standard of identity for that variety of cheese.

[~~2 VAC 5-531-110.~~ 2 VAC 5-531-120.] Personnel health.

A. No person affected with any disease in a communicable form, or while a carrier of a communicable disease, may work at any dairy farm or dairy plant in any capacity which brings the person into contact with the production, handling, storage, or transportation of milk or dairy products or into contact with milk or dairy product containers, equipment, or utensils.

B. No person holding a permit may employ any person having, or suspected of having, any disease in a communicable form or being a carrier of a communicable disease.

C. Each permit holder who produces or distributes milk or dairy products upon whose dairy farm or in whose dairy plant any communicable disease occurs or who suspects that any employee has contracted any disease in a communicable form or has become a carrier of a communicable disease shall notify the Virginia Department of Agriculture and Consumer Services within two hours after the time they had knowledge of the situation.

[~~2 VAC 5-531-120.~~ 2 VAC 5-531-130.] Procedure when infection is suspected.

When reasonable cause exists to suspect the possibility of transmission of infection of a communicable disease from any

person concerned with the handling of milk or dairy products to any other person, the person concerned with the handling of milk or dairy products and the person holding the permit shall comply with the following measures:

1. The immediate exclusion of the person suspected of having a communicable disease or being a carrier of a communicable disease from handling any milk or dairy product;
2. No permit holder may sell or offer for sale any milk or dairy products that have been handled by or exposed to a person who is suspected of having a communicable disease or being a carrier of a communicable disease; and
3. Each person who is suspected of having a communicable disease or being a carrier of a communicable disease and his associates, at the discretion of the Virginia Department of Agriculture and Consumer Services, shall submit to medical and bacteriological examination by a licensed physician in the Commonwealth of Virginia sufficient to make a medical diagnosis.

[~~2 VAC 5-531-130.~~ 2 VAC 5-531-140.] Interpretation and enforcement.

A. This chapter is based on the USDA Milk for Manufacturing Purposes and its Production and Processing-Recommended Requirements, effective November 12, 1996. Except as otherwise provided in this chapter, the provisions of this chapter shall be interpreted in a manner consistent with interpretations accorded the USDA Milk for Manufacturing Purposes and its Production and Processing-Recommended Requirements, effective November 12, 1996.

B. The administrative procedures used to conduct case decisions under this chapter shall conform to the provisions of the Virginia Administrative Process Act.

C. The Virginia Department of Agriculture and Consumer Services shall comply with the following administrative procedures when summarily suspending a permit as specified in [~~2 VAC 5-531-40-D~~ 2 VAC 5-531-50 D]:

1. The Virginia Department of Agriculture and Consumer Services shall serve upon the permit holder a written notice of suspension. The written notice of suspension shall specify the violations in question and inform the permit holder of the right to appear before the Virginia Department of Agriculture and Consumer Services in person, by counsel, or by other qualified representative at a fact-finding conference for the informal presentation of factual data, arguments, and proof to appeal this determination of violation;

2. Upon receipt of written application from any person whose permit has been summarily suspended (within 30 days after the effective date of the summary suspension), the Virginia Department of Agriculture and Consumer Services shall within seven days after the date of receipt of a written application from any person whose permit has been summarily suspended, proceed to hold an informal fact-finding conference to ascertain the facts of the violations in question, and upon evidence presented at the

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informal fact-finding conference, shall affirm, modify, or rescind the summary suspension;

3. The Virginia Department of Agriculture and Consumer Services shall, unless the parties consent, ascertain the fact basis for their decisions of cases through informal-conference proceedings. Such conference proceedings include the rights of parties to the case to have reasonable notice thereof, to appear in person or by counsel or other qualified representative before the Virginia Department of Agriculture and Consumer Services for the informal presentation of factual data, argument, or proof in connection with any case, to have notice of any contrary fact basis or information in the possession of the department which can be relied upon in making an adverse decision, to receive a prompt decision of any application for license, benefit, or renewal thereof, and to be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case;

4. No person whose permit has been summarily suspended may be granted an informal fact-finding conference by the Virginia Department of Agriculture and Consumer Services unless the Virginia Department of Agriculture and Consumer Services receives the person's written application within 30 days after the effective date of the summary suspension;

5. From any adverse decision of an informal fact-finding conference, the permit holder may request a formal hearing under § 2.2-4020 of the Code of Virginia by writing the Program Manager of the Office of Dairy and Foods within 30 days stating the request and providing the Virginia Department of Agriculture and Consumer Services with a statement of the issues in dispute. If the request for a formal conference is denied, the Virginia Department of Agriculture and Consumer Services shall notify the permit holder in writing and further may affirm or modify the decision of the informal fact-finding conference; and

6. If a formal fact-finding conference is denied, the Virginia Department of Agriculture and Consumer Services shall notify the permit holder of the right to file an appeal in the circuit court.

DOCUMENTS INCORPORATED BY REFERENCE

Official Methods of Analysis of AOAC International, 17th Edition, Revision 1 (2002), Association of Analytical Chemists International.

3-A Sanitary Standards, 3-A Accepted Practices & E-3-A Sanitary Standards, effective as of November 20, 2001, International Association of Food Protection.

Standard Methods for the Examination of Dairy Products, 16th Edition, 1992, American Public Health Association.

Evaluation of Milk Laboratories, 1995 Revision, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.

Beta lactam Test Methods for Use Under Appendix N and Section 6 of the Pasteurized Milk Ordinance (PMO), M-a-85 (Revision #9), December 21, 2001, Food and Drug Administration.

Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Trace Back, M-I-96-10 (Revision #4), December 21, 2001, Food and Drug Administration.

IMS List - Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers, July 1, 2002, Food and Drug Administration.

Bovine Tuberculosis Eradication - Uniform Methods and Rules, Effective January 22, 1999, U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

Brucellosis Eradication - Uniform Methods and Rules, Effective February 1, 1998, U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

VA.R. Doc. No. R01-64; Filed November 30, 2004, 1:41 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-25. Pertaining to Pound Net Siting Public Interest Review (adding 4 VAC 20-25-10 through 4 VAC 20-25-40).

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

Effective Date: December 1, 2004.

Agency Contact: Deborah Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

This regulation establishes the procedures associated with a public interest review of the licensing of pound nets at new locations.

CHAPTER 25.

PERTAINING TO POUND NET SITING PUBLIC INTEREST REVIEW.

4 VAC 20-25-10. Purpose.

The purpose of this chapter is to set forth the procedures for public notice and review of applications to establish a pound net at a new location.

4 VAC 20-25-20. Content and publication of public notice.

A. The owner of any pound net making application to the commission to license that pound net at a new location shall

advertise in the form of a public notice the proposed new location of the pound net and the applicant's name and address. The proposed location of the pound net shall be described in terms of its latitude and longitude and its position relative to the shoreline and landward properties, with reference to the nearest onshore locality.

B. The public notice shall be approved by the commissioner or his designee and shall be advertised in a newspaper of general circulation in the area where the pound net is proposed. The applicant shall assume the cost of publication of the public notice.

C. It shall be the responsibility of the owner of any pound net making application to the commission to license that pound net at a new location to provide the commission with names and addresses of all land owners and residents within 500 feet of the most shoreward end of the proposed, new pound net location. Upon receipt of this information, the commission shall place a copy of the public notice on the agency's website and shall inform in writing all land owners and residents within 500 feet of the proposed, new pound net location of the public notice.

4 VAC 20-25-30. Public comment and commission review.

A. A public comment period shall extend for 30 days from the date of advertisement of the public notice. During the comment period any interested citizen may offer written comment to the commission.

B. The receipt by the commissioner of any protest during the public comment period shall cause the application for a new pound net location to be placed on the next available agenda of the commission for public hearing and review by the commission.

C. In considering the licensing of a pound net at a new location, the commission shall be guided in its deliberation by the provisions of Article XI, Section 1 of the Constitution of Virginia and the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-10 of the Code of Virginia. The commission shall also consider the effects of placement of the pound net at the new location on the following:

1. Other reasonable and permissible uses of the state waters;
2. Marine and fishery resources of the Commonwealth;
3. Tidal wetlands;
4. Adjacent or nearby properties;
5. Water quality; and
6. Submerged aquatic vegetation.

D. Following the public hearing, the commission may issue the pound net license for the new location, deny the license, or issue a license for a modified location.

4 VAC 20-25-40. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provisions of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation

of any provision of this chapter committed by the same person within 12 months of a prior violation is guilty of a Class 1 misdemeanor.

VA.R. Doc. No. R05-88; Filed December 1, 2004, 11:24 a.m.

Title of Regulation: 4 VAC 20-650. Establishment of Oyster Management Areas (amending 4 VAC 20-650-20).

Statutory Authority: §§ 28.2-201 and 28.2-507 of the Code of Virginia.

Effective Date: December 1, 2004.

Agency Contact: K.V. Leonard, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2120, FAX (757) 247-2002.

Summary:

The amendment changes the eastern, downriver boundary line for the Wreck Shoal-James River Bridge Management Area.

4 VAC 20-650-20. Oyster replenishment management areas.

A. The following Oyster Management Area is established: the Wreck Shoals--James River Bridge Oyster Management Area shall consist of all public oyster grounds located from Wreck Shoals to the James River Bridge in the James River ; thence to a downriver line drawn from the south side of the river at Rainbow Farm Point to the channel buoy green #5; and thence to Blunt Point on the north side of the river. The upriver boundary for the Oyster Management Area shall be from Jail Point southwest to the southernmost corner of the Jail Island clean cull area then westerly to Channel Buoy 16 then southeasterly to the Channel Buoy 12, then southerly to Mogarts Beach. ~~The downriver boundary shall be the James River Bridge.~~

B. Constructed oyster reefs include all reefs constructed and marked by "no harvesting" signs provided by the Conservation and Replenishment Department.

VA.R. Doc. No. R05-86; Filed November 29, 2004, 11:06 a.m.

Title of Regulation: 4 VAC 20-720. Pertaining to Restrictions on Oyster Harvest (amending 4 VAC 20-720-20, 4 VAC 20-720-40 through 4 VAC 20-720-90; adding 4 VAC 20-720-75).

Statutory Authority: §§ 28.2-201, 28.2-507 and 28.2-518 of the Code of Virginia.

Effective Date: December 1, 2004.

Agency Contact: K.V. Leonard, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2120, or FAX (757) 247-2002.

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Summary:

The amendments establish additional open harvest areas for the 2004-2005 public oyster harvest season.

4 VAC 20-720-20. Definitions.

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

"Blackberry Hangs Hand Scrape Area" means the area in Public Ground No. 118 in the Upper Chesapeake Bay, south from the Smith Point Light to the Great Wicomico Light.

"Deep Rock Patent Tong Area" means the area described as follows: starting at Cherry Point, Gwynns Island, thence northeast to G"1P" along the south side of the channel to Piankatank River; thence east-southeast to G"1R"; thence southwest to Sandy Point, Gwynns Island, North of Hole-in-the-Wall (see map).

"Deep Water Shoal State Replenishment Seed Area (DWS)" in the James River (574.66 Acres) means the areas beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, north 302,280.00, east 2,542,360.00; thence north azimuth 30°49'59", 4,506.99 feet to Corner 2, north 306,150.00, east 2,544,670.00; thence north azimuth 135°08'57", 5,430.60 feet to Corner 3, north 302,300.00, east 2,548,500.00; thence north azimuth 212°13'54", 3,487.42 feet to Corner 4, north 299,350.00, east 2,546,640.00; thence north azimuth 269°10'16", 2,765.29 feet to Corner 5, north 299,310.00, east 2,543,875.00; thence north azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning.

"Great Wicomico River Hand Scrape Area" means that area of a line drawn from Sandy Point to Cockrell Point.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"James River Hand Scrape Area" means that area of the James River west of the Monitor and Merrimac Bridge Tunnel to the James River Bridge (Route 17).

"Pocomoke and Tangier Sounds Management Area (PTSMA)" means the area as defined in § 28.2-524 of the Code of Virginia.

"Pocomoke Sound" means that area northeast from a line from Beach Island Light to the house on the Great Fox Island.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia, all ground set aside as public oyster ground by court order, and all ground set aside as public oyster ground by order of the Marine Resources Commission.

"Rappahannock River Drumming Ground Hand Scrape Area" means that portion of the Rappahannock and Corrotoman River, west of the Route 3 bridge (Norris Bridge), and north of a line from the center of the Route 3 bridge (Norris Bridge)

following westward along the channel to Towles Point at Buoy "R6," excluding the Corrotoman River north of a line from Balls Point to Corrotoman Point. (See map.)

"Rappahannock River Hand Scrape Area" means that area including all public grounds between a line extending from the eastern-most point of Long Point thence in an easterly direction to flashing red buoy #8; thence due east to Rogue Point, upriver to a line extending from Tarpley Point; thence in a southwesterly direction to flashing green buoy #13; thence south-southwesterly to Jones Point. (See map.)

"Rappahannock River Temples Bay Hand Scrape Area" means that area in the Rappahannock River, west of the Route 3 bridge (Norris Bridge) and south of a line drawn from the center of the Route 3 bridge (Norris Bridge) upriver to Towles Point continuing the line upriver to red buoy #8; thence across to the southside of the river to Long Point, thence back to the Route 3 bridge (Norris Bridge) along the southern shoreline. (See map.)

"Standard oyster dredge" means any device or instrument having a maximum weight of 150 pounds with attachments, maximum width of 50 inches, maximum tooth length of four inches, and minimum teeth spacing of three inches.

"Tangier Sound" means that area from Tangier Light North to the Maryland-Virginia line (red buoy #6).

"Tangier Sound Hand Tong Area" means that area in the PTSMA south and west of a line from Fishbone Island thence southeast to bell buoy #5, thence south southwest to buoy #3 (such area to include all of Public Ground 3 and Flat Rock) and shall be a hand tong area only (see map) and Cod Harbor (approximately 1,124 acres) beginning at a point of East Point Marsh, said point having the Virginia state coordinates, south section, coordinates of north 555,414.89, east 2,730,388.85; thence south 79°59', east 2,260 feet to a line designating the western extent of the PTSMA as described in § 28.2-524 of the Code of Virginia; thence south 10°16', west 2,800 feet; thence south 28°46', west 8,500 feet to a point on Sand Spit, position north 545,131.78, east, 2,728,014.94; thence along the mean low water line of Cod Harbor in a west, north and northeast direction crossing Canton Creek and Mailboat Harbor from headland to headland to the point of beginning. (See map.)

"Thomas Rock Hand Scrape Area" means an area in the James River with an eastern boundary being the James River, Route 17 bridge and a western boundary being a line drawn from the south side of the river at Rainbow Farm Point; thence to the channel buoy green #5; and thence to Blunt Point on the north side of the river.

"Unassigned ground" means all grounds other than public oyster ground as defined by this chapter and which have not been set aside or assigned by lease, permit, or easement by the Marine Resources Commission.

"York River Hand Scrape Area" means an area above the Route 17 or Coleman Bridge in Public Ground No. 30, along the north side of the river, to just above Aberdeen Creek.

4 VAC 20-720-40. Open season and areas.

The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area and James River Jail Island and Point of Shoals Clean Cull Areas: October 1, 2004, through April 30, 2005. ~~By hand tong only.~~
2. Seaside of Eastern Shore: for clean cull oysters only, November 1, 2004, through January 31, 2005. ~~By hand only.~~
3. The Rappahannock River Hand Scrape Area; the Rappahannock River Drumming Ground Hand Scrape Area; the Rappahannock River Temples Bay Hand Scrape Area: October 15, 2004, through January 15, 2005.
4. That area of the Rappahannock River, west of the line drawn from Tarpley Point to green buoy #13 to Jones Point and the area of the Corrotoman River, north of the line drawn from Balls Point to Corrotoman Point; that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line (PRV6A to PRV6B; and PRV5A to PRV5C, respectively); that area of the Coan River to the Virginia-Maryland state line (PRV1A to PRV1B), except for that area above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur); that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113; that area of the Piankatank River, west of the Route 3 bridge; and Little Wicomico River: October 15, 2004, through January 15, 2005. ~~By hand tong only.~~
5. The following areas of the PTSMA in Tangier Sound, from Tangier Light north to the Maryland-Virginia Line (red buoy #6) and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island, excluding the Tangier Sound Hand Tong Areas: December 1, 2004, through February 28, 2005. ~~By dredge only.~~
6. Great Wicomico River Hand Scrape Area and James River Hand Scrape Area: February 1, 2005, through March 31, 2005. ~~By hand scrape only.~~
7. *Thomas Rock Hand Scrape Area; Upper Chesapeake Bay, Blackberry Hangs Hand Scrape Area and in the York River Hand Scrape Area: December 1, 2004, through January 31, 2005.*
8. *Lower Chesapeake Bay, Deep Rock Patent Tong Area: February 1, 2005, through March 31, 2005.*

4 VAC 20-720-50. Closed harvest season and areas.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, except ~~the following those areas listed in 4 VAC 20-720-40, are closed: that area of the Rappahannock River west of the line drawn from Tarpley Point to green buoy #13 to Jones Point; the area of the~~

~~Corrotoman River north of the line drawn from Balls Point to Corrotoman Point; the Rappahannock River Hand Scrape Area; the Drumming Ground Hand Scrape Area; the Temples Bay Hand Scrape Area; that area of the Piankatank River west of the Route 3 bridge; that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line; that area of the Coan River to the Virginia-Maryland state line, except for above a line from Walnut Point to Stephens Point; that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113; the Little Wicomico River; the PTSMA in Tangier Sound, from Tangier Light north to the Maryland-Virginia Line; the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island; the James River Seed Area; the James River Jail Island and Point of Shoals Clean Cull Areas; the Seaside of Eastern Shore; the Great Wicomico River Hand Scrape Area; and the James River Hand Scrape Area: October 1, 2004, through September 30, 2005.~~

2. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, and the James River Jail Island and Point of Shoals Clean Cull Areas: May 1, 2005, through September 30, 2005.
3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1, 2004, through October 31, 2004, and February 1, 2005, through September 30, 2005; and for seed oysters, all year. Oyster harvest from leased oyster ground and fee simple oyster ground shall require a permit from the Marine Resources Commission as set forth in 4 VAC 20-720-90.
4. That area of the Rappahannock River west of the line drawn from Tarpley Point to green buoy #13 to Jones Point; the area of the Corrotoman River, north of the line drawn from Balls Point to Corrotoman Point; the Rappahannock River Hand Scrape; the Rappahannock River Drumming Ground Hand Scrape Area; the Rappahannock River Temples Bay Hand Scrape Area; that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line; that area of the Coan River to the Virginia-Maryland state line, except for above a line from Walnut Point to Stephens Point; that area of the Piankatank River west of the Route 3 bridge; and that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113; and Little Wicomico River: October 1, 2004, through October 14, 2004, and January 16, 2005, through September 30, 2005.
5. The following areas of the PTSMA: in Tangier, from Tangier Light north to the Maryland-Virginia line, and in the area of the PTSMA in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island: October 1, 2004, through November 30, 2004, and March 1, 2005, through September 30, 2005.

6. Great Wicomico River Hand Scrape Area and the James River Hand Scrape Area: October 1, 2004, through January 31, 2005, and April 1, 2005, through September 30, 2005.

7. *The Thomas Rock Hand Scrape Area; Upper Chesapeake Bay, Blackberry Hangs Hand Scrape Area and the York River Hand Scrape Area: October 1, 2004, through*

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November 30, 2004, and February 1, 2005, through September 30, 2005.

8. Lower Chesapeake Bay, Deep Rock Patent Tong Area: October 1, 2004, through January 31, 2005, and April 1, 2005, through September 30, 2005.

4 VAC 20-720-60. Day and time limit.

A. It shall be unlawful to take, catch or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest. The presence of any gear normally associated with the harvesting of oysters on board the boat or other vehicle used during any harvesting under this exception shall be prima facie evidence of violation of this chapter.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in subdivisions 1; and 3 through 6 of 4 VAC 20-720-40.

~~C. The Commissioner of Marine Resources hereby is authorized to issue licenses to applicants to dredge for oysters where permitted on public oyster grounds by the Code of Virginia and Marine Resources Commission regulation or order, provided the applicant is eligible under all applicable laws and regulations, and further provided that such license shall be granted only upon the condition that the boat not leave the dock until one hour before sunrise and be back at dock before sunset or return to the dock after sunset.~~

~~D. The Commissioner of Marine Resources hereby is authorized to issue licenses to applicants to hand scrape, as described in 4 VAC 20-720-20, for oysters where permitted on public oyster grounds by the Code of Virginia and Marine Resources Commission regulation or order, provided the applicant is eligible under all applicable laws and regulations, and further provided that such license shall be granted only upon the condition that the boat not leave the dock until one-half hour before sunrise and be back at dock before sunset or return to the dock after sunset.~~

4 VAC 20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Areas, including the Deep Water Shoal State Replenishment Seed Area; the James River Point Jail Island and Point of Shoals Clean Cull Areas; areas in the Rappahannock River, west of the line drawn from Tarpley Point to green buoy #13 to Jones Point; the area of the Corrotoman River, north of the line drawn from Balls Point to Corrotoman Point; that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line (PRV6A to PRV6B and PRV5A to PRV5C, respectively); that area of the Coan River to the Virginia-Maryland state line (PRV1A to PRV1B), except for that area above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur); that area of the Yeocomico River inside public

grounds 102, 104, 107, 112 and 113; that area of the Piankatank River, west of the Route 3 bridge; and Little Wicomico River, except by hand or ordinary tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

~~B. It shall be unlawful for any person to harvest shellfish with a dredge from the public oyster grounds who has not first obtained a current gear license to use said dredge, and only at times and in areas as established by the commission can this dredge be used for harvesting on public oyster grounds. In order to be allowed to operate a dredge for harvesting oysters from any public oyster grounds, a harvester must have a current dredge gear license and the cost of this license shall be \$50. It shall be unlawful to harvest oysters from the seaside of the Eastern Shore, except by hand.~~

~~C. It shall be unlawful for any person to harvest shellfish from the Rappahannock River Hand Scrape Area; Drumming Ground Hand Scrape Area; Great Wicomico River Hand Scrape Area; James River Hand Scrape Area; and Temples Bay Hand Scrape Area without first obtaining a valid hand scrape license at a cost of \$50. It shall be unlawful to harvest oysters from the hand scrape areas in the Rappahannock River; James River, Great Wicomico River, Upper Chesapeake Bay, and York River, except by hand scrape.~~

~~D. It shall be unlawful for any person to harvest shellfish with a hand scrape from any public oyster grounds without first obtaining a valid hand scrape license and in accordance with times and areas established by the commission.~~

~~E. D. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape.~~

~~F. E. Harvesting with a standard oyster dredge shall be allowed in the PTSMA in Tangier Sound from Tangier Light north to the Maryland-Virginia line, and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island, except for the designated hand tong areas. Only a standard oyster dredge (maximum weight 150 pounds with attachment, maximum width of 50 inches, maximum tooth length of four inches, minimum teeth spacing of three inches) may be used. It shall be unlawful to harvest oysters from the PTSMA area except by a standard oyster dredge.~~

~~F. Harvesting with an oyster patent tong shall be allowed in the Deep Rock Patent Tong Area in the Lower Chesapeake Bay. It shall be unlawful to harvest oysters from the Lower Chesapeake Bay except by patent tongs.~~

4 VAC 20-720-75. Gear license fees.

A. It shall be unlawful for any person to harvest shellfish from the hand scrape areas in the Rappahannock River, James River, Great Wicomico River, Upper Chesapeake Bay, and York River who has not first obtained a current hand scrape license at a cost of \$50.

B. It shall be unlawful for any person to harvest shellfish with a dredge from the public oyster grounds in the PTSMA who has not first obtained a current dredge license at a cost of \$50.

4 VAC 20-720-80. Quotas and harvest limits.

A. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, there shall be an oyster harvest quota of 80,000 bushels of seed oysters. It shall be unlawful for any person to harvest seed oysters from the James River Seed Area after the 80,000 bushel quota has been reached. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, and Clean Cull Areas there shall be an oyster harvest quota of 15,000 bushels of market oysters. It shall be unlawful for any person to harvest market oysters from the James River Seed and Clean Cull Areas after the 15,000 bushel quota has been reached.

B. The lawful daily limit of clean cull oysters harvested from the areas as described in subdivisions 3, 4, and 6 *through 8* of 4 VAC 20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by eight bushels. It shall be unlawful to possess on board any vessel or to land more than the daily limit of clean cull oysters.

C. In the PTSMA in Tangier Sound, from Tangier Light north to the Maryland-Virginia line, and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island, where harvesting is allowed by dredge, there shall be a harvest limit of eight per registered commercial fisherman licensee on board the vessel, not to exceed 16 bushels per day, per vessel. It shall be unlawful to possess on board any vessel more than 16 bushels per day or a registered commercial fisherman licensee to possess more than eight bushels per day. No blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

D. Harvesters who export the oysters to an out-of-state market or do not sell the oysters to a licensed and Department of Health certified Virginia buyer but sell the oysters directly to the public for human consumption shall report oysters harvested on a daily basis and pay oyster taxes weekly.

4 VAC 20-720-90. Harvest permit required; the James River Hand Scrape Area; Thomas Rock Hand Scrape Area; and Seaside of Eastern Shore.

A. It shall be unlawful for any person to harvest, or attempt to harvest, oysters from leased oyster ground, fee simple ground, or aquacultural operations on the Seaside of Eastern Shore without first obtaining a harvest permit from the Marine Resources Commission.

B. Applicants for the harvest permit shall have paid all rent fees and shall specify the location of the lease or fee simple ground to be harvested and shall verify that the ground is marked properly as specified by 4 VAC 20-290.

C. Applicants for the permit to harvest from aquacultural operations shall have these operations verified by the Marine Resources Commission and with this aquaculture harvest

permit shall be exempt from all other fisheries regulations pertaining to harvesting and handling of wild oyster stocks.

D. No person shall hold more than four permits at any time.

E. The aquaculture harvest permit does not eliminate or exempt the aquacultural operation from all applicable Division of Shellfish Sanitation regulations pertaining to the harvest and marketing of shellfish.

F. A permit is required for the James River Hand Scrape Area *and the Thomas Rock Hand Scrape Area*. It shall be unlawful for any person to harvest, or attempt to harvest, oysters from the James River Hand Scrape Area *and the Thomas Rock Hand Scrape Area* without first obtaining a harvest permit from the Marine Resources Commission as required by § 28.2-518 of the Code of Virginia.

VA.R. Doc. No. R05-87; Filed November 29, 2004, 11:05 a.m.

Title of Regulation: **4 VAC 20-910. Pertaining to Scup (Porgy) (amending 4 VAC 20-910-45).**

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

Effective Date: December 1, 2004.

Agency Contact: Deborah Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

The amendments (i) reduce the projected amount from 85% to 80% as the projected and announced amount when additional restrictions on possession limits and harvest quotas of scup go into effect and (ii) increase the amount a vessel may possess or land from 2,000 pounds to 3,500 pounds.

4 VAC 20-910-45. Possession limits and harvest quotas.

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than 15,000 pounds of scup.
2. Land in Virginia more than a total of 15,000 pounds of scup during each consecutive seven-day landing period, with the first seven-day period beginning on January 1.

B. When it is projected and announced that ~~85%~~ 80% of the coastwide quota for this period has been attained, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than a total of 1,000 pounds of scup.
2. Land in Virginia more than a total of 1,000 pounds of scup during each seven-day landing period, with the first seven-day landing period beginning upon the announcement that ~~85%~~ 80% of the coastwide quota has been projected to be attained.

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C. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more ~~2,000~~ 3,500 pounds of scup; ~~except when it is announced that 70% of the coastwide quota for this period has been taken, it shall be unlawful for any person to possess aboard any vessel or land in Virginia more than 500 pounds of scup, until such time that the coastwide quota for this period has been reached.~~

D. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to 7,911 pounds.

E. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

G. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 50 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R05-89; Filed December 1, 2004, 11:24 a.m.

Title of Regulation: **4 VAC 20-920. Pertaining to Landing Licenses (adding 4 VAC 20-920-45).**

Statutory Authority: §§ 28.2-201 and 28.2-228.1 of the Code of Virginia.

Effective Date: December 1, 2004.

Agency Contact: Deborah Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

A new section establishes hardship exception criteria based on a medical condition, active military service, documentation for substantial vessel damage, or other extenuating circumstances that a commercial fisherman shall establish, in conjunction with having met a landing requirement, to be eligible to receive a flounder endorsement license.

4 VAC 20-920-45. Summer flounder endorsement license and hardship exception.

Any licensed fisherman who provides to the commissioner an opinion and supporting documentation from an attending physician of an existing medical condition, proof of active military service, documentation that indicates substantial vessel damage or other significant extenuating circumstances that prevented him from satisfying the eligibility criteria described in 4 VAC 20-920-40 F and can provide documentation of having landed at least 500 pounds of summer flounder during any one year of the 1990-1992 period may be authorized for an exception to the requirements to be eligible for a summer flounder endorsement license as described in 4 VAC 20-920-40 F.

VA.R. Doc. No. R05-90; Filed December 1, 2004, 11:24 a.m.

◆ **TITLE 9. ENVIRONMENT** ◆

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-590. Petroleum Underground Storage Tank Financial Responsibility Requirements (amending 9 VAC 25-590-10 through 9 VAC 25-590-100, 9 VAC 25-590-120, 9 VAC 25-590-140 through 9 VAC 25-590-210 and 9 VAC 25-590-260; repealing 9 VAC 25-590-120).**

Statutory Authority: §§ 62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia; 40 CFR Part 280.

Effective Date: January 26, 2005.

Agency Contact: Renee Hooper, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4018, or e-mail rthooper@deq.virginia.gov.

Summary:

The amendments bring the regulation into conformance with statutory requirements; clarify the method to demonstrate using group self-insurance pools, including a new certificate of insurance form; modify the financial assurance mechanism language to ensure the board receives notice of any cancellations and to simplify the cashing process; require an owner/operator to account for other types of self-insured liabilities when using a self-insurance mechanism; and make administrative changes to the regulation.

Changes made to the proposed regulation fall into three categories. First, the agency made minor changes to the insurance provisions in response to public comment. Second, the agency deleted the standby trust fund for all financial responsibility mechanisms in response to comments by the Department of Planning and Budget. Third, the agency made changes in response to comments by agency staff to bring the regulation into conformance with relevant statutory provisions and to clarify when and

how the Virginia Petroleum Storage Tank Fund will be used to reimburse owners and operators for costs arising from a petroleum release.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published 20:13 VA.R. 1574-1603 March 8, 2004, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

9 VAC 25-590-10. Definitions.

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

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action or compensation, ~~or both~~, for bodily injury or property damage, *or both*, neither expected nor intended by the tank owner or operator.

"Annual aggregate" means the maximum financial responsibility requirement that an owner or operator is required to demonstrate annually.

"Board" means the State Water Control Board.

"Bodily injury" means the death or injury of any person incident to an accidental release from a petroleum underground storage tank; but not including any death, disablement, or injuries covered by workers' compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Corrective action" means all actions necessary to abate, contain and cleanup a release from an underground storage tank to mitigate the public health or environmental threat from such releases and to rehabilitate state waters in accordance with Parts V (9 VAC 25-580-190 et seq.) and VI (9 VAC 25-580-230 et seq.) of 9 VAC 25 Chapter 580, Underground Storage Tanks: Technical Standards and Corrective Action Requirements. The term does not include those actions normally associated with closure or change in service as set out in Part VII (9 VAC 25-580-320 et seq.) of 9 VAC 25 Chapter 580 or the replacement of an underground storage tank.

[*"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.]*

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10 K report submitted to the U.S. Securities and Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration Utilities Service; or (iv) a year-end financial statement authorized under 9 VAC 25-590-60 B or C of this chapter. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Gallons of petroleum pumped" means either the amount pumped into or the amount pumped out of a petroleum underground storage tank.

"Group self-insurance pool" or "pool" means a pool organized by two or more owners and/or operators of underground storage tanks for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by § 62.1-44.34:12 of the Code of Virginia.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require corrective action or to recover the costs of corrective action, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; (ii) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial assurance mechanism.

"Local government" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state, or other special purpose government which provides essential services.

"Member" means an owner or operator of an underground storage tank [~~that~~ who] has entered into a member agreement and thereby becomes a member of a group self-insurance pool.

"Member agreement" means the written agreement executed between each member and the pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

NOTE: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Owner" means:

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1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

The term "owner" shall not include any person, who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Owner" or "operator," when the owner or operator are separate parties, refers to the person who is obtaining or has obtained financial assurances.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute).

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Pool plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to an accidental release from a petroleum underground storage tank. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means a person that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in 9 VAC 25-590-60 through [~~9 VAC 25-590-120~~ 9 VAC 25-590-110] and 9 VAC 25-590-250, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank at the time the release is reported to the board.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. Tank used for storing heating oil for consumption on the premises where stored;
3. Septic tank;
4. Pipeline facility (including gathering lines) regulated under:
 - a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.),
 - b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.), or
 - c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;
5. Surface impoundment, pit, pond, or lagoon;
6. Stormwater or wastewater collection system;
7. Flow-through process tank;
8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"9 VAC 25-580-40 ~~et seq.~~" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation promulgated by the board.

9 VAC 25-590-20. Applicability.

A. This chapter applies to owners and operators of all petroleum UST systems regulated under 9 VAC 25-580-40 ~~et seq.~~, except as otherwise provided in this section [*and 9 VAC 25-590-210*].

B. Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in 9 VAC 25-590-30.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this chapter.

D. The requirements of this chapter do not apply to owners and operators of any UST system described in 9 VAC 25-580-20 B or C.

E. If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

9 VAC 25-590-30. Compliance dates.

Owners of petroleum underground storage tanks are required to comply with the requirements of this chapter by the following dates:

1. All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration Utilities Service: January 24, 1989; except that compliance for owners and operators using the mechanisms specified in [~~9 VAC 25-590-0~~ 9 VAC 25-590-70] or 9 VAC 25-590-90 is required by July 24, 1989.
2. All petroleum marketing firms owning 100-999 USTs: October 26, 1989;
3. All petroleum marketing firms owning 13-99 USTs at more than one facility: April 26, 1991;

4. All petroleum UST owners not described in subdivision 1, 2, or 3 of this section, excluding local government entities: December 31, 1993;

5. All local government entities (including Indian tribes) not included in subdivision 6 of this section: February 18, 1994; or

6. Indian tribes that own USTs on Indian lands which meet the applicable technical requirements of 9 VAC 25-580-40 ~~et seq.~~: December 31, 1998.

9 VAC 25-590-40. Amount and scope of financial responsibility requirement.

A. Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in the following per-occurrence amounts:

1. For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.

2. For all other owners or operators of petroleum underground storage tanks; \$500,000.

B. Owners and operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

1. For owners and operators of 1 to 100 petroleum underground storage tanks, \$1 million; and

2. For owners and operators of 101 or more petroleum underground storage tanks, \$2 million.

C. Owners and operators of petroleum underground storage tanks may use the Virginia Petroleum Storage Tank Fund in combination with one or more of the mechanisms specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250 to satisfy the financial responsibility as required by this section. The fund may be used to demonstrate financial responsibility for the owner or operator in excess of the amounts specified in 9 VAC 25-590-210 [B C] 1 up to the per occurrence and annual aggregate requirements specified in this section for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks.

~~C.~~ D. Owners and operators who demonstrate financial responsibility shall maintain copies of those records on which the determination is based. The following documents may be used for purposes of demonstrating financial responsibility by owners or operators to support a financial responsibility requirement determination:

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1. Copies of invoices from petroleum suppliers which indicate the gallons of petroleum pumped into all underground storage tanks on an annual basis.
2. Copies of disposal or recycling receipts which indicate the gallons of petroleum pumped out of all underground storage tanks on an annual basis.
3. Letters from petroleum suppliers or disposal or recycling firms on the supplier's, disposer's or recycler's letterhead, which are signed by the appropriate financial officer and which indicate the gallons of petroleum pumped into or out of all of the owner's or operator's underground storage tanks on an annual basis.
4. Any other form of documentation which the board may deem to be acceptable evidence to support the financial responsibility requirement determination.

~~D.~~ E. For the purposes of this section, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

~~E.~~ F. If the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for: (i) taking corrective action; (ii) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or (iii) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in subsection A of this section.

~~F.~~ G. If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required for each mechanism shall be the amount specified in subsection B of this section.

~~G.~~ H. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the appropriate amount of annual aggregate assurance specified in subsection B of this section, by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

~~H.~~ I. The amounts of assurance required under this section exclude legal defense costs.

~~I.~~ J. The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

[9 VAC 25-590-50. Allowable mechanisms and combinations of mechanisms.

A. Subject to the limitations of subsection B of this section, an owner or operator may use any one or combination of the mechanisms listed in 9 VAC 25-590-60 through ~~9 VAC 25-590-120~~ 9 VAC 25-590-110 to demonstrate financial responsibility under this chapter for one or more underground storage tanks. A local government owner or operator may use any one or combination of the mechanisms listed in 9 VAC 25-

590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250 to demonstrate financial responsibility under this chapter for one or more underground storage tanks.

B. An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this chapter, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.]

9 VAC 25-590-60. [No change from proposed.]

9 VAC 25-590-70. Guarantee.

A. An owner or operator may satisfy the requirements of 9 VAC 25-590-40 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

1. A firm that:

- a. Possesses a controlling interest in the owner or operator;
- b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or
- c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

2. A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 9 VAC 25-590-60 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I or Appendix XI and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator, *and the board*. If the board notifies the guarantor that he no longer meets the requirements of the financial test of 9 VAC 25-590-60 B or C and D, the guarantor shall notify the owner or operator within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator ~~receives~~ *and the board receive* the notification, as evidenced by the return ~~receipt~~ *receipts*. The owner or operator shall obtain alternate coverage as specified in 9 VAC 25-590-190.

C. The guarantee shall be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. ~~[An owner or operator who uses a guarantee to satisfy the requirements of 9 VAC 25-590-40 shall establish a standby trust fund when the guarantee is obtained.]~~ Under the terms of the guarantee, all amounts paid by the guarantor under the

guarantee will be ~~[deposited paid]~~ directly ~~[into the standby trust fund to the board]~~ in accordance with instructions from the board under 9 VAC 25-590-170. ~~[This standby trust fund shall meet the requirements specified in 9 VAC 25-590-120.]~~

9 VAC 25-590-80. Insurance and group self-insurance pool coverage.

A. 1. An owner or operator may satisfy the requirements of 9 VAC 25-590-40 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or ~~[by entering into a member agreement with a]~~ group self-insurance pool.

2. Such ~~[liability]~~ insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

3. Group self-insurance pools shall comply with § 62.1-44.34:12 of the Code of Virginia and the *rules promulgated by the State Corporation Commission Bureau of Insurance Regulation No. 33 designated as Chapter 380 of Title 14 of the Virginia Administrative Code and entitled "Rules Governing Underground Storage Tank Owners and Operators Group Self-Insurance Pools,"* (14 VAC 5-380-40 et seq.).

B. Each ~~[liability]~~ insurance policy shall be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Each ~~[liability]~~ insurance policy shall be issued by an insurer ~~or a group self-insurance pool~~ that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.

D. Each group self-insurance pool must be licensed in accordance with 14 VAC 5-380 and any coverage provided by such a pool shall be evidenced by a certificate of group self-insurance worded identically as specified in Appendix XII, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

~~D. E.~~ Each ~~[liability]~~ insurance policy ~~or group self-insurance pool plan~~ shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of corrective action or damaged third party, as provided in this chapter, with a right of reimbursement by the insured ~~or member~~ for any such payment made by the insurer or group *self-insurance pool*. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250.

9 VAC 25-590-90. [No change from proposed.]

9 VAC 25-590-100. [No change from proposed.]

9 VAC 25-590-120. [Standby trust fund. (Repealed.)]

~~[A. An owner or operator, or guarantor using] any one of the mechanisms [the guarantee authorized by 9 VAC 25-590-70], 9 VAC 25-590-90 and 9 VAC 25-590-100 [shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.~~

~~B. The standby trust agreement or trust agreement shall be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.~~

~~C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional corrective action costs or third party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.~~

~~D. An owner or operator, or guarantor may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.]~~

9 VAC 25-590-140. [No change from proposed.]

9 VAC 25-590-150. [No change from proposed.]

9 VAC 25-590-160. Recordkeeping.

A. Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an underground storage tank until released from the requirements of this chapter under 9 VAC 25-590-180. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of work in this Commonwealth. Records maintained off-site shall be made available upon request of the board.

B. Owners or operators shall maintain the following types of evidence of financial responsibility:

1. An owner or operator using an assurance mechanism specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250 shall maintain a copy of the instrument worded as specified.

2. An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test, shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

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~~[3. An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.~~

~~4. A local government owner or operator using a local government guarantee with standby trust under 9 VAC 25-590-250 shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.~~

~~5. 3.] A local government owner or operator using the local government bond rating test under 9 VAC 25-590-250 shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.~~

~~[6. 4.] A local government owner or operator using the local government guarantee under 9 VAC 25-590-250, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 9 VAC 25-590-250 shall maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.~~

~~[7. 5.] An owner or operator using an insurance policy or group self-insurance pool coverage shall maintain a copy of the signed insurance policy or group self-insurance pool coverage policy plan and membership agreement, with the endorsement or certificate of insurance and any amendments to the agreements.~~

~~[8. 6.] An owner or operator using a local government fund under 9 VAC 25-590-250 shall maintain the following documents:~~

~~a. A copy of the state constitutional provision or local government statute, charter, ordinance or order dedicating the fund; and~~

~~b. Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under 40 CFR 280.107(a)(3) (1997) (as incorporated by reference in 9 VAC 25-590-250) using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.~~

~~c. If the fund is established under 40 CFR 280.107(a)(3) (1997) (as incorporated by reference in 9 VAC 25-590-250) using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum (under 40 CFR 280.107(a)(3)(i) (1997)) (as incorporated by reference in 9 VAC 25-590-250), or attestation by the Virginia Attorney General as specified under 40 CFR 280.107(a)(3)(ii) (1997) (as incorporated by reference in 9 VAC 25-590-250).~~

~~[9. 7.] A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.~~

[10. 8.] a. An owner or operator using an assurance mechanism specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 or 9 VAC 25-590-250 shall maintain an updated copy of a certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The owner or operator shall update this certification whenever the financial assurance mechanism or mechanisms used to demonstrate financial responsibility changes.

9 VAC 25-590-170. Drawing on financial assurance mechanism.

A. Except as specified in subsection D of this section, the board shall ~~may~~ [~~cash the letter of credit or surety bond or may~~] require the guarantor [, surety, or institution issuing a letter of credit] to [~~place the amount of funds stipulated by the board, pay to the board an amount~~] up to the limit of funds provided by the [financial assurance mechanism ~~guarantee, into the standby trust~~] if:

1. a. The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; [~~and or~~]

~~b. The board determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator, or the owner or operator has notified the board pursuant to Parts V (9 VAC 25-580-190 et seq.) and VI (9 VAC 25-580-230 et seq.) of 9 VAC 25 Chapter 580 of a release from an underground storage tank covered by the mechanism; or]~~

2. The conditions of subsection B of this section are satisfied.

B. [~~The board shall deposit the financial assurance funds forfeited pursuant to subsection A of this section into the Virginia Petroleum Storage Tank Fund.~~] The board may ~~draw on a standby trust fund~~ use the financial responsibility funds obtained pursuant to subsection A of this section to conduct corrective action or to pay a third party claim when:

1. The board makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Part VI (9 VAC 25-580-230 et seq.); or

2. The board has received either:

a. Certification from the owner or operator and the third party liability claimant or claimants and from attorneys representing the owner or operator and the third party liability claimant or claimants that a third party liability claim should be paid. The certification shall be worded identically as specified in Appendix X, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

b. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this chapter and the board determines that the owner or operator has not satisfied the judgment.

C. If the board determines that the amount of corrective action costs and third party liability claims eligible for payment under subsection B of this section may exceed ~~[the balance of the standby trust fund and]~~ the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The board shall direct payment ~~from the standby trust fund of the financial responsibility funds~~ for third party liability claims in the order in which the board receives certifications under subdivision B 2 a of this section and valid court orders under subdivision B 2 b of this section.

D. A local government acting as guarantor under 40 CFR 280.106(e) (1997) (as incorporated by reference in 9 VAC 25-590-250), the local government guarantee without standby trust, shall make payments as directed by the ~~director board~~ under the circumstances described in subsection A, B or C of this section.

9 VAC 25-590-180. [No change from proposed.]

9 VAC 25-590-190. [No change from proposed.]

9 VAC 25-590-200. Replenishment of guarantees, letters of credit or surety bonds.

~~[A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:~~

- ~~1. Replenish the value of financial assurance to equal the full amount of coverage required; or~~
- ~~2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.~~

~~B. A.] If at any time a letter of credit [or,] surety bond [, or guarantee] is drawn upon by instruction of the board and the board has expended all or part of the funds for corrective action or to pay a third party liability claim(s), the owner or operator by the anniversary date of the financial assurance mechanism shall [:~~

- ~~1. Replenish the value of the financial assurance mechanism to equal the full amount of coverage required; or~~
- ~~2.] Acquire another financial assurance mechanism for the amount by which the face value of the letter of credit [or,] surety bond [, or guarantee] has been reduced.~~

~~[B. C.]~~ For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9 VAC 25-590-40. If a combination of mechanisms was used to provide the assurance funds which were drawn upon,

replenishment shall occur by the earliest anniversary date among the mechanisms.

9 VAC 25-590-210. Virginia Petroleum Storage Tank Fund.

A. The Virginia Petroleum Storage Tank Fund will be used for costs in excess of the financial responsibility requirements specified under subsection [B C] of this section up to \$1 million per occurrence for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks in accordance with the following:

1. Corrective action disbursements for accidental releases with no associated third party disbursements from the fund shall not exceed:
 - a. \$995,000 for the \$5,000 corrective action requirement;
 - b. \$990,000 for the \$10,000 corrective action requirement;
 - c. \$980,000 for the \$20,000 corrective action requirement;
 - d. \$970,000 for the \$30,000 corrective action requirement;
 - e. \$950,000 for the \$50,000 corrective action requirement.

Third party disbursements for accidental releases with no corrective action disbursements from the fund shall not exceed:

- a. \$985,000 for the \$15,000 third party requirement;
- b. \$970,000 for the \$30,000 third party requirement;
- c. \$940,000 for the \$60,000 third party requirement;
- d. \$880,000 for the \$120,000 third party requirement;
- e. \$850,000 for the \$150,000 third party requirement.

Combined corrective action and third party disbursements from the fund shall not exceed:

- a. \$980,000 for the \$20,000 combined requirement;
- b. \$960,000 for the \$40,000 combined requirement;
- c. \$920,000 for the \$80,000 combined requirement;
- d. \$850,000 for the \$150,000 combined requirement;
- e. \$800,000 for the \$200,000 combined requirement.

The first priority for disbursements from the fund shall be for corrective action costs necessary to protect human health and the environment.

2. ~~[Compensation Reasonable and necessary costs of compensating third parties]~~ for bodily injury and property damage shall be paid ~~to third parties~~ only (i) in accordance with final court orders in cases which have been tried to final judgment no longer subject to appeal, (ii) in accordance with final arbitration awards not subject to appeal, or (iii) where the board approved the settlement of claim between the owner or operator and the third party prior to execution by the parties. ~~[The reasonableness and~~

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necessity of costs shall be determined based upon documented or actual damage, loss in value, and other relevant factors.]

The Commonwealth has not waived its sovereign immunity and does not believe that it is a necessary party to a private action against an owner or operator for third party bodily injury and property damage.

3. Owner or operator managed cleanups. An owner or operator [, including an operator of a facility or an owner or operator of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in 9 VAC 25-590-10 and an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored,] responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI (9 VAC 25-580-190 through 9 VAC 25-580-310) may proceed to pay for all costs incurred for such activities. An accounting submitted to the board of all costs incurred will be reviewed and those costs in excess of the financial responsibility requirements up to \$1 million which are reasonable and have been approved by the board will be reimbursed from the fund.

4. Owners or operators shall pay the financial responsibility requirement specified in this section for each occurrence.

~~[5. No person shall receive reimbursement from the fund for any costs or damages incurred:~~

~~a. Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has violated substantive environmental regulations under 9 VAC 25-580-10 et seq. or this chapter;~~

~~b. Where the release occurrence is caused, in whole or in part, by the willful misconduct or negligence of the person, his employee or agent, or anyone within the privity or knowledge of that person;~~

~~c. Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has (i) failed to carry out the instructions of the board, committed willful misconduct or been negligent in carrying out or conducting actions under Part V or VI (9 VAC 25-580-190 through 9 VAC 25-580-310) or (ii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out or conducting actions under Parts V or VI (9 VAC 25-580-190 through 9 VAC 25-580-310);~~

~~d. Where the claim has been reimbursed or is reimbursable, by an insurance policy;~~

~~e. Where the costs or damages were incurred pursuant to Article 4.1 (§ 10.1-1429.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia and the regulations promulgated thereunder;~~

~~f. For corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in 9 VAC 25-590-10, or an owner of an~~

~~aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored; or~~

~~g. Prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia.~~

~~6- 5.] No person shall receive reimbursement from the fund for third party bodily injury or property damage:~~

~~a. Where the release, occurrence, injury or property damage is caused, in whole or in part, by the willful misconduct or negligence of the owner or operator, his employee [, contractor,] or agent, or anyone within his privity or knowledge;~~

~~b. Where the claim cost has been reimbursed or is reimbursable by an insurance policy;~~

~~c. Where the costs or damages were incurred pursuant to [Article 4.1 (§ 10.1-1429.1 et seq.) of Chapter 14 of Title 10.1 § 10.1-1232] of the Code of Virginia and the regulations promulgated thereunder;~~

~~d. Where the release was reported before December 22, 1989; or~~

~~e. Where the owner or operator does not demonstrate the reasonableness and necessity of the claim costs.~~

~~[B. No person, including an operator of a facility or an owner or operator of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in 9 VAC 25-590-10 and an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored, shall receive reimbursement from the fund for any costs or damages incurred:~~

~~1. Where the person, his employee, contractor or agent, or anyone within the privity or knowledge of that person, has violated substantive environmental regulations under 9 VAC 25-580 or this chapter;~~

~~2. Where the release occurrence is caused, in whole or in part, by the willful misconduct or negligence of the person, his employee, contractor or agent, or anyone within the privity or knowledge of that person;~~

~~3. Where the person, his employee, contractor or agent, or anyone within the privity or knowledge of that person has (i) failed to carry out the instructions of the board, committed willful misconduct or been negligent in carrying out or conducting actions under Part V or VI (9 VAC 25-580-190 through 9 VAC 25-580-310) or (ii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out or conducting actions under Parts V or VI (9 VAC 25-580-190 through 9 VAC 25-580-310);~~

~~4. Where the claim has been reimbursed or is reimbursable by an insurance policy;~~

~~5. Where the costs or damages were incurred pursuant to § 10.1-1232 of the Code of Virginia and the regulations promulgated thereunder;~~

6. For corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in 9 VAC 25-590-10, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored; or

7. Prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia.

~~B. C.]~~ 1. The fund will be used to demonstrate financial responsibility requirements for owners or operators in excess of the amounts specified in this subdivision up to the per occurrence and annual aggregate requirements specified in 9 VAC 25-590-40 for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks.

a. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$5,000 per occurrence for taking corrective action and \$15,000 per occurrence for compensating third parties, with an annual aggregate of \$20,000.

b. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$10,000 per occurrence for taking corrective action and \$30,000 per occurrence for compensating third parties, with an annual aggregate of \$40,000.

c. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$20,000 per occurrence for taking corrective action and \$60,000 per occurrence for compensating third parties, with an annual aggregate of \$80,000.

d. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$30,000 per occurrence for taking corrective action and \$120,000 per occurrence for compensating third parties, with an annual aggregate of \$150,000.

e. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$50,000 per occurrence for taking corrective action and \$150,000 per occurrence for compensating third parties, with an annual aggregate of \$200,000.

2. The fund may be used to satisfy only the portion of an owner or operator's financial responsibility requirement specified in subdivision 1 of this subsection and, therefore, shall be used in combination with one or more of the mechanisms specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250.

3. The requirements of 9 VAC 25-590-40 B apply solely to financial responsibility demonstration requirements under this section, and shall not affect reimbursements paid under this section.

~~[E. D.]~~ This fund may also be used for the following:

1. Costs incurred by the board for taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the board to protect human health and the environment.

2. Costs incurred by the board for taking ~~both~~ corrective action ~~and compensating third parties~~ up to \$1 million for any release of petroleum into the environment from an underground storage tank:

a. Whose owner or operator cannot be determined by the board within 90 days; or

b. Whose owner or operator is incapable, in the judgment of the board, of carrying out such corrective action properly ~~[and paying for third party liability claims]~~.

3. Costs incurred by the board for taking corrective action for any release of petroleum into the environment from tanks which are otherwise specifically listed in 9 VAC 25-590-10 as exemptions in the definition of an underground storage tank.

4. All other uses authorized by § 62.1-44.34:11 of the Code of Virginia.

~~[D. E.]~~ The board shall seek recovery of fund moneys expended for corrective action in accordance with § 62.1-44.34:11 of the Code of Virginia where the owner or operator has violated substantive environmental regulations under 9 VAC 25-580-40 ~~et seq.~~ or this chapter.

~~[E. F.]~~ The board shall have the right of subrogation for moneys expended from the fund as compensation for bodily injury, death, or property damage against any person who is liable for such injury, death or damage.

~~[F. G.]~~ No funds shall be paid for reimbursement of costs incurred by an owner or operator for corrective action and for compensating third parties for bodily injury and property damage prior to December 22, 1989.

~~[G. H.]~~ No disbursements shall be made from the fund for owners or operators who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

~~[H. I.]~~ ~~The fund will be managed to provide for~~ *No funds shall be paid in excess of the minimum disbursement necessary to cleanup of each occurrence to an acceptable level of risk, as determined by the board in its sole discretion.*

9 VAC 25-590-250. Local government financial responsibility demonstration.

~~[A. Except as otherwise provided,]~~ the U.S. Environmental Protection Agency regulations on local government financial responsibility demonstration contained in the Technical

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Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) (40 CFR 280.104 through 280.107 (1997)) are incorporated by reference into this chapter as amended by the word or phrase substitutions given in 9 VAC 25-590-260.

B. A local government demonstrating financial responsibility pursuant to 40 CFR 280.106 shall demonstrate using the guarantee arrangement entitled "Local Government Guarantee Without Standby Trust Made by a Local Government."]

9 VAC 25-590-260. [No change from proposed.]

APPENDIX I. [No change from proposed.]

APPENDIX II. GUARANTEE.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 9 VAC 25-590-60 B or C and D of Virginia Petroleum Underground Storage Tank Financial Responsibility Requirements, 9 VAC 25-590-40 ~~et seq.~~, and agrees to comply with the requirements for guarantors as specified in 9 VAC 25-590-70 B.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), and the name and address of the facility]. This guarantee satisfies this chapter's requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by-" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] *corrective action* per occurrence, [insert dollar amount] *third party liability* per occurrence, and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business

relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the State Water Control Board and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall [~~fund a standby trust fund~~ *pay the funds to the State Water Control Board*] in accordance with the provisions of 9 VAC 25-590-170, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 9 VAC 25-580-230 through 9 VAC 25-580-300 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), the guarantor upon written instructions from the State Water Control Board shall [~~fund a standby trust~~ *pay the funds to the State Water Control Board*] in accordance with the provisions of 9 VAC 25-590-170, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the State Water Control Board, shall [~~fund a standby trust~~ *pay the funds to the State Water Control Board*] in accordance with the provisions of 9 VAC 25-590-170 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 9 VAC 25-590-60 B or C and D, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator] *and the State Water Control Board*. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator] *and the State Water Control Board*, as evidenced by the return ~~receipt~~ *receipts*.

(5) Guarantor agrees to notify [owner or operator] *and the State Water Control Board* by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 9 VAC 25-580-40 ~~et seq.~~ and 9 VAC 25-590-40 ~~et seq.~~

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial responsibility requirements of 9 VAC 25-590-40 ~~et seq.~~ for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator] *and the State Water Control Board*, such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator] *and the State Water Control Board*, as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-590-40.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of 9 VAC 25-590-40 ~~et seq.~~ as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

APPENDIX III. [No change from proposed.]

APPENDIX IV. [No change from proposed.]

APPENDIX V. [No change from proposed.]

APPENDIX VI. [No change from proposed.]

APPENDIX VII. TRUST AGREEMENT.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of..... " or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the [~~insert: "standby trust agreement" or "~~] *trust agreement* ["] .

~~[Whereas, the Grantor has elected to establish insert either "a guarantee," "surety bond," or "letter of credit" to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);]~~

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "9 VAC 25-590-40 ~~et seq.~~" is the Petroleum Underground Storage Tank Financial Requirements Regulation promulgated by the State Water Control Board for the Commonwealth of Virginia.

~~[Section 2. Identification of the Financial Assurance Mechanism.~~

~~This Agreement pertains to the identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)] -]~~

Section [3- 2.] Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the

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Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [~~The Fund is established initially as a standby to receive payments and shall not consist of any property.~~] Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Section [4. 3.] Payment for ["Corrective Action" and/or "Third Party Liability Claims"].

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage] caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" arising from operating the tanks covered by [~~the financial assurance mechanism identified in~~] this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-590-40.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for corrective action expenditures and/or third party liability claims in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined here.

Section [~~5. 4.] Payments Comprising the Fund.~~

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section [~~6. 5.] Trustee Management.~~

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section [~~7. 6.] Commingling and Investment.~~

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section [~~8. 7.] Express Powers of Trustee.~~

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section [9- 8.] Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section [40- 9.] Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section [44- 10.] Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section [42- 11.] Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall

assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section [43- 12.] Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the State Water Control Board, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section [44- 13.] Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

Section [45- 14.] Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section [46- 15.] Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

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Section [47- 16.] Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section [48- 17.] Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of 9 VAC 25-590-40 et seq. as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

APPENDIX IX. [No change from proposed.]

APPENDIX XI. [No change from proposed.]

APPENDIX XII. CERTIFICATE OF GROUP SELF-INSURANCE [POOL MEMBERSHIP].

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy number:

Endorsement (if applicable):

Period of coverage: [current policy period]

Name of Group self-insurance pool:

Address of Group self-insurance pool:

Name of Member:

Address of Member:

Certification:

1. [Name of Group Self-Insurance Pool], the group self-insurance pool, "Pool," as identified above, hereby certifies that it has entered into a Membership Agreement (Agreement) with the member to provide liability coverage for the following underground storage tank(s) in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (9 VAC 25-590) for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by either sudden accidental releases or nonsudden accidental releases; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the Pool Plan (Plan) and Agreement; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability of the Pool are [insert the dollar amount] corrective action per occurrence and [insert dollar amount] third party liability per occurrence and [insert dollar amount] annual aggregate [If the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the Plan or Agreement. This coverage is provided under the Plan dated [insert date] and the Agreement entered into between [name of member] and [name of Pool]. The effective date of said Agreement is [date].

2. The Pool further certifies the following with respect to the coverage described in paragraph 1:

a. Bankruptcy or insolvency of the member shall not relieve the Pool of its obligations under the policy to which this certificate applies.

b. The Pool is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the member for any such payment made by the Pool. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-590-60 through 9 VAC 25-590-110.

c. Whenever requested by the State Water Control Board, the Pool agrees to furnish to the State Water Control Board a signed duplicate original of the Agreement and Plan and all endorsements.

d. Cancellation or any other termination of the coverage by the Pool, except for nonpayment of premium or misrepresentation by the member, will be effective only upon written notice and only after the expiration of 60

days after a copy of such written notice is received by the member and the State Water Control Board. Cancellation for nonpayment of premium or misrepresentation by the member will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the member and the State Water Control Board.

e. The Pool covers claims otherwise covered by the Agreement and Plan that are reported to the Pool within six months of the effective date of cancellation or nonrenewal of the Agreement except where the new or renewed Agreement has the same retroactive date or a retroactive date earlier than that of the prior Agreement and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such Agreement renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the Agreement and Plan.

I hereby certify that the wording of this instrument is identical to the wording in APPENDIX XII of 9 VAC 25-590 and that the Pool is licensed by the Commonwealth of Virginia's State Corporation Commission pursuant to 14 VAC 5-380.

[Signature of [Administrator Authorized Representative] of Pool]

[Type name], [Administrator Authorized Representative] of [name of Pool]

[Address of representative]

FORMS [No change from proposed.]

VA.R. Doc. No. R02-309; Filed December 8, 2004, 8:06 a.m.

REGISTRAR'S NOTICE: The following regulations filed by the State Water Control Board are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007 B, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007 F, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9 VAC 25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half of an Acre (amending 9 VAC 25-660-10 through 9 VAC 25-660-100).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: January 26, 2005.

Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032, or e-mail egilinsky@deq.virginia.gov.

Summary:

The amendments correct several administrative procedures, clarify application and permitting requirements, and allow for a more efficient application review process. Since implementation of this regulation in October 2001, it has become evident that these minor corrections are needed to improve applications for coverage, timeframes for issuance of authorizations, and coordination with the U.S. Army Corps of Engineers State Program General Permit (SPGP-01). No change to the upper thresholds of coverage under this regulation or to the 2:1 compensation ratio for wetland impacts is being proposed.

The proposed regulation was revised to clarify application informational requirements, types of compensation allowed, mitigation plan, monitoring and reporting requirements, and termination process for events beyond permittee's control; to include language concerning refunds of compensation payments; to include termination process for events beyond permittee's control; and to provide minor clarifications of a grammatical nature. Also, the Forms section was revised to include version dates and additional document titles.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published 20:22 VA.R. 2331-2343 July 12, 2004, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however the sections that have changed since publication of the proposed are set out.

9 VAC 25-660-10. [No change from proposed.]

9 VAC 25-660-20. [No change from proposed.]

9 VAC 25-660-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact less than one-half of an acre of surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, provided that the person submits notification as required in 9 VAC 25-660-50 and 9 VAC 25-660-60, remits the required application processing fee (9 VAC 25-20-40 et seq.), complies with the limits and other requirements of 9 VAC 25-660-100, 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 25-210-40 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.

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2. Impacts [, *both temporary and permanent*,] result from a single and complete project, including all attendant features [*both temporary and permanent*].

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 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. 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. ~~Compensatory mitigation~~ *Compensation* for unavoidable impacts is provided in the form of the purchase or use of mitigation bank credits or a contribution to an approved in-lieu fee fund.

B. Only activities in nontidal waters may qualify for coverage under this VWP general permit.

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.

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.

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 § 401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit 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.

[*G. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under this VWP general permit.*]

9 VAC 25-660-40. [No change from proposed.]

9 VAC 25-660-50. [No change from proposed.]

9 VAC 25-660-60. ~~Registration statement~~ *Application*.

A. ~~Registration statements~~ *Applications* shall be filed with the board as follows:

1. The applicant shall file a complete ~~registration statement application~~ as described in 9 VAC 25-660-50 for a VWP General Permit WP1 for impacts to surface waters of less than one-half of an acre, including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, 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 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 applications.~~

B. The required ~~registration statement application~~ shall contain the following information [, *if applicable to the project*]:

1. The applicant's name, mailing address, *and* telephone number ~~and, if applicable, fax number;~~

2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number *and electronic mail address;*

3. The existing VWP permit number (if applicable);

4. The name of the project, *narrative description of project purpose of project*, and a description of the *proposed activity in surface waters;*

5. The name of 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 project area, *including the project boundary*. The map ~~should~~ *shall* be of sufficient detail such that the site may be easily located for site inspection;

10. ~~The appropriate appendices from the JPA (Reserved);~~

11. The project plan view. All plan view sketches ~~should~~ *shall* include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water, impact limits, and location and dimension of all proposed structures in impact areas. ~~Cross-sectional drawings or profile sketches, as appropriate,~~ with the information in this subdivision, ~~may~~

shall be required for certain projects as appropriate to demonstrate minimization of impacts;

12. (Reserved-);

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, [~~and~~] the *areal extent* [*of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width)*], [*the*] *location* ([*by*] *latitude and longitude*) [*at the center of the impact, or at the center of each impact for linear projects*] and [*the*] *type of impact* [*area*] { [*of wetland in square feet*], *linear feet* or [*and acres*] } [*; area of stream, length of stream, and average width*]. ~~Wetland impacts~~] should [~~shall be quantified~~ () according to [~~their~~ *the*] Cowardin classification or similar terminology ()];

14. (Reserved-);

15. A description of the *specific on-site* measures *considered or 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 25-210-145-A~~;

16. A ~~description of conceptual plan~~ for the intended compensation for unavoidable impacts, including:

a. Any *applicant proposing* compensation ~~plan proposing to include~~ *involving* contributions to an in-lieu fee fund shall ~~include proof state such as their conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this VWP general permit authorization~~; and

b. Any *applicant proposing* compensation ~~plan proposing~~ *involving* the purchase or use of mitigation banking credits shall include *as their conceptual compensation plan*:

(1) The name of the proposed mitigation bank *and the HUC in which it is located*;

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits;

17. A delineation map 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 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~~ *shall* also include the location of ~~all impacted and non-impacted~~ streams, open water and other surface waters on

the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) ~~should~~ *shall* 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. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-40 ~~et seq.~~); and

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 application~~ 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~~ *an application by the appropriate DEQ office, the board has 15 days to review the application and either determine that the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete*. Coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days *of receipt of a complete application*. If the board fails to act within 45 days *on a complete application*, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the ~~registration statement application~~, 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 authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit program regulation ~~and may not override or conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation~~.

E. Incomplete ~~registration statement application~~. Where a ~~registration statement~~ *an application* is incomplete, the board may require the submission of additional information and ~~may~~ *shall* suspend processing *the application* until such time as the applicant has supplied the missing or deficient information and the ~~registration statement application~~ is complete. Further,

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where the applicant becomes aware that he omitted one or more relevant facts from a ~~registration statement an application~~, or submitted incorrect information in a ~~registration statement an application~~ or in any report to the board, he shall immediately submit such facts or the correct information. *Such application with new information shall be deemed a new application [, but shall not require an additional permit application fee]*.

9 VAC 25-660-70. ~~Mitigation Compensation.~~

A. For the purposes of this VWP general permit, the board shall assume that the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund is ecologically preferable to practicable on-site or *other* off-site ~~individual compensatory mitigation compensation~~ options, and no further demonstration is necessary.

B. ~~Compensatory mitigation Compensation~~ for unavoidable wetland impacts *is shall be provided at a 2:1 replacement to less impact ratio.*

C. ~~Compensatory mitigation Compensation~~ for unavoidable stream impacts *is shall be provided at a 1:1 replacement to less ratio through the purchase [or use] of stream mitigation bank credits or contribution to an in-lieu fee fund that includes watershed enhancements. [The amount of One factor determining the] required compensation [will shall] be [determined based on] an analysis of stream impacts utilizing a [scientifically based] stream impact assessment methodology approved by the board.*

D. Compensation for open water impacts [*other than to streams*] may be required, as appropriate, *at a 1:1 replacement to impact ratio* to protect state waters and fish and wildlife resources from significant impairment.

E. *Compensation for conversion impacts [to wetlands] shall be required at a 1:1 replacement to impact ratio, when such conversion results in a permanent alteration of the functions and values of the [surface water wetland]*.

~~E. F.~~ In order for contribution to an in-lieu fee fund to be an acceptable form of ~~compensatory mitigation compensation~~, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

~~F. G.~~ ~~The use of mitigation banks for compensating project impacts shall be deemed appropriate if~~ *In order for purchase [or use] of bank credits to be an acceptable form of compensation, the bank is shall be 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 F. The applicant provides verification shall provide proof of purchase [, use,] or debit to the board of purchase or debiting of the required amount of credits DEQ [prior to commencing activities in impact areas]*.

9 VAC 25-660-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional *permanent* wetland ~~and~~ or 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. *In no case can this authorization be modified to exceed the general permit threshold for use.*

B. *Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. [DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions.]*

C. *Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.*

D. *Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased [or used], provided that the same amount of credits are purchased [or used] and all criteria for use in 9 VAC 25-210-115 are met.*

E. *Authorization under the VWP general permit may be modified after issuance for typographical errors.*

F. *A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and [they are the area is] restored to preexisting conditions in accordance with Part I C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.*

~~B. G.~~ The permittee shall notify the board in advance of the planned change, and the ~~modification~~ *planned change* request shall be reviewed according to all provisions of this regulation.

9 VAC 25-660-90. ~~Notice of Termination of authorization by consent.~~

When all permitted activities requiring notification under 9 VAC 25-660-50 A 1 have been completed, *or if the authorized impacts will not occur*, the permittee shall submit a ~~notice of request for termination~~ *within 30 days of final project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The notice permittee shall contain* submit the following information:

1. Name, mailing address and telephone number of the ~~permittee~~;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. *One of the following certification certifications:*

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in 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 *authorization*."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination [,that] I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

9 VAC 25-660-100. VWP general permit.

Any applicant whose ~~registration statement~~ *application* has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP1

Authorization effective date:

Authorization expiration date:

Authorization Note(s):

VWP GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF OF AN ACRE 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.

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, the permittee is authorized to impact less than one-half of an acre of nontidal surface waters including up to 125 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream 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 Compensation~~, Monitoring, and Reporting, and Part III--Conditions Applicable to All VWP General Permits, as set forth herein.

Director, Department of Environmental Quality Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes impacts to less than one-half of an acre of nontidal surface waters, including up to 125 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~~ *application*.

2. Any ~~additional~~ *changes to the authorized permanent* impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-660-80, or another VWP permit application.

3. *Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.*

4. *Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.*

~~3-~~ 5. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. *Continuation of coverage.* 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 has not been completed within three years of the date of

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authorization. ~~Application consists of an updated or new registration statement. The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.~~

C. Overall project conditions.

1. The ~~construction or work~~ activities 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 that 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. ~~[The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater.]~~ 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. ~~Excess or waste concrete shall not be disposed of in [flowing] surface waters or washed [out] into [flowing] surface waters.~~

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia 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~~ is stabilized and shall then be removed.

6. Any exposed slopes and streambanks ~~must~~ shall be stabilized immediately upon completion of ~~the project at work in each water body permitted impact area.~~ All denuded areas shall be properly stabilized in accordance with the 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 a manner that minimizes construction 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 surface]~~ waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted ~~[wetland areas surface waters]~~ shall be placed on mats, geotextile fabric, or other suitable ~~measures~~ material to minimize soil

disturbance to the maximum extent practicable. *Equipment and materials shall be removed immediately upon completion of work.*

10. All nonimpacted surface waters within 50 feet of any ~~permitted activities and within the project or right-of-way limits that are within 50 feet of any clearing, grading, or filling activities~~ shall be clearly flagged or marked for the life of the construction activity ~~within at that area location to preclude any unauthorized disturbances to these surface waters during construction.~~ The permittee shall notify all contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to ~~wetlands~~ surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions ~~within 30 days of completing work, which shall include reestablishing preconstruction contours, and planted planting or seeded seeding~~ with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote ~~and maintain~~ revegetation of temporarily disturbed wetland areas with wetland vegetation ~~by through the second year post-disturbance. All temporary fills temporarily impacted streams [and streambanks] shall be removed in restored to their entirety and the affected area returned to pre-existing contours original [elevation contours] within 30 days following the construction at that stream segment, and the banks seeded or planted with [native the same] vegetation [cover type originally present along the streambanks], [and supplemented by including supplemental] erosion control grasses [crown vetch, orchard grass, or weeping lovegrass] when stabilizing steep slopes if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list .~~

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 restored~~ within 30 days following removal of the stockpile, and restored to the original vegetated state with ~~[native vegetation or a seed mix comprised of native the same] vegetation [and cover type originally present, including supplemental] erosion control grasses [crown vetch, orchard grass, or weeping lovegrass] when stabilizing steep slopes if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list]~~.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

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, and shall ensure that all contractors are aware of any time-of-year restrictions imposed.

16. ~~Immediately downstream of the construction area, Water quality standards shall not be violated as a result of the construction activities, unless allowed by this permit authorization.~~

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters, *unless allowed by this permit authorization*. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

18. *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 stream channel can begin.*

D. Road crossings.

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable and to follow as near as possible 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 re-establishment of a natural stream bottom and to maintain a low flow channel. For multiple celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk. Countersinking] is [shall not be required for existing pipes or culverts that are being maintained or extended.]~~

[3. 2.] Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

4. All state 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 a manner that minimizes disturbance, and the area must be returned to its original contours and ~~stabilized~~ restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit. [Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.]

2. Material resulting from trench excavation may be temporarily sidecast 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.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). *For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.*

F. ~~Bank stabilization~~ Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For *stream* bank protection activities, the structure and backfill shall be placed as close to the ~~shoreline~~ *stream bank* as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All *stream* bank ~~erosion protection~~ control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

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.

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7. ~~All~~ No material removed from the stream ~~substrate~~ ~~bottom~~ shall be disposed of in ~~an approved upland area~~ ~~surface waters~~ [, unless authorized by this permit].

G. Stormwater management facilities.

1. Stormwater management facilities shall be ~~designed~~ ~~installed~~ 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~~ Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance ~~excavation activities within stormwater management facilities~~ shall not require additional permit authorization, or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.

4. ~~Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the maintenance plan.~~

Part II. ~~Mitigation~~ Compensation, Monitoring, and Reporting.

A. ~~Compensatory mitigation~~ Compensation.

1. The permittee shall provide appropriate and practicable ~~compensatory mitigation~~ compensation for all impacts meeting the conditions outlined in this VWP general permit.

2. The types of ~~compensatory mitigation~~ compensation options that may be considered under this VWP general permit include:

~~4.~~ a. Purchases [or use] of credits from approved mitigation banks meeting the requirements of 9 VAC 25-210-115 F in accordance with 9 VAC 25-660-70 and provided that all impacts are compensated at a 2:1 ratio; or

~~2.~~ b. Contributions to an in lieu fee fund approved in accordance with 9 VAC 25-210-115 E and dedicated to the achievement of no net loss of wetland acreage and function, provided that [all wetland] impacts are compensated at a 2:1 ratio.

3. A written statement that conveys the applicant's proposal to use a mitigation bank or in-lieu fee fund for compensation shall be submitted with the application and shall constitute the compensation plan for the approved project. A site change will require a modification to the authorization.

~~B.~~ 4. The permittee shall ~~submit~~ not initiate work in permitted impact areas until documentation within 60 days of VWP general permit issuance that the USACE has debited the required mitigation credits from the mitigation

~~bank ledger of the mitigation bank credit purchase or that the fund contribution has been submitted to and received by DEQ.~~

5. The compensation plan shall be approved by the board prior to any construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Any deviations from the approved plan must be submitted and approved in advance by the board.

~~C.~~ B. [Impact site] construction monitoring.

1. ~~Photo stations shall be established to document the Construction aspects of project activities within impact areas as authorized by this permit that are within impact areas shall be monitored [through photographic documentation and documented]. Photographs should~~ The [photographic] monitoring shall document the preconstruction conditions, activities during construction, and post-construction conditions ~~within one week after completion of construction.~~ [Photographic] Monitoring shall consist of one of the following options:

a. Photographs shall be taken during construction at the end of the first, second and ~~twelfth~~ third months of construction and then annually semi-annually for the remainder of the construction project. ~~Photographs are not necessary~~ , except during periods of no activity within impact areas- ; [or]

b. An ortho-rectified photograph shall be taken prior to construction, and annually thereafter until all impacts are taken, and [all photos] shall clearly show the delineated surface waters and authorized impact areas [-; or

c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months of construction in impact areas, and then semi-annually for the remainder of the construction activities in impact areas, except during periods of no activity within the 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. As part of construction monitoring, photographs taken at the photo stations [or the narrative] shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the~~

exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

~~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. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.~~

4. Monitoring of water quality parameters shall be conducted during ~~rerouting of the live~~ permanent relocation of perennial 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~~ 30 minutes for at least three readings two hours at each station prior to opening the new channels; and immediately before opening new channels.
- c. ~~After opening the new channel,~~ Temperature, pH and D.O. readings shall be taken ~~once after opening the channels and every half hour~~ 30 minutes for at least three readings hours at each station within 24 hours of opening the new channel.

~~[5.] The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.~~

D. C. 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. The board DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing initiation and completion of work at each permitted impact area.~~

3. ~~After construction begins,~~ Construction monitoring reports shall be submitted to the board within 30 days of each DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes

place. The reports shall include, ~~at a minimum,~~ the following, as appropriate:

a. ~~For each permitted impact area, a written statement regarding when narrative stating whether work started in the identified impact area, where work was performed, what during the monitoring period [- , and] if work was performed, a description of the work performed, when the work was initiated, and what work was completed expected date of completion.~~

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.). *The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in any permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration.*

c. Summary of activities conducted to comply with the permit conditions.

d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.

e. Summary of anticipated work to be completed during the next monitoring period [,] and an estimated date of construction completion at all impact areas.

f. Labeled site map depicting all impact areas and photo stations.

~~4. The permittee shall submit a notice of termination DEQ shall be notified in writing within 30 days of final completion in accordance with 9 VAC 25-660-90 following the completion of all activities in all permitted impact areas authorized under this permit.~~

5. The permittee shall notify ~~the board~~ DEQ in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a 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 ~~the board~~ DEQ.

6. 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; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

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8. 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 *for cause*, VWP general permit authorization revocation, or denial of a ~~renewal application~~ *continuation of coverage request*.

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 its conditions when the circumstances on which the previous VWP general permit authorization 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 general permit authorization was issued and thereby constitute cause for VWP general permit 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. Coverage under 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 permittee shall allow 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.

H. Transferability of VWP 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 new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the 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 new permittee of its intent to modify or revoke and reissue the VWP general permit authorization ~~within the 30-day time period~~ *15 days*.

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.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if: (i) the permittee determines that additional *permanent* wetland ~~and~~ or 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~~ *compensated*; (ii) *the project results in less wetland or stream impacts, in which case compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals*; (iii) *there is a change in the project plans that does not result in a change in project impacts*; (iv) *there is a change in the mitigation bank at which credits are purchased [or used], provided that the same amount of credits are purchased [or used] and all criteria for use are met, as detailed in 9 VAC 25-210-115*; or (v)

typographical errors need to be corrected. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the ~~modification~~ planned change request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board after public notice and opportunity for a hearing. Causes Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;
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; 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 a VWP general permit authorization ~~modification~~ planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, when the authorized impacts [~~de~~ will] not occur, or when a planned change occurs that involves substituting a specified, approved mitigation bank or banks with another specified, approved mitigation bank. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certifications:

a. For project completion:

"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 [~~7~~ ~~that~~] I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination [~~7~~ ~~that~~] I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

~~K.~~ L. 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.~~ M. 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.~~ N. 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.~~ O. 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.

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2. Plans, ~~specifications~~, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

⊖ P. 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, as appropriate:

- 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.

⊖ Q. 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 alter or degrade 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.

NOTICE: The forms used in administering 9 VAC 25-660, the Virginia Water Protection General Permit for Impacts Less Than One-Half of an Acre, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East 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 *Form* (eff. ~~8/04~~ 7/04).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. ~~8/04~~ [4/04 10/04]).

~~Virginia Water Protection General Permit Registration Statement (eff. 10/02).~~

~~Quarterly Reporting of Impacts Less than One-Tenth Acre (insert reporting period) Statewide (eff. 4/03).~~

[*Joint Permit Application for Projects in Tidewater, Virginia* (eff. 10/04).]

Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (eff. 10/02).

VA.R. Doc. No. R04-100; Filed December 8, 2004, 8:12 a.m.

* * * * *

Title of Regulation: 9 VAC 25-670. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (amending 9 VAC 25-670-10 through 9 VAC 25-670-100).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: January 26, 2005.

Agency Contact: Ellen Gilinsky, Virginia Water Protection Permit Program Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23229, telephone (804) 698-4375, FAX (804) 698-4032, or e-mail egilinsky@deq.virginia.gov.

Summary:

The proposed amendments revise this general permit regulation to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process. Since implementation of this regulation in October 2001, it has become evident that these minor corrections are needed to improve applications for coverage, timeframes for issuance of authorizations, and coordination with the U.S. Army

Corps of Engineers State Program General Permit (SPGP-01). No change to the upper thresholds of coverage under this regulation is being made.

The proposed regulation was revised to (i) clarify application informational requirements, types of compensation allowed, mitigation plan, monitoring and reporting requirements, and termination process for events beyond permittee's control; (ii) include language concerning refunds of compensation payments; (iii) include termination process for events beyond permittee's control; and (iv) provide minor clarifications of a grammatical nature. Also, the Forms section was revised to include version dates and additional document titles.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published 20:22 VA.R. 2344-2362 July 12, 2004, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however the sections that have changed since publication of the proposed are set out.

9 VAC 25-670-10. [No change from proposed.]

9 VAC 25-670-20. [No change from proposed.]

9 VAC 25-670-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact up to one acre 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 facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities provided that the person submits notification as required in 9 VAC 25-670-50 and 9 VAC 25-670-60, remits the required application processing fee (9 VAC 25-20-10 ~~et seq.~~), complies with the limitations and other requirements of 9 VAC 25-670-100, 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 this VWP general permit.

2. Impacts [, *both temporary and permanent*,] result from a single and complete project, including all attendant features [~~both temporary and permanent~~].

a. Where a utility line has multiple crossings of surface waters (several single and complete projects) with more than minimal impacts, the board may at its discretion require a VWP individual permit for the project.

b. Where an access 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 a VWP individual permit.

3. ~~Compensatory mitigation~~ *Compensation* 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. *For wetlands* compensation may incorporate preservation of wetlands, or preservation or restoration of upland buffers adjacent to state waters, when utilized in conjunction with creation, restoration or mitigation bank credits. *For other surface waters, compensation may incorporate preservation and enhancement of stream channels, or preservation or restoration and enhancement of adjacent riparian buffers.*

4. 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.~~

5. When functions and values of surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in permanently maintained utility right-of-ways, ~~mitigation compensation~~ will be required ~~to reduce and minimize the adverse effects of the project to surface waters.~~ Permanently maintained access corridors no wider than 20 feet will be allowed without ~~compensatory mitigation compensation.~~

B. Activities that may be authorized under this VWP general permit include the following:

1. The construction, maintenance or repair of utility lines, including outfall structures and the excavation, backfill or bedding for utility lines provided there is no change in preconstruction contours;

2. The construction, maintenance or expansion of a substation facility or pumping station associated with a power line or utility line;

3. The construction or maintenance of foundations for overhead utility line towers, poles or anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a single pad) are used where feasible; and

4. The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit.

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.

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.

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E. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.

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 § 401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit 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.

[G. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under this VWP general permit.]

9 VAC 25-670-40. [No change from proposed.]

9 VAC 25-670-50. [No change from proposed.]

9 VAC 25-670-60. Registration statement Application.

A. ~~Registration statements~~ Applications shall be filed with the board, as follows:

1. The applicant shall file a complete ~~registration statement application~~ as described in 9 VAC 25-670-50 for a VWP General Permit WP2 for impacts to surface waters resulting from activities of utilities, 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 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 applications.~~

B. The required ~~registration statement application~~ shall contain the following information [, if applicable to the project]:

1. The applicant's name, mailing address, and telephone number ~~and fax number (if applicable)~~;

2. The authorized agent's (if applicable) name, mailing address, telephone number and, *if applicable*, fax number (~~if applicable~~) and *electronic mail address*;

3. The existing VWP permit number (if applicable);

4. The name of the project, *narrative description of project purpose of project*, and a description of the *proposed activity in surface waters*;

5. The name of 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 project area, *including the project boundary*. The map ~~should~~ *shall* be of sufficient detail such that the site may be easily located for site inspection;

10. ~~The appropriate appendices from the JPA (Reserved)~~;

11. Project plan view. All plan view sketches ~~should~~ *shall* include, at a minimum, north arrow, scale, existing structures, existing and proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water, impact limits, and location and dimension of all proposed structures in impact areas. Cross-sectional *or profile sketches, as appropriate*, with the above information, ~~may~~ *shall* be required ~~for certain projects as appropriate~~ to demonstrate minimization of impacts;

12. (Reserved.)

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, [and] the *areal extent [of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width)]*, [the] location ([by] *latitude and longitude [at the center of the impact, or at the center of each impact for linear projects]*) and [the] type of impact [~~area~~] ([~~of wetland in square feet~~], ~~linear feet or [and acres; area of stream, length of stream, and average width~~). *Wetland impacts] should [shall be quantified (] according to [their the] Cowardin classification or similar terminology []]*;

14. Functional values assessment for impacts to wetlands greater than one acre. ~~The functional assessment, which shall consist of a narrative description—summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters/functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats;~~

15. A description of the *specific on-site measures considered or 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 conceptual plan for the intended compensation for unavoidable impacts, including:~~

a. ~~A For wetlands, the conceptual compensatory mitigation—compensation 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 detailed location map (e.g., a United States~~

Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; 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 these data; ~~wetland delineation sheets, maps~~ a map for existing wetland surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, and zonation and acreage of each vegetation type proposed; and a proposed soil preparation and amendment plan addressing both description of existing soils, including general information on topsoil and subsoil conditions; and a draft design of any water control structures, permeability, and the need for soil amendments.

b. For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude and the hydrologic unit code (HUC) 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 proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.

b-c. Applicants proposing to compensate off-site, including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund shall first discuss submit an evaluation of the feasibility of on-site compensatory mitigation compensation. If on-site compensatory mitigation compensation is practicable, applicants must shall provide documentation as to why the proposed off-site compensatory mitigation compensation is ecologically preferable. The evaluation should shall include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.

e. Any applicant proposing compensation 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 applicant proposing compensation plan proposing to include involving contributions to an in-lieu fee fund shall include proof state such as the conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.

e. Any compensation plan applicant proposing compensation involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:

- (1) The name of the proposed mitigation bank and the HUC in which it is located;
- (2) The number of credits proposed to be purchased or used; and
- (3) Certification from the bank owner of the availability of credits;

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 shall 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 shall also include the location of all impacted and non-impacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should shall 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. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-40 et seq.); and

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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 application~~ 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, an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete.~~ Coverage under the VWP general permit shall be approved, approved with conditions, or denied within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under the VWP general permit shall be deemed approved.

1. In evaluating the ~~registration statement application~~, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under the VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit regulation and ~~may not conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.~~

E. Incomplete ~~registration statement application~~. Where a ~~registration statement an application~~ is incomplete, the board shall require the submission of additional information and ~~may~~ shall suspend processing the application until such time as the applicant has supplied the missing or deficient information and the ~~registration statement application~~ is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a ~~registration statement an application~~, or submitted incorrect information in a ~~registration statement an application~~ or in any report to the board, he shall immediately submit such facts or the correct information. Such application with new information shall be deemed a new application [, but shall not require an additional permit application fee].

9 VAC 25-670-70. ~~Mitigation Compensation.~~

A. For the purposes of this VWP general permit, the board may accept any one or combination of the following as compensation for unavoidable impacts: wetland [~~creation, wetland~~] or stream [~~creation or~~] restoration, the purchase or use of mitigation bank credits [,] or a contribution to an in-lieu fee fund. ~~Compensation may incorporate Preservation of wetlands or streams, or preservation or restoration of upland buffers adjacent to state waters, may only be applied toward wetland compensation when utilized in conjunction with creation, restoration or mitigation bank credits one or more of the above-mentioned compensation options. Preservation or enhancement of stream channels, or preservation, restoration, or enhancement of adjacent riparian buffers, may be applied toward stream compensation as appropriate.~~

B. ~~Compensatory mitigation Compensation~~ for unavoidable permanent 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. ~~Compensatory mitigation Compensation~~ for unavoidable impacts to streams shall be provided at a ~~4:1 replacement to less ratio via~~ and shall include, as practicable and appropriate, stream relocation, restoration, riparian buffer establishment restoration or enhancement, or preservation or enhancement of stream corridors. The purchase [or use] of stream mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, when feasible watershed enhancements is also acceptable. [~~The amount of One factor in determining the~~] required compensation [~~will~~ shall] be [~~determined based on~~] an analysis of stream impacts utilizing a [~~scientifically based~~] stream impact assessment methodology approved by the board.

D. Compensation for open water impacts [other than to streams] may be required at a 1:1 replacement to impact ratio, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. Compensation for conversion impacts [to wetlands] shall be required at a 1:1 replacement to impact ratio when such conversion results in a permanent alteration of the functions and values of the [~~surface water~~ wetland].

~~E-F.~~ In order for contribution to an in-lieu fee fund to be an acceptable form of ~~compensatory mitigation compensation~~, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

~~F.~~ The use of mitigation banks for compensating project impacts shall be deemed appropriate if G. In order for purchase [or use] of bank credits to be an acceptable form of compensation, the bank is shall be 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 F. The applicant provides verification shall provide proof of purchase [, use,] or [~~debt debit~~] to the board of purchase or debiting of the required

~~amount of credits~~ DEQ [prior to commencing activities in impact areas].

9 VAC 25-670-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional *permanent* wetland ~~and~~ or 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 great than 50 linear feet, and provided that the additional impacts are fully mitigated. *In no case can this authorization be modified to exceed the general permit threshold for use.*

B. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. [DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions.]

C. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

D. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased [or used], provided that the same amount of credits are purchased [or used] and all criteria for use in 9 VAC 25-210-115 are met.

E. Authorization under the VWP general permit may be modified after issuance for typographical errors.

F. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and [~~they are~~ the area is] restored to preexisting conditions in accordance with Part I C 11 of this general permit. *In no case can the additional temporary impacts exceed the general permit threshold for use.*

~~B.G.~~ The permittee shall notify the board in advance of the planned change, and the ~~modification-planned change~~ request will be reviewed according to all provisions of this regulation.

9 VAC 25-670-90. Notice of Termination.

When all permitted activities requiring notification under 9 VAC 25-670-50 B 1 have been completed, *or if the authorized impacts will not occur*, the applicant shall submit a ~~notice of request for termination~~ within 30 days of ~~final-project completion or project cancellation~~. *The director may accept this termination of authorization on behalf of the board.* The ~~notice~~ permittee shall ~~contain~~ submit the following information:

1. Name, mailing address and telephone number ~~of the permittee~~;
2. Name and location of the activity;
3. The VWP permit authorization number; and

4. One of the following ~~certification~~ certifications:

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination [~~that~~] I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

9 VAC 25-670-100. VWP general permit.

Any applicant whose ~~registration statement~~ application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP2

Authorization effective date:

Authorization expiration date:

Authorization Note(s):

VWP GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION

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COMMISSION AND OTHER UTILITY LINE 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 surface waters or fish and wildlife resources.

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, the permittee is authorized to impact up to one acre 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.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I-Special Conditions, Part II-Mitigation Compensation, 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. This permit authorizes impacts of up to one acre 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 application.
2. Any additional changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-670-80 or another VWP permit application.
3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs,

provided that the adjusted compensation meets the initial authorization compensation goals.

3-5. The activities authorized for coverage under this VWP general permit must commence and be completed within three years of the date of this authorization.

B. ~~Reapplication~~ Continuation of coverage. Application ~~Reapplication~~ 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 compensation) has not been completed within three 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 continuation] of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered [an a new] application [for coverage,] and no application fee will be charged. *The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.*

C. Overall project conditions.

1. The ~~construction or work~~ activities 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. *[The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater.]* 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. *Excess or waste concrete shall not be disposed of in [flowing] surface waters or washed [out] into [flowing] surface waters.*
4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
5. Erosion and sedimentation controls shall be designed in accordance with the Virginia 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 *is stabilized and shall then be removed.*

6. Any exposed slopes and streambanks ~~must shall~~ be stabilized immediately upon completion of the ~~utility line crossing of work in each water body permitted area~~. All denuded areas shall be properly stabilized in accordance with the 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 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 ~~surface~~] waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted [wetland areas ~~surface waters~~] shall be placed on mats, geotextile fabric, or other suitable ~~measures material~~, to minimize soil disturbance to the maximum extent practicable. *Equipment and materials shall be removed immediately upon completion of work.*

10. All nonimpacted surface waters within *50 feet of any permitted activities and within the project or right-of-way limits that are within 50 feet of any clearing, grading, or filling activities* shall be clearly flagged or marked for the life of the construction activity ~~within at that area location to preclude any unauthorized disturbances to these surface waters during construction~~. The permittee shall notify all contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to ~~wetlands surface waters~~ during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions *within 30 days of completing work, which shall include reestablishing preconstruction contours, and planted planting or seeded seeding* with appropriate wetland vegetation according to cover type (emergent, scrub-shrub or forested). The permittee shall take all appropriate measures to promote *and maintain* revegetation of temporarily disturbed wetland areas with wetland vegetation ~~by through~~ the second year post-disturbance. All ~~temporary fills must temporarily impacted streams [and streambanks] shall be removed in restored to their entirety and the affected area returned to preexisting contours original [elevation contours] within 30 days following the construction at that stream segment, and the banks seeded or planted with [native the same] vegetation [cover type originally present along the streambanks], [and supplemented by including supplemental] erosion control grasses [~~crown vetch, orchard grass, or weeping lovegrass~~] *when stabilizing steep slopes if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list*].~~

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 restored~~ within 30 days following removal of the stockpile, and restored ~~to the original vegetated state with [native vegetation or a seed mix comprised of native the same]~~ *vegetation [and cover type originally present, including supplemental] erosion control grasses [~~crown vetch, orchard grass, or weeping lovegrass~~] when stabilizing steep slopes if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list*].

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

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, *and shall ensure that all contractors are aware of any time-of-year restrictions imposed.*

16. ~~Immediately downstream of the construction area,~~ Water quality standards shall not be violated as a result of the construction activities *unless allowed by this permit authorization.*

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters *unless allowed by this permit authorization*. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

18. *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 steam flow must be fully established before construction activities in the old stream channel can begin.

D. Road crossings.

1. Access roads *and associated bridges or culverts* shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable ~~and to follow as near as possible 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.

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~~[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 to maintain a low flow channel. For multiple celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk. Countersinking] is [shall not be required for existing pipes or culverts that are being maintained or extended.]~~

~~[3. 2.]~~ Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or 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 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 a manner that minimizes disturbance, and the area must be returned to its original contours and ~~stabilized~~ *restored within 30 days of completing work in the area*, unless otherwise authorized by this VWP general permit. *[Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.]*

2. Material resulting from trench excavation may be temporarily sidcast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). *For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.*

F. ~~Bank stabilization~~ Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For *stream* bank protection activities, the structure and backfill shall be placed as close to the ~~shoreline~~ *stream bank* as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All *stream* bank ~~erosion control~~ *protection* structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

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 No material removed from the stream ~~substrate bottom~~ shall be disposed of in an ~~approved upland area surface waters~~ *[, unless authorized by this permit]*.

Part II. ~~Mitigation~~ Compensation, Monitoring, and Reporting.

A. ~~Compensatory mitigation~~ Compensation.

1. The permittee shall provide appropriate and practicable ~~compensatory mitigation~~ *compensation* for all impacts meeting the conditions outlined in this VWP general permit.

2. The types of ~~compensatory mitigation~~ *compensation* 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.

3. *For wetlands*, compensation may incorporate preservation of wetlands or ~~streams~~ or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits. *For other surface waters, compensation may incorporate preservation [, restoration,] or enhancement of stream channels, or preservation, restoration [,] or enhancement of adjacent riparian buffers.*

~~4.~~ 4. The site or sites depicted in the conceptual ~~compensatory mitigation~~ *compensation* plan submitted with the ~~registration statement~~, *application* shall constitute the ~~compensatory mitigation~~ *compensation* ~~[plan site]~~ for the approved project. *A site change will require a modification to the authorization.*

~~2.~~ 5. For compensation involving the purchase or use of mitigation bank credits, the permittee shall ~~submit~~ *not initiate work in permitted impact areas until* documentation ~~within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the mitigation bank ledger of the mitigation bank credit purchase [or usage] has been submitted to and received by DEQ.~~

6. For projects proposing a contribution to an in-lieu fee fund, the permittee shall ~~submit not initiate work in permitted impact areas until documentation within 60 days of VWP general permit authorization that the fund contribution has been received of the in-lieu fee fund contribution has been submitted to and received by DEQ.~~

3- 7. All aspects of the ~~compensatory mitigation compensation~~ plan shall be finalized, submitted and approved by the board prior to any construction activity in permitted impact areas. 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 compensation~~ plan as approved by the board shall be an enforceable requirement of this VWP general permit *authorization*. Any deviations from the approved plan must be submitted and approved in advance by the board.

a- 8. The final ~~compensatory mitigation wetlands compensation~~ plan shall include: ~~narrative description of the plan including~~

a. The goals and objectives, ~~site of the plan in terms of replacement of wetland acreage and functions, by wetland type;~~

b. Location, ~~map, including latitude and longitude (to the nearest second) at the center of the site;~~

c. Summary of the type and acreage of the existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;

d. Grading plan with existing and proposed ~~grade, elevations at one-foot or less contours;~~

e. Schedule for ~~compensatory mitigation compensation~~ site construction, including sequence of events with estimated dates;

~~source of hydrology and~~ f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; ;

~~plant species,~~ g. Groundwater elevation data for the site, or the proposed location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;

h. Design of water control structures;

i. Planting scheme and schedule, indicating ~~expected plant species, zonation, planting schedule, and acreage of each vegetation type proposed;~~

j. An abatement and control plan [~~for covering all~~] undesirable plant species, [~~including, at a minimum, the species as~~] listed on DCR's Invasive Alien Plant Species of Virginia list, [~~and including that includes the proposed~~] procedures [~~to notify for notifying~~] DEQ of [~~any undesirable plant species occurrences~~ their presence], methods of removal, and [~~successful the~~] control [~~of any such species~~];

k. Erosion and sedimentation control plan;

l. A soil ~~amendments,~~ preparation and ~~amendment plan~~ addressing both topsoil and subsoil conditions;

all m. A discussion of any structures and features considered necessary for the success of the ~~plan, site;~~

~~and number and~~ n. A monitoring plan, including [~~proposed~~] success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and ground water [~~;~~ and] monitoring wells. ~~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. , any sampling points, and [, if applicable,] reference wetlands;~~

o. Site access plan;

p. The location and composition of any buffers; and

q. The mechanism for protection of the compensation areas.

9. The final stream compensation plan shall include:

a. The goals and objectives of the compensation plan in terms of replacement of stream functions and values [~~;~~ and linear feet and acreage of surface waters];

b. A location map, including latitude and longitude (to the nearest second) at the center of the site;

c. An evaluation [~~and,~~] discussion [, and plan sketches] of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the [~~restorative~~] measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);

d. The identification of existing [~~geomorphological~~] stream type being impacted and proposed [~~geomorphological~~] stream type for compensation purposes;

e. Detailed design information for the proposed restorative measures, including geomorphological measurements [~~;~~] and reference reach information as appropriate;

f. Riparian buffer plantings, including planting scheme, species, buffer width;

g. Livestock access limiting measures [, to the greatest extent possible];

h. A site access plan;

i. An erosion and sedimentation control plan, if appropriate;

j. [~~A monitoring~~ An abatement] and control plan [~~for covering all~~] undesirable plant species, [~~if appropriate, including, at a minimum, the species as~~] listed on DCR's

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~~Invasive Alien Plant Species of Virginia list, [and including that includes the proposed] procedures [to notify for notifying] DEQ of [any undesirable plant species occurrences their presence], methods for removal [,] and [successful the] control [, and report the success of the removal efforts of any such species];~~

k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;

l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; [~~proposed monitoring photo points; monitoring and reporting schedule;~~] location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;

m. The mechanism for protection of the compensation area [; and]

[n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.]

~~[10. For final wetland or stream compensation plans, rooted seedlings or cuttings shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.~~

~~11. 10.] For final wetland or stream compensation plans, any vegetation used shall be native species common to the area, shall be suitable for growth in local wetland conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.~~

b. [~~12. 11.] The final compensatory mitigation wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation site(s) to include all state waters (including compensatory mitigation areas and nonimpact state waters) within the project compensation site boundary in perpetuity. These areas or boundaries. Such protections shall be surveyed or platted in place 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 compensation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general 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, or any equivalent instrument for government-owned lands. Proof of recordation shall be submitted within [60 120] 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 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.~~

~~[13. An as-built survey of the site, including spot elevations, shall be submitted to DEQ within 60 days of completion of grading, and shall be certified by a licensed land surveyor or a professional engineer.]~~

5. [~~14. 12.] All work in permitted impact areas shall cease if compensatory mitigation compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.~~

~~6. A site stabilization plan shall be provided for compensation sites involving land disturbance.~~

~~[15. 13.] DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s).~~

7. [~~16. 14.] Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan wetland or stream compensation plan(s).~~

8. [~~17. 15.] Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation compensation 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 or forebays.~~

9. [~~18. 16.] The success of the compensatory mitigation compensation 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 meeting the success criteria established in the approved final compensation plan.~~

10. [~~19. 17.] Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost-free growing season, as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years or the NRCS WETS table, measured in consecutive days under normal rainfall typical precipitation conditions, and as defined in the water budget of the final mitigation compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is~~

greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.

44. ~~[20- 18.]~~ The wetland plant community shall be considered established according to the performance criteria specified in the final ~~mitigation compensation~~ plan and approved by the board. *The proposed vegetation success criteria in the final compensation plan shall include the following:*

a. Species composition shall reflect the desired plant community types stated in the final ~~mitigation wetlands compensation~~ plan by the end of the first growing season and shall be maintained through the last *monitoring year of the VWP permit.*

b. 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, *by the end of the first growing season and shall be maintained through the last monitoring year .*

42. ~~[21- 19.]~~ ~~Noxious weeds~~ *Undesirable plant species* shall be identified and controlled as described in the ~~noxious weed undesirable plant species~~ 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 *DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by [aerial area] coverage on wetland or stream compensation sites [, including. The notification shall include]* the methods of removal; and *[control, and]* whether the methods are successful ~~control.~~

43. ~~[22- 20.]~~ If the ~~compensatory mitigation wetland or stream compensation area(s) fails fail to be established as viable wetlands meet the specified success criteria in a monitoring year (with the exception of the final monitoring year), the reasons for this failure shall be determined and a corrective action plan; (including proposed actions, a schedule, and monitoring plan []) shall be submitted to the board DEQ for approval prior to or with the next required or before that year's monitoring report. All problems shall be corrected by the permittee. The approved corrective action plan shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to establish wetlands ensure success, the required monitoring plan cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by DEQ.~~

~~[23- 21.]~~ *If all success criteria have not been met in the final monitoring year, or if the wetland or stream compensation [site(s)-have site has] not met the stated restoration goals, monitoring shall be required for each consecutive year until two sequential, annual reports indicate that all criteria have been successfully satisfied and the [site(s)-have site has] met the overall restoration goals (i.e., that corrective actions were successful). The reasons for this failure shall be determined and a corrective action plan (including proposed actions, a schedule, and a monitoring plan) shall be submitted with the monitoring*

report to DEQ for approval and implemented by the permittee in accordance with the approved schedule.

44. ~~[24- 22.]~~ The ~~surveyed wetland boundary for the compensatory mitigation~~ *compensation 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. *Data shall be submitted by [November-30 December 31] of the final monitoring year.*

45. ~~[25- 23.]~~ Herbicides or algicides shall not be used in or immediately adjacent to the ~~compensatory mitigation~~ *compensation site or sites* without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by ~~the board~~ *DEQ* 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 or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.~~

B. ~~Compensatory mitigation Wetland compensation site monitoring.~~

1. ~~A post-grading~~ *An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, including spot elevations, of shall be conducted for the entire compensation site or sites for wetland compensatory mitigation may including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be required depending upon the type and size of the compensation site, and shall be conducted certified by a licensed land surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within [90 60] days of completing compensation site construction. Any changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.*

2. Photographs shall be taken at the ~~compensatory mitigation~~ *compensation site or sites* from the permanent markers identified in the final ~~mitigation compensation~~ 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~~ *at a time specified in the final compensation plan during every monitoring year.*

3. ~~Compensatory mitigation~~ *Compensation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin [at on the first day of] the first complete growing season (monitoring year one 1) following compensatory mitigation after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, and 3, and 5, unless*

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otherwise approved by DEQ. In all cases, if all success criteria have not been met in the ~~third~~ fifth monitoring year, then 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 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, weekly monitoring may be discontinued for the remainder of that monitoring year following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final ~~mitigation~~ compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final ~~mitigation~~ compensation plan. Monitoring shall take place in August ~~or~~, September, or October during the growing season of each monitoring year, unless authorized in the monitoring plan.

7. The presence of ~~noxious~~ undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted by [~~November 30~~ December 31] of the monitoring year. The reports shall include, as applicable, the following:

a. General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

d. Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

e. Evaluation of hydric soils or soils under hydric conditions, as appropriate.

f. Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

g. Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the

photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

h. Discussion of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, if applicable.

j. Discussion of corrective measures or maintenance activities to control undesirable species, to repair any damaged water control device, or to replace any damaged planted vegetation.

k. Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

C. Stream ~~mitigation~~ compensation, restoration and monitoring.

1. ~~Stream mitigation~~ Any riparian buffer restoration activities shall be performed detailed in accordance with the final ~~mitigation~~ compensation plan and subsequent ~~submittals~~, as approved by the board shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream bank slopes, banks, and channel relocation shall be stabilized to reduce stream bank erosion, where completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. [~~Heavy equipment is authorized for use within the~~] Stream channel [~~during~~] restoration activities [~~when~~ shall be conducted in the dry or during low flow conditions. When] site conditions prohibit access from the streambank [~~These activities shall be conducted in the dry or during low flow conditions, when practicable, heavy equipment shall be authorized for use within the stream channel~~].

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within [90 60] days of completing compensation site construction. Any changes or deviations [from the final compensation plans] in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

[7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise determined by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.]

~~3. [7- 8.] All stream mitigation compensation monitoring reports shall be conducted in accordance with the final mitigation plan approved by the board. All monitoring reports shall be submitted by [November 30 December 31] of the monitoring year. Monitoring The reports shall include, as applicable, the following:~~

- a. General description of the site including a site location map identifying photo stations and monitoring stations.
- b. Summary of activities completed during the monitoring year.
- c. Description of monitoring methods.
- d. An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.
- ~~a-~~ e. 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 labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.
- ~~b-~~ Discussion of the establishment of vegetation, if applicable.
- ~~c-~~ Any f. A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream mitigation compensation site.

g. Documentation of undesirable plant species and summary of abatement and control measures.

h. A summary of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, [and as-built survey,] if applicable.

j. A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

[k. Any additional submittals that were approved by DEQ in the final compensation plan.]

D. [Impact site] construction monitoring.

~~1. Photo stations shall be established to document the Construction aspects of project activities within impact areas as authorized by this permit that are within impact areas shall be monitored [through photographic documentation and documented]. Photographs should The [photographic] monitoring shall document the preconstruction conditions, activities during construction, and post-construction conditions within one week after completion of construction. [Photographic monitoring Monitoring] shall consist of one of the following options:~~

a. Photographs shall be taken during construction at the end of the first, second and ~~twelfth~~ third months of construction, and then semi-annually for the remainder of the construction project. ~~Photographs are not necessary, except during periods of no activity within impact areas; ; [or]~~

b. An ortho-rectified photograph shall be taken [by a firm specializing in ortho-rectified photography] prior to construction, and annually thereafter until all impacts are taken, and shall clearly show the delineated surface waters and authorized impact areas [- ; or]

[c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months of construction in impact areas, and then semi-annually for the remainder of the construction activities in impact areas, except during periods of no activity within the 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. As part of construction monitoring, photographs taken at the photo stations [or the narrative] shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs~~

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at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

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. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.~~

4. Monitoring of water quality parameters shall be conducted during ~~rerouting of the live~~ permanent relocation of perennial 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~~ 30 minutes for at least ~~three readings~~ two hours at each station prior to opening the new channels; and immediately before opening new channels.

c. ~~After opening the new channel,~~ Temperature, pH and D.O. readings shall be taken ~~once after opening the channels and every half hour~~ 30 minutes for at least three readings hours at each station within 24 hours of opening the new channel.

[5.] ~~The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.~~

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. ~~The board~~ DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include ~~identification of the impact area at which work will occur and a~~ projected schedule for completing initiation and completion of work at each permitted impact area.

3. ~~After construction begins,~~ Construction monitoring reports shall be submitted to ~~the board~~ within 30 days of each DEQ

not later than the 10th day of the month following the month in which the monitoring event specified in Part II D takes place. The reports shall include, ~~at a minimum,~~ the following, as appropriate:

a. ~~For each permitted impact area, a written statement regarding when narrative stating whether work started in the identified impact area, where work was performed, what during the monitoring period [; , and] if work was performed, a description of the work performed, when the work was initiated, and what work was completed the expected date of completion.~~

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.). ~~The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in any permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration.~~

c. Summary of activities conducted to comply with the permit conditions.

d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.

e. Summary of anticipated work to be completed during the next monitoring period [;] and an estimated date of construction completion at all impact areas.

f. Labeled site map depicting all impact areas and photo stations.

4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.

5. DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.

4-6. All ~~compensatory mitigation~~ compensation monitoring reports shall be submitted annually by [~~November 30~~ December 31], 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~~ compensation sites shall be reported. Invasive Undesirable plant species occurrences and control of these occurrences shall also be reported to ~~the board~~ DEQ.

~~5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-670-90.~~

~~6-7. The permittee shall notify the board DEQ 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 the board DEQ.~~

7-8. 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; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

8-9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

9-10. 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, *for cause*, VWP general permit authorization revocation, or denial of a ~~renewal application~~ *continuation of coverage request*.

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 its conditions when the circumstances on which the previous VWP general permit authorization 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 general permit authorization was issued and, thereby, constitute cause for VWP general permit 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 permittee shall allow 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.

H. Transferability of VWP 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 new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the 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 new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within the ~~30-day time period~~ 15 days.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as

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fully effective as if it had been issued directly to the new permittee.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if: (i) the permittee determines that additional *permanent* 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~~ compensated; (ii) the project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals; (iii) there is a change in the project plans that does not result in a change in project impacts; (iv) there is a change in the mitigation bank at which credits are purchased [or used], provided that the same amount of credits are purchased [or used] and all criteria for use are met, as detailed in 9 VAC 25-210-115; or (v) typographical errors need to be corrected. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the ~~modification~~ planned change request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board after public notice and opportunity for a hearing. Causes Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;
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; 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~~ planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, when the authorized impacts do not occur, or when a planned change occurs that involves substituting a specified, approved mitigation bank or banks with another specified, approved mitigation bank. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination

of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certifications:

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination [, ~~that~~] I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

~~K~~L. 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~~M. 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-N.~~ 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-O.~~ 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-P.~~ 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, as appropriate:

- 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.

~~P-Q.~~ 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.

NOTICE: The forms used in administering 9 VAC 25-670, Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East 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. ~~8/04~~ 7/04).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. ~~10/02~~ [~~4/04~~ 10/04]).

[*Joint Permit Application for Projects in Tidewater, Virginia* (eff. 10/04).]

~~Virginia Water Protection General Permit Registration Statement~~ (eff. 8/04).

Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application [~~for Activities in Waters and Wetlands of the Commonwealth of Virginia~~] (eff. 10/02).

VA.R. Doc. No. R04-101; Filed December 8, 2004, 8:14 a.m.

Title of Regulation: 9 VAC 25-680. Virginia Water Protection General Permit for Linear Transportation Projects (amending 9 VAC 25-680-10 through 9 VAC 25-680-100).

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Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: January 26, 2005.

Agency Contact: Ellen Gilinsky, Virginia Water Protection Permit Program Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032, or e-mail egilinsky@deq.virginia.gov.

Summary:

The amendments correct several administrative procedures, clarify application and permitting requirements, and allow for a more efficient application review process. Since implementation of this regulation in October 2001, it has become evident that these minor corrections are needed to improve applications for coverage, timeframes for issuance of authorizations, and coordination with the U.S. Army Corps of Engineers State Program General Permit (SPGP-01). No change to the upper thresholds of coverage under this regulation is being made.

The proposed regulation was revised to (i) clarify application informational requirements, types of compensation allowed, mitigation plan, monitoring and reporting requirements, and termination process for events beyond permittee's control; (ii) include language concerning refunds of compensation payments; (iii) include termination process for events beyond permittee's control; and (iv) provide minor clarifications of a grammatical nature. Also, the Forms section was revised to include version dates and additional document titles.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published 20:22 VA.R. 2362-2381 July 12, 2004, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however the sections that have changed since publication of the proposed are set out.

9 VAC 25-680-10. [No change from proposed.]

9 VAC 25-680-20. [No change from proposed.]

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 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 25-20-40 ~~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 25-210-40 ~~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 [, *both temporary and permanent*,] result from a single and complete project, including all attendant features [, ~~both temporary and permanent~~].

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 a VWP individual permit.

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. 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.

5. ~~Compensatory mitigation~~ Compensation 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. *For wetlands* compensation may incorporate preservation of wetlands, or preservation or restoration of upland buffers adjacent to surface waters, when utilized in conjunction with creation, restoration or mitigation bank credits. *For other surface waters, compensation may incorporate preservation and enhancement of stream channels, or preservation or restoration and enhancement of adjacent riparian buffers.*

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).

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.

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.

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 § 401 certification existing as of the effective date of this regulation, shall constitute coverage under this VWP general permit 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.

[G. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under this VWP general permit.]

9 VAC 25-680-40. Exceptions to coverage.

A. Authorization for coverage under this VWP general permit will not apply in the following areas:

1. 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 shall be based upon either basal area or percent areal cover *in the area of impact*.
2. Surface waters ~~with~~ *where the proposed activity will impact* 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 *general permits in order to impact greater than two acres of nontidal surface waters including* , more than 500 linear feet of perennial stream channel, or more than 1,500 linear feet of nonperennial stream channel. More than one authorization for coverage under this VWP 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 specified here*.

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, nor shall it contravene applicable Water Quality Standards (9 VAC 25-260-5 ~~et seq.~~).

E. The board shall deny coverage under this VWP general permit to any applicant conducting activities 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 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, *that significantly* increase flooding, or *that* 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. 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 or the work is performed in the dry [, *or unless approved by DEQ*];
6. Return flow discharges from dredge disposal sites;
7. Overboard disposal of dredge materials;
8. Dredging in marinas;
9. Dredging of shellfish areas, submerged aquatic vegetation beds and other highly productive areas;
10. Federal navigation projects;
11. The taking of threatened or endangered species in accordance with the following:
 - a. Pursuant to § 29.1-564 of the Code of Virginia: "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 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 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. [No change from proposed.]

9 VAC 25-680-60. ~~Registration statement~~ **Application.**

A. ~~Registration statements~~ *Applications* shall be filed with the board as follows:

1. The applicant shall file a complete ~~registration statement~~ *application*, as described in 9 VAC 25-680-50, for a VWP

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General Permit Number WP3 for impacts to surface waters from linear transportation projects, 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 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 applications.~~

B. The required ~~registration statement application~~ shall contain the following information [, if applicable to the project]:

1. The applicant's name, mailing address, and telephone number and, if applicable, fax number;
2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number and electronic mail address;
3. The existing VWP permit number (if applicable);
4. The name of the project, *narrative description of project purpose of project*, and a description of the *proposed activity in surface waters*;
5. The name of 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 project area, *including the project boundary*. The map ~~should~~ *shall* be of sufficient detail such that the site may be easily located for site inspection;
10. ~~The appropriate appendices from the JPA (Reserved);~~
11. Project plan view. All plan view sketches ~~should~~ *shall* include, at a minimum, north arrow, scale, existing structures, existing and proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water mark, impact limits, location and dimension of all proposed structures in impact areas. Cross-sectional or *profile sketches, as appropriate*, with the above information, ~~may shall~~ be required for certain projects as appropriate to demonstrate minimization of impacts;
12. Dredge material management plan (for dredging projects only) including plan and cross-section view drawings of the disposal or dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal or dewatering site;
13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, [and] the *areal extent* [, of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width),

~~the] location ([by] latitude and longitude [at the center of the impact, or at the center of each impact for linear projects)] and [the] type of [the] impact [(area) (of wetland in square feet) , linear feet, or [and acres; area of stream, length of stream, and average width). Wetland impacts] should [shall be quantified (] according to [their the] Cowardin classification or similar terminology []);~~

14. Functional values assessment for impacts to wetlands greater than one acre. ~~The functional assessment , which shall consist of a narrative description summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters/functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats;~~

15. A description of the *specific on-site* measures considered or 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 25-240-115-A;~~

16. A ~~description of conceptual plan~~ for the intended compensation for unavoidable impacts, including:

a. ~~A~~ *For wetlands, the conceptual compensatory mitigation compensation 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 detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; 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 these data; wetland delineation confirmation, data sheets, and maps a map for existing wetland surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a conceptual grading plan; a conceptual planting scheme, including suggested plant species; and zonation and acreage of each vegetation type proposed; and a proposed soil preparation and amendment plan addressing both description of existing soils, including general information on topsoil and subsoil conditions; and a draft design of any water control structures, permeability, and the need for soil amendments.*

b. *For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude and the hydrologic unit code (HUC) 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 proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.

b. c. Applicants proposing to compensate off-site, including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund shall first discuss ~~submit an evaluation of~~ the feasibility of on-site ~~compensatory mitigation compensation~~. If on-site ~~compensatory mitigation compensation~~ is practicable, applicants must ~~shall~~ provide documentation as to why the proposed off-site ~~compensatory mitigation compensation~~ is ecologically preferable. The evaluation ~~should~~ *shall* include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, 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 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 applicant proposing~~ compensation plan ~~proposing to include involving~~ contributions to an in-lieu fee fund shall ~~include proof state such as [their the] conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.~~

e. Any applicant proposing compensation plan ~~proposing involving~~ the purchase or use of mitigation banking credits shall include ~~as their conceptual compensation plan:~~

- (1) The name of the proposed mitigation bank *and the HUC in which it is located*;
- (2) The number of credits proposed to be purchased or used; and
- (3) Certification from the bank owner of the availability of credits-;

~~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~~ *shall* 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~~ *shall* 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~~ *shall* 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. The appropriate application processing fee for a VWP permit (9 VAC 25-20-10 et seq.); and

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 application~~ 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 an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete.~~ Coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days *of receipt of a complete*

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application. If the board fails to act within 45 days on a complete application, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the registration statement application, 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 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 application. Where a registration statement application is incomplete, the board shall require the submission of additional information and may suspend processing the application until such time as the applicant has supplied the missing or deficient information and the registration statement application is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement application, or submitted incorrect information in a registration statement application or in any report to the board, he shall immediately submit such facts or the correct information. Such application with new information shall be deemed a new application [, but shall not require an additional permit application fee].

9 VAC 25-680-70. Mitigation Compensation.

A. For the purposes of this VWP general permit, the board may accept any one or combination of the following as compensation for unavoidable impacts: wetland [creation, 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 only be applied toward wetland compensation when utilized in conjunction with creation, restoration or mitigation bank credits one or more of the above-mentioned compensation options. Preservation or enhancement of stream channels, or preservation, restoration, or enhancement of adjacent riparian buffers, may be applied toward stream compensation as appropriate.

B. ~~Compensatory mitigation~~ Compensation 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. ~~Compensatory mitigation~~ Compensation for unavoidable impacts to streams shall be provided at a 1:1 replacement to less ratio via and shall include, as practicable and appropriate,

~~stream relocation, restoration, riparian buffer establishment, or restoration or enhancement, or preservation or enhancement of stream corridors.~~ The purchase [or use] of stream mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, when feasible watershed enhancements is also acceptable. [~~The amount of~~ One factor in determining the] required compensation [~~will shall~~] be [~~determined based on~~] an analysis of stream impacts utilizing a [~~scientifically based~~] stream impact assessment methodology approved by the board.

D. Compensation for open water impacts [other than to streams] may be required at a 1:1 replacement to impact ratio, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. Compensation for conversion impacts [to wetlands] shall be required at a 1:1 replacement to impact ratio when such conversion results in a permanent alteration of the functions and values of the [~~surface water~~ wetlands].

~~E.~~ F. In order for contribution to an in-lieu fee fund to be an acceptable form of ~~compensatory mitigation~~ compensation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

~~F.~~ G. ~~The use of mitigation banks for compensating project impacts shall be deemed appropriate if~~ In order for the purchase [or use] of bank credits to be an acceptable form of compensation, the bank is shall be 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 shall provide proof of purchase [, use,] or debit to the board of purchase or debiting of the required amount of credits DEQ [prior to commencing activities in impact areas].

9 VAC 25-680-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland and or 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. In no case can this authorization be modified to exceed the general permit threshold for use.

B. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. [DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions.]

C. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

D. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased [or used], provided that the same amount of

credits are purchased [or used] and all criteria for use in 9 VAC 25-210-115 are met.

E. Authorization under the VWP general permit may be modified after issuance for typographical errors.

F. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and [they are the area is] restored to preexisting conditions in accordance with Part I C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.

G. The permittee shall notify the board in advance of the planned change, and the ~~modification~~ planned change request will be reviewed according to all provisions of this regulation.

9 VAC 25-680-90. Notice of Termination of authorization by consent.

When all permitted activities requiring notification under 9 VAC 25-680-50 A 1 have been completed, or if the authorized impacts will not occur, the permittee shall submit a notice of request for termination within 30 days of final project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The notice permittee shall contain submit the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certification certifications:
 - a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination [~~that~~] I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

9 VAC 25-680-100. VWP general permit.

Any applicant whose registration statement application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP3

Authorization Effective date:

Authorization Expiration date:

Authorization Notes(s):

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.

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, the permittee 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.

Permittee:

Address:

Activity Location:

Activity Description:

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The authorized activity shall be in accordance with this cover page, Part I-Special Conditions, Part II--~~Mitigation Compensation~~, 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. 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 application~~.
2. Any ~~additional changes to the authorized permanent~~ 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.
3. *Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.*
4. *Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.*
- 3- 5. 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~~ Continuation of Coverage. ~~Application~~ *Reapplication* 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 compensation~~) 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 continuation~~] of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered [~~an a new~~] application [~~for coverage~~] and no application fee will be charged. *The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.*

C. Overall project conditions.

1. The ~~construction or work~~ activities 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. [*The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplan culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater.*] 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 [, *unless otherwise approved by DEQ*]. *Excess or waste concrete shall not be disposed of in [flowing] surface waters or washed [out] into [flowing] surface waters.*

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia 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~~ *is stabilized and shall then be removed.*

6. Any exposed slopes and streambanks ~~must shall~~ be stabilized immediately upon completion of ~~the project at work in each water body permitted impact area.~~ All denuded areas shall be properly stabilized in accordance with the 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 a manner that minimizes construction 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 ~~surface~~] waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted [~~wetland areas surface waters~~] shall be placed on mats, geotextile fabric, or other suitable ~~measures material~~, to minimize soil disturbance to the maximum extent practicable. *Equipment and materials shall be removed immediately upon completion of work.*

10. All nonimpacted surface waters within 50 feet of any ~~permitted activities and within the project or right-of-way limits that are within 50 feet of any clearing, grading, or filling activities~~ shall be clearly flagged or marked for the life of the construction activity ~~within~~ *at that area location to preclude any unauthorized disturbances to these surface waters during construction.* The permittee shall notify all

contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to ~~wetlands~~ *surface waters* during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions *within 30 days of completing work, which shall include reestablishing preconstruction contours, and planted planting or seeded seeding* with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote *and maintain* revegetation of temporarily disturbed wetland areas with wetland vegetation *by through* the second year post-disturbance. All ~~temporary fills must temporarily impacted streams [and streambanks]~~ shall be ~~removed in~~ restored to their ~~entirety and the~~ affected areas returned to the ~~pre-existing contours~~ *original [elevation contours]* within 30 days following the construction at that stream segment, and the banks seeded or planted with *[native the same]* vegetation *[cover type originally present along the streambanks], [and supplemented by including supplemental]* erosion control grasses *[(crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list]*.

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~~ restored within 30 days following removal of the stockpile, and restored to the original vegetated state with *[native vegetation or a seed mix comprised of native the same]* vegetation *[and cover type originally present, including supplemental]* erosion control grasses *[(crown vetch, orchard grass, or weeping lovegrass) when stabilizing steep slopes if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list]*.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

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, *and shall ensure that all contractors are aware of any time-of-year restrictions imposed.*

16. ~~Immediately downstream of the construction area,~~ Water quality standards shall not be violated as a result of the construction activities, *unless allowed by this permit authorization.*

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters, *unless allowed by this permit authorization.* Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

~~18. 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 stream channel can begin.

D. Road crossings.

1. Access roads *and associated bridges or culverts* shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable ~~and to follow as near as possible 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 to maintain a low flow channel. For multiple celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk. Countersinking]~~ is ~~[shall not be required for existing pipes or culverts that are being maintained or extended.]~~

~~[3. 2.]~~ Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, *stream diversions*, or ~~other~~ 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 the~~

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~~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 a manner that minimizes disturbance, and the area must be returned to its original contours and ~~stabilized~~ restored *within 30 days of completing work in the area*, unless otherwise authorized by this VWP general permit. *[Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.]*

2. Material resulting from trench excavation may be temporarily sidcast 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.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). *For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.*

F. ~~Bank stabilization~~ Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap aprons for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For bank protection activities, the structure and backfill shall be placed as close to the *stream* bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All ~~stream bank erosion control protection~~ structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

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~~ No material removed from the stream ~~substrate bottom~~ shall be disposed of in ~~an approved upland area surface waters~~ *[unless authorized by this permit]*.

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. 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.

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.~~ A buffer of four times the depth of the dredge cut shall be maintained between the ~~top~~ *bottom edge* of the ~~dredge cut design channel~~ and the channelward limit of wetlands or mean low water, *or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands or mean low water, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.*

~~e. b.~~ 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.

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.

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 installed~~ 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~~ *Compensation* for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance ~~excavation activities within stormwater management facilities~~ shall not require additional permit authorization [;] or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.

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~~ Compensation, Monitoring and Reporting.

A. ~~Compensatory mitigation~~ Compensation:

1. The permittee shall provide appropriate and practicable ~~compensatory mitigation compensation~~ for all impacts meeting the conditions outlined in this VWP general permit.

2. The types of ~~compensatory mitigation compensation~~ 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.

3. For wetlands compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration, or mitigation bank credits. For other surface waters, compensation may incorporate preservation [, restoration,] or enhancement of stream channels, or preservation, restoration [,] or enhancement of adjacent riparian buffers.

4. 4. The site or sites depicted in the conceptual ~~compensatory mitigation~~ compensation plan submitted with the registration statement, application shall constitute the ~~compensatory mitigation compensation~~ [plan site] for the approved project. A site change will require a modification to the authorization.

2- 5. For compensation involving the purchase or use of mitigation bank credits, the permittee shall ~~submit not initiate work in permitted impact areas until~~ documentation within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the Mitigation Bank ledger of the mitigation bank credit purchase [or usage] has been submitted to and received by DEQ.

6. For projects proposing a contribution to an in-lieu fee fund, the permittee shall ~~submit not initiate work in permitted impact areas until~~ documentation within 60 days of VWP general permit authorization that the fund contribution has

~~been received of the in-lieu fee fund contribution has been submitted to and received by DEQ.~~

3- 7. All aspects of the ~~compensatory mitigation compensation~~ plan shall be finalized, submitted and approved by the board prior to any construction activity in permitted impact areas. 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 compensation~~ plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Any deviations from the approved plan must be submitted and approved in advance by the board.

a- 8. The final ~~compensatory mitigation wetlands compensation~~ plan shall include: ~~narrative description of the plan including~~

a. The goals and objectives, ~~site of the plan in terms of replacement of wetland acreage and functions, by wetland type;~~

b. Location; map, including latitude and longitude (to the nearest second) at the center of the site;

c. Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;

d. Grading plan with existing and proposed grade, elevations at one-foot or less contours;

e. Schedule for ~~compensatory mitigation compensation~~ site construction, including sequence of events with estimated dates;

~~source of hydrology and~~ f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year;

~~plant species,~~ g. Groundwater elevation data for the site, or the proposed location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;

h. Design of water control structures;

i. Planting scheme and schedule, indicating expected plant species zonation, ~~planting schedule,~~ and acreage of each vegetation type proposed;

j. An abatement and control plan [for covering all] undesirable plant species, [including, at a minimum, the species as] listed on DCR's Invasive Alien Plant Species of Virginia list, [and including that includes the proposed] procedures [to notify for notifying] DEQ of [any undesirable plant species occurrences their presence], methods of removal, and [successful] control [of any such species];

k. Erosion and sedimentation control plan;

l. A soil preparation and amendments, amendment plan addressing both topsoil and subsoil conditions;

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~~m. A discussion of any structures and features considered necessary for the success of the plan, and number and ;~~

~~n. A monitoring plan, including [proposed] success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations [;] and ground water [and] monitoring wells. 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. , any sampling points and [, if applicable] , reference wetlands;~~

~~o. Site access plan;~~

~~p. The location and composition of any buffers; and~~

~~q. The mechanism for protection of the compensation areas.~~

9. The final stream compensation plan shall include:

a. The goals and objectives of the compensation plan in terms of replacement of stream functions and values [; and linear feet and acreage of surface waters];

b. A location map, including latitude and longitude (to the nearest second) at the center of the site;

c. An evaluation [and ,] discussion [, and plan sketches] of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the [restorative] measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);

d. The identification of existing [geomorphological] stream type being impacted and proposed [geomorphological] stream type for compensation purposes;

e. Detailed design information for the proposed restorative measures, including geomorphological measurements [;] and reference reach information as appropriate;

f. Riparian buffer plantings, including planting scheme, species, buffer width;

g. Livestock access limiting measures [, to the greatest extent possible];

h. A site access plan;

i. An erosion and sedimentation control plan, if appropriate;

j. [A monitoring Abatement] and control plan [for covering all] undesirable plant species, [if appropriate, including, at a minimum, the species as] listed on DCR's Invasive Alien Plant Species of Virginia list [, and including that includes the proposed] procedures [to notify for notifying] DEQ of [any undesirable plant

~~species occurrences their presence], methods for removal [,] and [successful the] control [, and report the success of the removal efforts of any such species];~~

k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;

~~l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; [proposed monitoring photo points; monitoring and reporting schedule;] location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams [; and ;]~~

m. The mechanism for protection of the compensation area [; and]

[n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.]

~~[10. For final wetland or stream compensation plans, rooted seedlings or cuttings shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.]~~

~~[11. 10.] For final wetland or stream compensation plans, any vegetation used shall be native species common to the area, shall be suitable for growth in local wetland conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.~~

~~b. [12. 11.] The final compensatory mitigation wetland or stream compensation plan or plans shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters (including compensatory mitigation areas and nonimpact state waters) within the project compensation site boundary in perpetuity. These areas or boundaries. Such protections shall be surveyed or platted in place 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 compensation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general 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, or an equivalent instrument for government-owned lands. Proof~~

of recordation shall be submitted within [~~60~~ 120] 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 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.~~

~~[13. An as-built survey of the site, including spot elevations, shall be submitted to DEQ within 60 days of completion of grading, and shall be certified by a licensed land surveyor or a professional engineer.]~~

~~5. [14. 12.] All work in permitted impact areas shall cease if compensatory mitigation compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.~~

~~6. A site stabilization plan shall be provided for compensation sites involving land disturbance.~~

~~[15. 13.] DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation sites.~~

~~7. [16. 14.] Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan wetlands or stream compensation plan(s).~~

~~8. [17. 15.] Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation compensation 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 or forebays.~~

~~9. [18. 16.] The success of the compensatory mitigation compensation 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 meeting the success criteria established in the approved final compensation plan.~~

~~10. [19. 17.] Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost-free growing season, as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years or the NRCS WETS table, measured in consecutive days under normal rainfall typical precipitation conditions, and as defined in the water budget of the final mitigation compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.~~

~~14. [20. 18.] The wetland plant community shall be considered established according to the performance criteria specified in the final mitigation compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:~~

~~a. Species composition shall reflect the desired plant community types stated in the final mitigation [wetlands wetland] compensation plan by the end of the first growing season and shall be maintained through the last monitoring year of the VWP permit.~~

~~b. 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, by the end of the first growing season and shall be maintained through the last monitoring year.~~

~~12. Noxious weeds [21. 19.] Undesirable plant species shall be identified and controlled as described in the noxious weed undesirable plant species 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 DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by [aerial areal] coverage on wetland or stream compensation sites [; including . The notification shall include] the methods of removal; and [control, and] whether the methods are successful control.~~

~~13. [22. 20.] If the compensatory mitigation area wetland or stream compensation area(s) fails fail to be established as viable wetlands meet the specified success criteria in a monitoring year (with the exception of the final monitoring year), the reasons for this failure shall be determined and a corrective action plan; (including proposed actions, a schedule, and a monitoring plan []) shall be submitted to the board DEQ for approval prior to or with the next required or before that year's monitoring report. All problems shall be corrected by the permittee. The approved corrective action plan shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to establish wetlands ensure success, the required monitoring plan cycle shall begin again, with monitoring year one being the year that the changes are complete as confirmed by DEQ.~~

~~[23. 21.] If all success criteria have not been met in the final monitoring year, or if the wetland or stream compensation site [or sites have has] not met the stated restoration goals, monitoring shall be required for each consecutive year until two sequential, annual reports indicate that all criteria have been successfully satisfied and the [sites have site has] met the overall restoration goals (i.e., that corrective actions were successful). The reasons for this failure shall be determined and a corrective action plan (including proposed actions, a schedule, and a monitoring plan) shall be submitted with the monitoring report to DEQ for approval and implemented by the permittee in accordance with the approved schedule.~~

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14. ~~[24. 22.]~~ The surveyed wetland boundary for the ~~compensatory mitigation~~ compensation 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. *Data shall be submitted by [~~November 30~~ December 31] of the final monitoring year.*

15. ~~[25. 23.]~~ Herbicides or algicides shall not be used in or immediately adjacent to the ~~compensatory mitigation~~ compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means only, unless authorized by ~~the board~~ DEQ 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 or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.~~

B. ~~Compensatory mitigation~~ Wetland compensation site monitoring.

1. ~~A post-grading~~ An as-built ground survey, including spot elevations, ~~of an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites for wetland compensatory mitigation may be required depending upon the type and size of the compensation site, and shall be conducted, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed land surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within [90 60] days of completing compensation site construction. Any changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.~~

2. Photographs shall be taken at the ~~compensatory mitigation~~ compensation site or sites from the permanent markers identified in the final ~~mitigation~~ compensation 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 at a time specified in the final compensation plan during every monitoring year.

3. ~~Compensatory mitigation~~ Compensation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin [~~at on the first day of~~] the first complete growing season (monitoring year 1) following ~~compensatory mitigation~~ after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by DEQ. In all cases, if all success criteria have not been met in the ~~first~~ final monitoring year,

then 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, 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 following DEQ approval. *After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.*

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final ~~mitigation~~ compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final ~~mitigation~~ compensation plan. Monitoring shall take place in August or, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of noxious undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted by [~~November 30~~ December 31] of the monitoring year. The reports shall include, as applicable, the following:

a. General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

d. Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

e. Evaluation of hydric soils or soils under hydric conditions, as appropriate.

f. Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

g. Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph

subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

h. Discussion of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, if applicable.

j. Discussion of corrective measures or maintenance activities to control undesirable species, to repair any damaged water control device, or to replace any damaged planted vegetation.

k. Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

C. Stream mitigation compensation, restoration, and monitoring (if applicable).

1. ~~Stream mitigation~~ Any riparian buffer restoration activities shall be performed detailed in accordance with the final mitigation compensation plan and subsequent submittals, as approved by the board shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream bank slopes banks and channel relocation shall be stabilized to reduce stream bank erosion, where completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. ~~[Heavy equipment is authorized for use within the]~~ Stream channel ~~[during]~~ restoration activities ~~[shall be conducted in the dry or during low flow conditions.]~~ When site conditions prohibit access from the streambank ~~[- These activities shall be conducted in the dry or during low flow conditions, when practicable , heavy equipment shall be authorized for use within the stream channel]~~.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted

for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within ~~[90]~~ 60 days of completing compensation site construction. Any changes or deviations ~~[from the final compensation plans]~~ in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

[7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site constructions activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise determined by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.]

~~3- [7- 8.]~~ All stream mitigation compensation monitoring reports shall be conducted in the manner prescribed in the final mitigation plan approved by the board. All monitoring reports shall be submitted by ~~[November 30]~~ December 31 of the monitoring year. Monitoring The reports shall include, as applicable, the following:

a. General description of the site including a site location map identifying photo stations and monitoring stations.

b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

d. An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

~~a- e.~~ 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 labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

~~b.~~ Discussion of the establishment of vegetation, if applicable.

~~e- Any f.~~ A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream mitigation compensation site.

g. Documentation of undesirable plant species and summary of abatement and control measures.

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h. A summary of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, if applicable.

j. A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

[k. Any additional submittals that were approved by DEQ in the final compensation plan.]

D. [Impact site] construction monitoring.

~~1. Photo stations shall be established to document the Construction aspects of project activities within impact areas as authorized by this permit that are within impact areas shall be monitored [through photographic documentation and documented]. Photographs should The [photographic] monitoring shall document the preconstruction conditions, activities during construction, and post-construction conditions within one week after completion of construction. [Photographic] Monitoring shall consist of one of the following options:~~

a. Photographs shall be taken during construction at the end of the first, second and ~~twelfth~~ third months of construction, and then ~~annually~~ semi-annually for the remainder of the construction project. ~~Photographs are not necessary~~, except during periods of no activity within impact areas; or

b. An ortho-rectified photograph shall be taken [by a firm specializing in ortho-rectified photography] prior to construction, and annually thereafter until all impacts are taken, and shall clearly show the delineated surface waters and authorized impact areas.

[c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months of construction in impact areas, and then semi-annually for the remainder of the construction activities in impact areas, except during periods of no activity with the 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 authorities. As part of construction monitoring, photographs taken at the photo stations [or the narrative] shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be~~

required once the site is stabilized following completion of construction at that site.

~~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. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.~~

4. Monitoring of water quality parameters shall be conducted during rerouting of the live permanent relocation of perennial 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~~ 30 minutes for at least ~~three readings~~ two hours at each station prior to opening the new channels and immediately before opening new channels.

c. ~~After opening the new channel,~~ Temperature, pH and D.O. readings shall be taken ~~once~~ after opening the channels and every ~~half hour~~ 30 minutes for at least three readings hours at each station within 24 hours of opening the new channel.

~~[5. d.] The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.~~

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate DEQ office. The VWP general permit authorization number shall be included on all correspondence.

2. ~~The board~~ DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing initiation and completion of work at each permitted impact area.

3. ~~After construction begins,~~ Construction monitoring reports shall be submitted to the board within 30 days of each DEQ not later than the 10th day of the month following the month in which the monitoring event specified in Part II D takes place, unless otherwise specified below]. The reports shall include, at a minimum, the following, as appropriate:

a. ~~For each permitted impact area, a written statement regarding when narrative stating whether work started in the identified impact area, where work was performed, what during the monitoring period [- , and] if work was performed, a description of the work performed, when the work was initiated, and what work was completed the expected date of completion.~~

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.). *The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in any permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration.*

c. *Summary of activities conducted to comply with the permit conditions.*

d. *Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.*

e. *Summary of anticipated work to be completed during the next monitoring period [-] and an estimated date of construction completion at all impact areas.*

f. *Labeled site map depicting all impact areas and photo stations.*

4. *DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.*

5. *DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.*

4- 6. ~~All compensatory mitigation compensation~~ monitoring reports shall be submitted annually by [~~November 30~~ *December 31*], 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 compensation~~ sites shall be reported. *Invasive Undesirable plant species* occurrences and control of these occurrences shall also be reported to ~~the board~~ *DEQ*.

5- ~~The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-680-90.~~

6- 7. The permittee shall notify ~~the board~~ *DEQ* 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 ~~the board~~ *DEQ*.

7- 8. 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; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

8- 9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

9- 10. 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 *for cause*, VWP general permit authorization, revocation, or denial of a ~~renewal application~~ *continuation of coverage request*.

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 its conditions when the circumstances on which the previous VWP general permit authorization 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 general permit authorization was issued and thereby constitute cause for VWP general permit 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

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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 permittee shall allow 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.

H. Transferability of VWP 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 new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the 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 new permittee of its intent to modify or revoke and reissue the VWP general permit authorization ~~within the 30-day time period~~ 15 days.

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.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if: (i) the permittee determines that additional *permanent* wetland ~~and~~ or 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~~ compensated: (ii) *the project results in less wetland or stream impacts, in which case compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals;* (iii) *there is a change in the project plans that does not result in a change in project impacts;* (iv) *there is a change in the mitigation bank at which credits are purchased [or used], provided that the same amount of credits are purchased [or used] and all criteria for use are met, as detailed in 9 VAC 25-210-115; or* (v) *typographical errors need to be corrected. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use.* The permittee shall notify the board in advance of the planned change, and the ~~modification~~ *planned change* request will be reviewed according to all provisions of this regulation.

J. VWP general permit authorization termination *for cause*. This VWP general permit authorization is subject to termination *for cause by the board after public notice and opportunity for a hearing.* ~~Causes~~ *Reasons for termination for cause* are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit *authorization*;
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; 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 a VWP general permit authorization ~~modification~~ *planned change* or termination *for cause*.

K. VWP general permit authorization termination *by consent*. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, when the authorized impacts ~~[do will]~~ not occur, or when a *planned change* occurs that involves substituting a specified, approved mitigation bank or banks with another specified, approved mitigation bank. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and

4. One of the following certifications:

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination [~~that~~] I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

~~K.~~ L. 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.~~ M. 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.~~ N. 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.~~ O. 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.~~ P. 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, as appropriate:

- 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.

~~P.~~ Q. 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

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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.

NOTICE: The forms used in administering 9 VAC 25-680, the Virginia Water Protection General Permit for Linear Transportation Projects, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East 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. ~~8/04~~ 7/04).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. ~~8/04~~ [~~4/04~~ 10/04]).

[*Joint Permit Application for Projects in Tidewater, Virginia* (eff. 10/04).]

~~Virginia Water Protection General Permit Registration Statement (eff. 8/01).~~

~~Quarterly Reporting of Impacts Less than One-Tenth Acre (insert reporting period) Statewide (eff. 4/03).~~

~~Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (eff. 10/02).~~

VA.R. Doc. No. R04-102; Filed December 8, 2004, 8:10 a.m.

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Title of Regulation: **9 VAC 25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9 VAC 25-690-10 through 9 VAC 25-690-100).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: January 26, 2005.

Agency Contact: Ellen Gilinsky, Virginia Water Protection Permit Program Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032, or e-mail egilinsky@deq.virginia.gov.

Summary:

The regulatory action corrects several administrative procedures, clarifies application and permitting requirements and allows for a more efficient application review process. Since implementation of this regulation in October 2001, it has become evident that these minor corrections are needed to improve applications for coverage, timeframes for issuance of authorizations, and coordination with the U.S. Army Corps of Engineers State Program General Permit (SPGP-01). No change to the upper thresholds of coverage under this regulation is being made.

Changes made to the proposed regulation focus on the inclusion of certain mining activities to be authorized under this general permit regulation as reflected in 9 VAC 25-690-10, 9 VAC 25-690-30, 9 VAC 25-690-60, and 9 VAC 25-690-100. The general permit regulation was revised to clarify application informational requirements, types of compensation allowed, mitigation plan, monitoring and reporting requirements, and termination process for events beyond permittee's control; to include language concerning refunds of compensation payments; to include termination process for events beyond the permittee's control; and to provide minor clarifications of a grammatical nature. Also, the Forms section was revised to include version dates and additional document titles.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published 20:22 VA.R. 2381-2401 July 12, 2004, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

CHAPTER 690.

VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES.

9 VAC 25-690-10. Definitions.

The words and terms used in this 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 25-210-40 ~~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, march 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.

"Conversion" means changing one type of surface water to another type of surface water, either permanently or temporarily. The permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation.

"Cross-sectional 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 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 United States Department of Agriculture Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in 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.

["*In-stream mining*" means operations that remove accumulated sand, gravel, and mineral deposits directly from stream channels using equipment such as, but not limited to, hydraulic dredges, clamshell dredges, or draglines for the sole purpose of processing and selling the material. *In-stream mining* does not include dredging activities, whose main

purpose is to maintain channels and harbors for navigation, nor does it include the recovery of spilled material, such as sand, gravel, and aggregate, that was inadvertently spilled into a waterway during loading activities.]

"Less than one-half of an acre" means 0.00 to 0.49 acre (0 to 21,779 square feet).

"Perennial stream" means a ~~stream~~ *well-defined channel that has flowing* contains water year round ~~in during a typical year of normal rainfall. 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. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

"Permanent impacts" are those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

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

~~"Real estate subdivision" means a tract of land 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 a facility that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours.

"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.

"Single and complete project" means the total project proposed or accomplished by ~~one~~ a person and which has independent utility. For linear projects, the "single and complete project" (i.e., a single and complete crossing) ~~will~~ *may but does not always* apply to each crossing of a separate surface water (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. Phases of a project that have independent public and economic utility may each be considered single and complete.~~

"State programmatic general permit" means a general permit issued by the Department of the Army in accordance with 33 CFR Part 32S that is founded on a state program and is

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designed to avoid duplication between the federal and state programs.

~~"Temporary impact impacts" means an impact caused by activities in are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, including wetlands, in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.~~

~~"Up to 300 linear feet of stream channel" means 0.00 to 300.00 linear feet of any stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.~~

~~"Up to 500 linear feet of stream perennial channel" means 0.00 to 500.00 linear feet of perennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.~~

~~"Up to 1500 linear feet of nonperennial stream channel" means 0.00 to 1500.00 linear feet of nonperennial stream, rounded to the second decimal place, as measured along the center of the main channel of the stream segment.~~

~~"Up to one acre" means 0.00 to 1.00 acre (0 to 43,560 square feet).~~

~~"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place (0 to 4,356 square feet).~~

~~"Up to two acres" means 0.00 to 2.00 acres, rounded to the second decimal place (0 to 87,120 square feet).~~

~~"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 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. [No change from proposed.]

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 25-20-40 ~~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 25-210-40 ~~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 [, both temporary and permanent,] result from a single and complete project including all attendant features [, both temporary and permanent].

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 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. 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.

5. ~~Compensatory mitigation~~ Compensation 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. *For wetlands*, compensation may incorporate preservation of wetlands or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits. *For other surface waters*, compensation may incorporate preservation and enhancement of stream channels, or preservation, restoration, or enhancement of adjacent riparian buffers.

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.

4. Mining facilities. *The construction or expansion of mining facilities and attendant features for a single and complete project. [This general permit may not be used to authorize impacts from in-stream activities as defined in 9 VAC 25-690-10.]*

a. *Mining facilities include activities directly associated with aggregate mining (i.e., sand, gravel, and crushed or broken stone); hard rock/mineral mining (i.e., metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Mines, Minerals, and Energy.*

b. *Attendant features are authorized provided they are directly related to the mining facility, and include, but are not limited to, access road construction, parking lots, offices, maintenance shops, garages, and stormwater management facilities.*

c. *Both direct impacts (i.e., footprints of all fill areas, road crossings, sediment ponds, and stormwater management facilities; mining through state waters; stockpile of overburden, and excavation) and indirect impacts (i.e., diversion of [surface] water and reach of state waters affected by sediment pond pool and sediment transport) shall be considered when issuing an authorization under this general permit.*

~~[d. This general permit may not be used to authorize impacts from mining facilities, except for those impacts from attendant features to the mining facilities, that occur in the following areas:~~

~~(1) Where federal and state listed endangered and threatened species or their critical habitat are present within one mile of the project site, as determined by the Division of Natural Heritage or the Department of Game and Inland Fisheries;~~

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~~(2) State waters within one mile of the project site that are designated by the Department of Game and Inland Fisheries as natural or stockable trout waters; and~~

~~(3) State waters within one mile of the project site that are designated by the Department of Game and Inland Fisheries or the National Marine Fisheries Service as having anadromous fish.]~~

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.

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.

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 § 401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit 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.

[G. Coverage under a permit issued by the Department of Mines, Minerals and Energy under the Virginia Coal Surface Mining Control and Reclamation Act, Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia, where such permit authorizes activities that may be permitted by this regulation and contains a mitigation plan for the impacts from the mining activities, shall also constitute coverage under this VWP general permit.

H. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under this VWP general permit.]

9 VAC 25-690-40. Exceptions to coverage.

A. Authorization for coverage under this VWP general permit will not apply in the following areas:

1. 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 shall be based upon either basal area or percent areal cover in the area of impact.

2. Wetlands underlain by histosols.

3. Surface waters with where the proposed activity will impact 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 general permits in order 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. More than one authorization for coverage under this VWP 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 specified here.

C. This VWP general permit cannot be used for any activity in ~~any real estate subdivision~~ a phased development which would cause the aggregate total loss of nontidal surface waters in the subdivision to exceed two acres, 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, nor shall it contravene applicable Water Quality Standards (9 VAC 25-260-5 et seq.).

E. The board shall deny coverage under this VWP general permit to any applicant for activities 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 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, that significantly increase flooding, or that 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;

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;

6. Return flow discharges from dredge disposal sites;

7. Overboard disposal of dredge materials;

8. Dredging in marinas;

9. Dredging of shellfish areas, submerged aquatic vegetation beds or other highly productive areas;
10. Federal navigation projects;
11. The construction of new ski areas [~~or oil and gas wells~~]; and
12. The taking of threatened or endangered species in accordance with the following:
 - a. Pursuant to § 29.1-564 of the Code of Virginia 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 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, transportation, 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. [No change from proposed.]

9 VAC 25-690-60. Registration statement Application.

A. ~~Registration statements Applications~~ shall be filed with the board as follows:

1. The applicant shall file a complete ~~registration statement application~~, as described in 9 VAC 25-690-50 for a VWP general permit number WP4 for impacts to surface waters from development [*and certain mining*] 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 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 applications.~~

B. The required ~~registration statement application~~ shall contain the following information [, *if applicable to the project*]:

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 *and electronic mail address*;
3. The existing VWP permit number (if applicable);
4. The name of the project, *narrative description of project purpose of project*, and a description of the *proposed activity in surface waters*;
5. The name of 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 project area, *including the project boundary*. The map ~~should~~ *shall* be of sufficient detail such that the site may be easily located for site inspection;
10. ~~The appropriate appendices from the JPA (Reserved)~~;
11. Project plan view. All plan view sketches ~~should~~ *shall* include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water, impact limits, and location and dimension of all proposed structures in impact areas. Cross-sectional *or profile* sketches, *as appropriate*, with the above information, ~~may~~ *shall* be required for ~~certain projects~~ *as appropriate* to demonstrate minimization of impacts;
12. Dredge material management plan (for dredging projects only) including plan and cross-section view drawings of the disposal or dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal or dewatering site;
13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, [~~and~~] *the areal extent [of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width)], [the] location ([by] latitude and longitude [at the center of the impact, or at the center of each impact for linear projects]) and [the] type of [the] impact [area] ([of wetland in square feet] , linear feet or [and acres; area of stream, length of stream, and average width])*. Wetland impacts] should [~~shall~~] *be quantified () according to [their the] Cowardin classification or similar terminology []]*;
14. Functional values assessment for impacts to wetlands greater than one acre. ~~The functional assessment , which shall consist of a narrative description summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters/functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats;~~
15. A description of the *specific on-site* measures *considered or 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 conceptual plan~~ for the intended compensation for unavoidable impacts, including:

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a. ~~For wetlands, the conceptual compensatory mitigation compensation 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 detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; 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 these data; wetland delineation confirmation and data sheets, and maps a map for existing wetland and surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, and zonation and acreage of each vegetation type proposed; and a proposed soil preparation and amendment plan addressing both description of existing soils including general information on topsoil and subsoil conditions; and a draft design of any water control structures, permeability, and the need for soil amendments.~~

b. ~~For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude and the hydrologic unit code (HUC) 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 proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.~~

~~b. c. Applicants proposing to compensate off-site, including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund shall first discuss submit an evaluation of the feasibility of on-site compensatory mitigation compensation. If on-site compensatory mitigation compensation is practicable, applicants must shall provide documentation as to why the proposed off-site compensatory mitigation compensation is ecologically preferable. The evaluation should shall include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.~~

~~e. Any applicant proposing compensation 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 applicant proposing compensation plan proposing to include involving contributions to in-lieu fee programs shall include proof state such as [their the] conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.~~

e. ~~Any applicant proposing compensation plan proposing involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:~~

- ~~(1) The name of the proposed mitigation bank and the HUC in which it is located;~~
- ~~(2) The number of credits proposed to be purchased or used; and~~
- ~~(3) Certification from the bank owner of the availability of credits.;~~

~~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~~ shall 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~~ shall 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~~ shall 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. The appropriate application processing fee for a VWP general permit (9 VAC 25-20-40 ~~et seq.~~); and

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~~ *application* 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~~ *an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete.* Coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days *of receipt of a complete application.* If the board fails to act within 45 days *on a complete application,* coverage under this VWP permit general permit shall be deemed approved.

1. In evaluating the ~~registration statement~~ *application,* 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 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~~ *application.* Where a ~~registration statement~~ *an application* is incomplete, the board shall require the submission of additional information and ~~may~~ *shall* suspend processing *the application* until such time as the applicant has supplied the missing or deficient information and the ~~registration statement~~ *application* is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a ~~registration statement~~ *an application,* or submitted incorrect information in a ~~registration statement~~ *an application* or in any report to the board, ~~he~~ *the applicant* shall immediately submit such facts or the correct

information. *Such application with new information shall be deemed a new application [, but shall not require an additional permit application fee].*

9 VAC 25-690-70. Mitigation Compensation.

A. For the purposes of this VWP general permit, the board may accept any one or combination of the following as compensation for unavoidable impacts: wetland [~~creation, 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 only be applied toward wetland compensation when utilized in conjunction with creation, restoration or mitigation bank credits one or more of the above-mentioned compensation options. Preservation or enhancement of stream channels, or preservation, restoration, or enhancement of adjacent riparian buffers, may be applied toward stream compensation as appropriate.~~

B. ~~Compensatory mitigation~~ *Compensation* 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. ~~Compensatory mitigation~~ *Compensation* for unavoidable impacts to streams shall be provided ~~at a 1:1 replacement to less ratio via~~ *and shall include, as practicable and appropriate, stream relocation, restoration, riparian buffer establishment restoration or enhancement, or preservation or enhancement of stream corridors.* The purchase [~~or use~~] of stream mitigation bank credits or contribution to an in-lieu fee fund that includes ~~stream restoration, when feasible watershed enhancements is also acceptable. [One factor in determining] the [amount of] required compensation [will shall] be [determined based on] an analysis of stream impacts utilizing a [scientifically based] stream impact assessment methodology approved by the board.~~

D. Compensation for open water impacts [~~other than to streams~~] may be required ~~at a 1:1 replacement to impact ratio,~~ as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

E. *Compensation for conversion impacts [to wetlands] shall be required at a 1:1 replacement to impact ratio when such conversion results in a permanent alteration of the functions and values of the [surface water wetland].*

~~E. F.~~ In order for contribution to an in-lieu fee fund to be an acceptable form of ~~compensatory mitigation~~ *compensation,* the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.

~~F. G.~~ The use of mitigation banks for compensating project impacts ~~shall be deemed appropriate if~~ *In order for purchase [or use] of bank credits to be an acceptable form of compensation, the bank is shall be operating in accordance*

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with the provisions of § 62.1-44.15:5 E of the Code of Virginia and 9 VAC 25-210-115, ~~and F.~~ The applicant provides verification shall provide proof of purchase [, use,] or debit to the board of purchase or debiting of the required amount of credits DEQ [prior to commencing activities in impact areas].

9 VAC 25-690-80. Notice of planned changes.

A. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional *permanent* wetland and or 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. *In no case can this authorization be modified to exceed the general permit threshold for use.*

B. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. [DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions.]

C. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

D. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased [or used], provided that the same amount of credits are purchased [or used] and all criteria for use in 9 VAC 25-210-115 are met.

E. Authorization under the VWP general permit may be modified after issuance for typographical errors.

F. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and [~~they are~~ the area is] restored to preexisting conditions in accordance with Part I C 11 of this general permit. *In no case can the additional temporary impacts exceed the general permit threshold for use.*

G. The permittee shall notify the board in advance of the planned change, and the ~~modification~~ planned change request will be reviewed according to all provisions of this regulation.

9 VAC 25-690-90. Notice of Termination of authorization by consent.

When all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, *or if the authorized impacts will not occur*, the permittee shall submit a ~~notice of request~~ notice of request for termination within 30 days of ~~final~~ project completion or project cancellation. *The director may accept this termination of authorization on behalf of the board.* The ~~notice~~ permittee shall ~~contain~~ submit the following information:

1. Name, mailing address and telephone number of the permittee;

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. One of the following certification certifications:

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination [, ~~that~~] I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

[c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

9 VAC 25-690-100. VWP general permit.

Any applicant whose ~~registration statement~~ application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP4

Authorization effective date:

Authorization expiration date:

Authorization Notes(s):

VWP GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING 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.

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, the permittee 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.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I--Special Conditions, Part II--Mitigation Compensation, 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. 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 application.
2. Any additional changes to the authorized permanent 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. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease

in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.

3- 5. 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 Continuation of coverage. Application Reapplication 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 compensation) 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 continuation] of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered [an a new] application [for coverage,] and no application fee will be charged. The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.

C. Overall project conditions.

- 1. The construction or work activities 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. [The requirement to countersink does no apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater.] 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. Excess or waste concrete shall not be disposed of in [flowing] surface waters or washed [out] into [flowing] surface waters.
4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 [, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Mines, Minerals and Energy that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992]. These controls shall be placed prior to clearing and grading and maintained

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in good working order to minimize impacts to state waters. These controls shall remain in place until the area ~~stabilizes~~ *is stabilized and shall then be removed.*

6. Any exposed slopes and streambanks ~~must shall~~ be stabilized immediately upon completion of ~~the project at work in each water body permitted impact area.~~ All denuded areas shall be properly stabilized in accordance with the 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 a manner that minimizes construction 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 ~~surface~~] waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily-impacted [wetland areas ~~surface waters~~] shall be placed on mats, geotextile fabric, or other suitable ~~measures, material~~ to minimize soil disturbance to the maximum extent practicable. *Equipment and materials shall be removed immediately upon completion of work.*

10. All nonimpacted surface waters within 50 feet of any ~~permitted activities and within~~ the project or right-of-way limits ~~that are within 50 feet of any clearing, grading, or filling activities~~ shall be clearly flagged or marked for the life of the construction activity ~~within~~ at that ~~area location~~ to preclude any unauthorized disturbances to these surface waters during construction. The permittee shall notify all contractors that these marked areas are surface waters where no activities are to occur.

11. Temporary disturbances to ~~wetlands surface waters~~ during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions *within 30 days of completing work, which shall include reestablishing preconstruction contours, and planted planting or seeded seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation by through the second year post-disturbance. All temporary fills temporarily impacted streams [and streambanks] shall be removed in restored to their entirety and the affected area returned to the preexisting contours original [elevation contours] within 30 days following the construction at that stream segment, and the banks seeded or planted with [native the same] vegetation [cover type originally present along the streambanks], [and supplemented by including supplemental] erosion control grasses [~~erown vetch, orchard grass, or weeping lovegrass~~] when stabilizing steep slopes if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list].*

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~~ restored within 30 days following removal of the stockpile, and restored to the original vegetated state with [native or a seed mix comprised of native the same] vegetation [and cover type originally present, including supplemental] erosion control grasses [~~erown vetch, orchard grass, or weeping lovegrass~~] when stabilizing steep slopes if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list].

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

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, *and shall ensure that all contractors are aware of any time-of-year restrictions imposed.*

16. ~~Immediately downstream of the construction area,~~ Water quality standards shall not be violated as a result of the construction activities, *unless allowed by this permit authorization.*

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters, *unless allowed by this permit authorization.* Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

18. *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 stream channel can begin.*

D. Road crossings.

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable ~~and to follow as near as possible 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 to maintain a low flow channel. For multiple-celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk. Countersinking] is [shall not be required for existing pipes or culverts that are being maintained or extended.]~~

[3. 2.] Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or 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 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 a manner that minimizes disturbance, and the area must be returned to its original contours and ~~stabilized~~ restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit. *[Restoration shall be the seeding of planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.]*

2. Material resulting from trench excavation may be temporarily sidecast 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.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). *For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.*

F. ~~Bank stabilization~~ Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For *stream* bank protection activities, the structure and backfill shall be placed as close to the ~~shoreline~~ *stream bank* as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All *stream* bank ~~erosion protection~~ structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

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~~ No material removed from the stream ~~substrate bottom~~ shall be disposed of in an approved upland area *surface waters* [, unless authorized by this permit].

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 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.

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. A buffer of four times the depth of the dredge cut shall be maintained between the ~~top~~ *bottom edge* of the ~~dredge cut design channel~~ and the channelward limit of wetlands or mean low water, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands or mean low water, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

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~~e.~~ *b.* 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.

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.

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~~ *installed* 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~~ *Compensation* for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance ~~excavation~~ *activities within stormwater management facilities* shall not *require additional permit authorization or compensation provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.*

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 Compensation, Monitoring, and Reporting.

A. ~~Compensatory mitigation~~ *Compensation.*

1. The permittee shall provide appropriate and practicable ~~compensatory mitigation compensation~~ for all impacts meeting the conditions outlined in this VWP general permit.

2. The types of ~~compensatory mitigation compensation~~ 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.

3. ~~For wetlands compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration, or mitigation bank credits. For other surface waters, compensation may incorporate preservation [, restoration,] or enhancement of stream channels, or preservation, restoration [,] or enhancement of adjacent riparian buffers.~~

~~4.~~ 4. The site or sites depicted in the conceptual ~~compensatory mitigation~~ *compensation* plan submitted with the ~~registration statement, application~~ shall constitute the ~~compensatory mitigation compensation [plan site]~~ for the approved project. *A site change will require a modification to the authorization.*

~~2.~~ 5. For compensation involving the purchase or use of mitigation bank credits, the permittee shall ~~submit not initiate work in permitted impact areas until documentation within 60 days of VWP general permit authorization that the USACE has debited the required mitigation credits from the Mitigation Bank ledger of the mitigation bank credit purchase [or usage] has been submitted to and received by DEQ.~~

6. For projects proposing a contribution to an in-lieu fee fund, the permittee shall ~~submit not initiate work in permitted impact areas until documentation within 60 days of VWP general permit authorization that the fund contribution has been received of the in-lieu fee fund contribution has been submitted to and received by DEQ.~~

~~3.~~ 7. All aspects of the ~~compensatory mitigation compensation~~ plan shall be finalized, submitted and approved by the board prior to any construction activity in permitted impact areas. 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 compensation~~ plan as approved by the board shall be an enforceable requirement of this VWP general permit *authorization*. Any deviations from the approved plan must be submitted and approved in advance by the board.

~~a.~~ 8. The final ~~compensatory mitigation wetlands compensation~~ plan shall include: ~~narrative description of the plan including~~

a. The goals and objectives, of the plan in terms of replacement of wetland acreage and functions, by wetland type;

~~site~~ *b. Location, map, including latitude and longitude (to the nearest second) at the center of the site;*

c. Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;

d. Grading plan with existing and proposed grade, elevations at one-foot or less contours;

- e. Schedule for ~~compensatory mitigation~~ compensation site construction, including sequence of events with estimated dates;
- ~~source of hydrology and~~ f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a wet year, and a dry year;
- ~~plant species,~~ g. Groundwater elevation data for the site, or the proposed location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;
- h. Design of water control structures;
- i. Planting scheme and schedule, indicating ~~expected plant species, zonation, planting schedule, and acreage of each vegetation type proposed;~~
- j. An abatement and control plan [~~for covering all~~ undesirable plant species, [~~including, at a minimum, the species as~~] listed on DCR's Invasive Alien Plant Species of Virginia list, [~~and including that includes the proposed~~] procedures [~~to notify for notifying~~] DEQ of [~~any undesirable plant species occurrences~~ their presence], methods of removal, and [~~successful~~ the] control [of any such species];
- k. Erosion and sedimentation control plan;
- l. A soil ~~amendments, all preparation and amendments plan addressing both topsoil and subsoil conditions;~~
- m. A discussion of any structures and features considered necessary for the success of the ~~plan, site;~~
- ~~and number and~~ n. A monitoring plan, including [~~proposed~~] success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations [; and] ~~and ground water monitoring wells. 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. , any sampling points, and [, if applicable] , reference wetlands;~~
- o. Site access plan;
- p. The location and composition of any buffers; and
- q. The mechanism for protection of the compensation area(s).
9. The final stream compensation plan shall include:
- a. The goals and objectives of the compensation plan in terms of replacement of stream functions and values [; and linear feet and acreage of surface waters];
- b. A location map, including latitude and longitude (to the nearest second) at the center of the site;
- c. An evaluation [~~and~~ ,] discussion [, and plan sketches] of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the [~~restorative~~] measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
- d. The identification of existing [~~geomorphological~~] stream type being impacted and proposed [~~geomorphological~~] stream type for compensation purposes;
- e. Detailed design information for the proposed restorative measures, including geomorphological measurements [;] and reference reach information as appropriate;
- f. Riparian buffer plantings, including planting scheme, species, buffer width;
- g. Livestock access limiting measures [, to the greatest extent possible];
- h. A site access plan;
- i. An erosion and sedimentation control plan, if appropriate;
- j. [~~A monitoring~~ An abatement] and control plan [~~for covering all~~] undesirable plant species, [~~if appropriate, including, at a minimum, the species~~] listed on DCR's Invasive Alien Plant Species of Virginia list, [~~and including that includes the proposed~~] procedures [~~to notify for notifying~~] DEQ of [~~any undesirable plant species occurrences~~ their presence], methods for removal [,] and [~~successful~~ the] control [, and report the success of the removal efforts of any such species];
- k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;
- l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; [~~proposed monitoring photo points; monitoring and reporting schedule,~~] location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams [; and];
- m. The mechanism for protection of the compensation area [; and];
- [n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.]
- ~~[10. For final wetland or stream compensation plans, rooted seedlings or cuttings shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCs Land Resource Region as that of the project site.~~

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~~44. 10.] For final wetland or stream compensation plans, any vegetation used shall be native species common to the area, shall be suitable for growth in local wetland conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.~~

~~b. [42. 11.] The final compensatory mitigation plan wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation sites(s) to include all state waters (including compensatory mitigation areas and nonimpact state waters) within the project compensation site boundary in perpetuity. These areas or boundaries. Such protections shall be surveyed or platted in place 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 compensation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general 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, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within [60 120] 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 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.~~

~~[13. An as-built survey of the site, including spot elevations, shall be submitted to DEQ within 60 days of completion of grading and shall be certified by a licensed land surveyor or a professional engineer.]~~

~~5. [44. 12.] All work in impact areas shall cease if compensatory mitigation compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.~~

~~6. A site stabilization plan shall be provided for compensation sites involving land disturbance.~~

~~[15. 13.] DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s).~~

~~7. [46. 14.] Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final mitigation plan wetlands or stream compensation plan(s).~~

~~8. [47. 15.] Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation compensation 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 or forebays.~~

~~9. [48. 16.] The success of the compensatory mitigation compensation 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 meeting the success criteria established in the approved final compensation plan.~~

~~10. [49. 17.] Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost-free growing season, as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years or the NRCS WETS table, measured in consecutive days under normal rainfall typical precipitation conditions, and as defined in the water budget of the final mitigation compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.~~

~~11. [20. 18.] The wetland plant community shall be considered established according to the performance criteria specified in the final mitigation compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:~~

~~a. Species composition shall reflect the desired plant community types stated in the final mitigation [wetlands wetland] compensation plan by the end of the first growing season and shall be maintained through the last monitoring year of the VWP permit.~~

~~b. 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, by the end of the first growing season and shall be maintained through the last monitoring year.~~

~~12. Noxious weeds [24. 19.] Undesirable plant species shall be identified and controlled as described in the noxious weed undesirable plant species 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 DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by [aerial areal] coverage on wetland or stream compensation sites [, including. The notification shall include] the methods of removal, and [control, and] whether the methods are successful control.~~

~~13. [22. 20.] If the compensatory mitigation area wetland or stream compensation area(s) fails to be established as viable wetlands meet the specified success criteria in a monitoring year (with the exception of the final monitoring year), the reasons for this failure shall be determined and a corrective action plan, (including proposed actions, a schedule, and a monitoring plan) shall be submitted to the board DEQ for approval prior to or with the next required or before that year's monitoring report. All problems shall be corrected by the permittee. The approved corrective action plan shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to establish wetlands ensure success, the required monitoring plan cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by DEQ.~~

~~[23. 21.] If all success criteria have not been met in the final monitoring year, or if the wetland or stream compensation [sites have site has] not met the stated restoration goals, monitoring shall be required for each consecutive year until two sequential, annual reports indicate that all criteria have been successfully satisfied and the [sites have site has] met the overall restoration goals (i.e., that corrective actions were successful). The reasons for this failure shall be determined and a corrective action plan (including proposed actions, a schedule, and a monitoring plan) shall be submitted with the monitoring report to DEQ for approval and implemented by the permittee in accordance with the approved schedule.~~

~~14. [24. 22.] The surveyed wetland boundary for the compensatory mitigation wetlands compensation 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. Data shall be submitted by [November 30 December 31] of the final monitoring year.~~

~~15. [25. 23.] Herbicides or algicides shall not be used in or immediately adjacent to the compensatory mitigation wetlands or stream compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by the board DEQ 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 or extension must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if renewal of the VWP general permit authorization is necessary.~~

~~B. Compensatory mitigation Wetland compensation site monitoring.~~

~~1. A post-grading An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, including spot elevations, of shall be conducted for the entire compensation site or sites for wetland compensatory mitigation may including invert elevations for all water~~

~~elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be required depending upon the type and size of the compensation site, and shall be conducted certified by a licensed land surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within [90 60] days of completing compensation site construction. Any changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.~~

~~2. Photographs shall be taken at the compensatory mitigation compensation site or sites from the permanent markers identified in the final mitigation compensation 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 at a time specified in the final compensation plan during every monitoring year.~~

~~3. Compensatory mitigation Compensation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin [at on day one of] the first complete growing season (monitoring year 1) following compensatory mitigation after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by DEQ. In all cases if all success criteria have not been met in the fifth final monitoring year, then 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 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 following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.~~

~~5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final mitigation compensation plan.~~

~~6. The establishment of wetland vegetation shall be in accordance with the final mitigation compensation plan. Monitoring shall take place in August or, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan:~~

~~7. The presence of noxious undesirable plant species shall be documented.~~

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8. All wetland compensation monitoring reports shall be submitted by [~~November 30~~ December 31] of the monitoring year. The reports shall include, as applicable, the following:

- a. General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones;
- b. Summary of activities completed during the monitoring year;
- c. Description of monitoring methods;
- d. Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan;
- e. Evaluation of hydric soils or soils under hydric conditions, as appropriate;
- f. Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan;
- g. Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete;
- h. Discussion of wildlife or signs of wildlife observed at the compensation site;
- i. Comparison of site conditions from the previous monitoring year and reference site, if applicable;
- j. Discussion of corrective measures or maintenance activities to control undesirable species, to repair any damaged water control device, or to replace any damaged planted vegetation; and
- k. Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

C. Stream mitigation compensation, restoration and monitoring.

1. ~~Stream mitigation~~ Any riparian buffer restoration activities shall be performed detailed in accordance with the final mitigation compensation plan and subsequent submittals, as approved by the board shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream bank slopes banks, and channel relocation shall be stabilized to reduce stream bank erosion, where completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. [~~Heavy equipment is authorized for use within the~~ Stream channel [~~during~~] restoration activities [~~shall be conducted in the dry or during low flow conditions.~~] When site conditions prohibit access from the streambank [~~These activities shall be conducted in the dry or during low flow conditions, when practicable~~, heavy equipment shall be authorized for use within the stream channel].

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within [90 60] days of completing compensation site construction. Any changes or deviations [from the final compensation plans] in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

[7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise determined by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.]

3. [~~7. 8.~~] All stream mitigation compensation monitoring reports 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 December 31] of the monitoring year. Monitoring The reports shall include, as applicable, the following:

- a. General description of the site including a site location map identifying photo stations and monitoring stations.
- b. Summary of activities completed during the monitoring year.

c. Description of monitoring methods.

d. An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

~~a. e. 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 labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.~~

~~b. Discussion of the establishment of vegetation, if applicable.~~

~~e. Any f. A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream mitigation compensation site.~~

g. Documentation of undesirable plant species and summary of abatement and control measures.

h. A summary of wildlife or signs of wildlife observed at the compensation site.

i. Comparison of site conditions from the previous monitoring year and reference site, [and as-built survey,] if applicable.

j. A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

[k. Any additional submittals that were approved by DEQ in the final compensation plan.]

D. [Impact site] construction monitoring.

~~1. Photo stations shall be established to document the Construction aspects of project activities within impact areas as authorized by this permit that are within impact areas shall be monitored [through photographic documentation and documented]. Photographs should [photographic] monitoring shall document the preconstruction conditions, activities during construction, and post-construction conditions within one week after completion of construction. [Photographic] Monitoring shall consist of one of the following options:~~

a. Photographs shall be taken during construction at the end of the first, second, and ~~twelfth~~ ^{third} months of construction, and then ~~annually~~ ^{semi-annually} for the remainder of the construction project. ~~Photographs are not necessary , except during periods of no activity within impact areas;~~ [or]

b. An ortho-rectified photograph shall be taken [by a firm specializing in ortho-rectified photography] prior to

construction, and annually thereafter until all impacts are taken, and shall clearly show the delineated surface waters and authorized impact areas [- ; or]

[c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months of construction in impact areas, and then semi-annually for the remainder of the construction activities in impact areas, except during periods of no activity within the 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. As part of construction monitoring, photographs taken at the photo stations [or the narrative] shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.~~

~~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. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.~~

4. Monitoring of water quality parameters shall be conducted during rerouting of the live permanent relocation of perennial 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~~ ^{once every 30 minutes} for at least ~~three readings~~ ^{two hours} at each station prior to opening the new channels; and immediately before opening new channels.

~~c. After opening the new channel, Temperature, pH and D.O. readings shall be taken once after opening the channels and every half hour 30 minutes for at least three~~

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~~readings hours at each station within 24 hours of opening the new channel.~~

~~[5.] The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.~~

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate DEQ office. The VWP general permit authorization number shall be included on all correspondence.

~~2. The board DEQ shall be notified in writing by certified letter at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing initiation and completion of work at each permitted impact area.~~

~~3. After construction begins, Construction monitoring reports shall be submitted to the board within 30 days of each DEQ not later than the 10th day of the month following the month in which the monitoring event specified in Part II D takes place [, unless otherwise specified below]. The reports shall include, at a minimum, the following, as appropriate:~~

~~a. For each permitted impact area, a written statement regarding when narrative stating whether work started in the identified impact area, where work was performed, what during the monitoring period [- , and] if work was performed, a description of the work performed, when the work was initiated, and what work was completed the expected date of completion.~~

~~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.). The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in any permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration.~~

~~c. Summary of activities conducted to comply with the permit conditions.~~

~~d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.~~

~~e. Summary of anticipated work to be completed during the next monitoring period, and an estimated date of construction completion at all impact areas.~~

~~f. Labeled site map depicting all impact areas and photo stations.~~

~~4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.~~

~~5. DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.~~

~~4. 6. All compensatory mitigation compensation monitoring reports shall be submitted annually by [November 30 December 31], 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 compensation sites shall be reported. Invasive Undesirable plant species occurrences and control of these occurrences shall also be reported to the board DEQ.~~

~~5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-690-90.~~

~~6. 7. The permittee shall notify the board DEQ 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 the board DEQ.~~

~~7. 8. 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; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.~~

~~8. 9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.~~

~~9. 10. 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 *for cause*, VWP general permit authorization revocation, or denial of a ~~renewal application~~ *continuation of coverage request*.

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 its conditions when the circumstances on which the previous VWP general permit authorization 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 general permit authorization was issued and thereby constitute cause for VWP general permit 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 permittee shall allow 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.

H. Transferability of VWP 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 new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the 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 new permittee of its intent to modify or revoke and reissue the VWP general permit authorization ~~within the 30 day time period~~ *15 days*.

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.

I. Notice of planned change. Authorization under the VWP general permit may be modified subsequent to issuance if: (i) the permittee determines that additional *permanent* wetland ~~and~~ or 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~~ *compensated*; (ii) *the project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals*; (iii) *there is a change in the project plans that does not result in a change in project impacts*; (iv) *there is a change in the mitigation bank at which credits are purchased [or used], provided that the same amount of credits are purchased [or used] and all criteria for use are met, as detailed in 9 VAC 25-210-115*; or (v) *typographical errors need to be corrected. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use.* The permittee shall notify the board in advance of the planned change, and the ~~modification~~ *planned change* request will be reviewed according to all provisions of this regulation.

J. VWP general permit *authorization* termination *for cause*. This VWP general permit; *authorization is subject to*

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termination for cause by the board after public notice and opportunity for a hearing, is subject to termination. Causes Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;
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; and
4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a VWP general permit authorization modification planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9 VAC 25-690-50 A 1 have been completed, when the authorized impacts [~~de~~ will] not occur, or when a planned change occurs that involves substituting a specified, approved mitigation bank with another specified, approved mitigation bank. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certifications:

a. For project completion:

"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 surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization."

b. For project cancellation:

"I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination [, ~~that~~] I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to

resume the permitted activities without reapplication and reauthorization."

[c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that all activities authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in 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 authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."]

~~K~~. L. 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~~. M. 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~~. N. 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 VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

~~N~~. O. 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~~. P. 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, as appropriate:

- 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.

P. Q. 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.

NOTICE: The forms used in administering 9 VAC 25-690, Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East 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 *Form* (eff. ~~4/04~~ 7/04).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. ~~4/04~~ [~~4/04~~ 10/04]).

[*Joint Permit Application for Projects of Tidewater, Virginia* (eff. 10/04.)]

~~Virginia Water Protection General Permit Registration Statement (eff. 10/01).~~

~~Quarterly Reporting of Impacts Less than One-Tenth Acre (insert reporting period) Statewide (eff. 4/03).~~

Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (eff. 10/02).

VA.R. Doc. No. R04-103; Filed December 8, 2004, 8:16 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

REGISTRAR'S NOTICE: The Board of Optometry is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 14 of the Code of Virginia, which exempts the Board of Optometry from the Administrative Process Act when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

Title of Regulation: 18 VAC 105-20. Regulations Governing the Practice of Optometry (adding 18 VAC 105-20-46 and 18 VAC 105-20-47).

Statutory Authority: § 54.1-3223 of the Code of Virginia.

Effective Date: December 8, 2004.

Agency Contact: Elizabeth Carter, Ph.d., Executive Director, Board of Optometry, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, or e-mail elizabeth.carter@dhp.virginia.gov.

Summary:

The amendments set forth the treatment guidelines for the use of therapeutic pharmaceutical agents (TPA) by TPA-certified optometrists and specify the categories of drugs that may be procured, administered and prescribed to treat diseases and abnormal conditions of the human eye and its adnexa.

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No changes have been made since publication of the repropounded regulation in 21:4 VA.R. 391-392 November 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.

18 VAC 105-20-46. Treatment guidelines for ~~TPA certification~~ TPA-certified optometrists.

A. TPA-certified optometrists may treat diseases and abnormal conditions of the ~~following structures of the~~ human eye and its adnexa that may be ~~appropriately~~ treated with medically appropriate pharmaceutical agents as referenced in 18 VAC 105-20-47. The adnexa is defined as conjoined, subordinate or immediately associated anatomic parts of the human eye, including eyelids and eyebrows.

- ~~1. Lids and adnexa;~~
- ~~2. Lacrimal system;~~
- ~~3. Cornea;~~
- ~~4. Conjunctiva; and~~
- ~~5. Episclera.~~

B. In addition, the following may be treated:

1. Glaucoma (excluding the treatment of congenital and infantile glaucoma). Treatment of angle closure shall follow the definition and protocol prescribed in subsection C of this section.
2. Ocular-related post-operative care in cooperation with patient's surgeon.
3. Ocular trauma to the above tissues as in subsection A of this section.
4. Uveitis.
5. Anaphylactic shock (limited to the administration of intramuscular epinephrine).

C. The definition and protocol for treatment of angle closure glaucoma shall be as follows:

1. As used in this chapter, angle closure glaucoma shall mean a closed angle in the involved eye with significantly increased intraocular pressure, and corneal microcystic edema;
2. Treatment shall be limited to the initiation of immediate emergency care with appropriate pharmaceutical agents as prescribed by this chapter;
- ~~2.~~ 3. Once the diagnosis of ~~acute~~ angle closure glaucoma has been established by the optometrist, the ophthalmologist to whom the patient is to be referred should be contacted immediately;
- ~~3.~~ 4. If there are no medical contraindications, an oral osmotic agent may be administered as well as an oral carbonic anhydrase inhibitor and any other medically

accepted, Schedule III, IV or VI, oral antiglaucomatic agent as may become available; and

4. 5. Proper topical medications as appropriate may also be administered by the optometrist.

D. An oral Schedule VI immunosuppressive agent shall only be used when (i) the condition fails to appropriately respond to any other treatment regimen; (ii) such agent is prescribed in consultation with a physician; and (iii) treatment with such agent includes monitoring of systemic effects.

18 VAC 105-20-47. Therapeutic pharmaceutical agents.

A. A TPA-certified optometrist, acting within the scope of his practice, may procure, administer and prescribe medically appropriate therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule III, IV and VI narcotic and nonnarcotic agents.
2. Topically administered Schedule VI agents:
 - a. Alpha-adrenergic blocking agents;
 - b. Anesthetic (including esters and amides);
 - c. Anti-allergy (including antihistamines and mast cell stabilizers);
 - d. Anti-fungal;
 - e. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
 - f. Anti-infective (including antibiotics and antivirals);
 - g. Anti-inflammatory;
 - h. Cycloplegics and mydiratics;
 - i. Decongestants; and
 - j. Immunosuppressive agents.
3. Orally administered Schedule VI agents:
 - a. Aminocaproic acids (including antifibrinolytic agents);
 - b. Anti-allergy (including antihistamines and leukotriene inhibitors);
 - c. Anti-fungal;
 - d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
 - e. Anti-infective (including antibiotics and antivirals);
 - f. Anti-inflammatory (including steroidal and nonsteroidal);
 - g. Decongestants; and
 - h. Immunosuppressive agents.

B. Schedule I, II and V drugs are excluded from the list of therapeutic pharmaceutical agents.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed or dispensed.

NOTICE: The forms used in administering 18 VAC 105-20, Regulations Governing the Practice of Optometry, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

[FORMS

~~Optometry Licensure Applicant Application Instructions for Licensure/TPA Certification (rev. 11/02 12/04).~~

Form A, Application for a License to Practice Optometry or TPA Certification (rev. 11/02 7/04).

Diagnostic Pharmaceutical Agents Endorsement Application (rev. 11/02).

Professional Designation Application (rev. 11/02).

Professional Designation Application Letter (rev. 12/02).

Application for Reinstatement (rev. 11/02).

License Renewal Notice and Application, 0601, Optometrist (rev. 12/02).

License Renewal Notice and Application, 0603, Professional Designation (rev. 12/02).

Clearance from Other State Boards (eff. 11/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 01/03).

Form C, Graduate Optometric Programs Approved and Postgraduate TPA Optometric Programs Approved (eff. 2/00).

Form D, Certificate of Training (rev. 11/02).]

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Virginia Board of Optometry
6603 West Broad Street, 5th Floor
Richmond, VA 23230
Phone (804) 662-9910, Fax (804) 662-7098
e-mail: www.optbd@dhp.virginia.gov

APPLICATION INSTRUCTIONS FOR LICENSURE/TPA CERTIFICATION

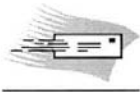
LICENSURE

To be considered for licensure by examination or endorsement, the following must be submitted to the Board office:

- ▶ Form A – "Application for a License to Practice Optometry" (All applicants must complete the relevant sections)
- ▶ Form B – "Clearance from Other State Boards" (Only for those who are or have ever been licensed in another jurisdiction). Send a copy of this form to each optometry board where you have been licensed. Have them verify your licensure status on the form and submit it directly to the Board office
- ▶ For candidates seeking licensure by examination (passed all parts of the NBEO examination including TMOD):
 - National Board of Examiners in Optometry (NBEO) Examination scores sent to the Board directly from NBEO
 - Transcript certifying graduation with a doctorate in optometry (O.D.) sent directly to the Board from the registrar. Note that only candidates who have graduated from schools of optometry accredited by the American Optometric Association's Accreditation Council on Optometry Education (ACOE) will be considered (Information regarding ACOE accreditation may be obtained through the following website: www.aoa.org)
 - Make check payable to the "*Treasurer of Virginia*" for \$445 to cover the initial application and licensure fee
- ▶ For candidates seeking licensure or TPA certification by endorsement, see page 2 for instructions and eligibility.

NOTARIZED APPLICATION SIGNATURE

Please be aware that your notarized application signature affirms that you have read, understand and will comply with the laws and regulations governing the practice of optometry and the use of controlled substances in Virginia.



The status of your application will be forwarded via e-mail upon receipt of the application. If no e-mail, the status will be mailed regular mail. Upon receipt of all required documentation, a license permit will be issued and mailed.

PERMIT EXPIRATION DATES

Permits for Licensure issued prior to October 1st will expire on December 31st. Permits issued on or after October 1 will expire December 31st of the following year.

Calligraphy wall certificates will be requested within 90 days and shall only reflect the O.D. degree.



Online Licensing – Upon licensure, a pin number will be issued and printed on your licensure permit. Licensees are encouraged to renew on-line, change addresses, and request duplicate permits. See on-line licensing at www.dhp.virginia.gov for specific information/instructions.

The above website also offers the most current changes to the laws/regulations, frequently asked questions, forms and guidance documents.

All fees are non-refundable; therefore, if any doubt as to eligibility, please contact the Board office for further clarification.

ENDORSEMENT INSTRUCTIONS

To be considered for licensure by endorsement, an applicant must be a graduate of an optometry college accredited by the American Optometric Association's Accreditation Council on Optometry Education (ACOE) and the following criteria must be met:

- ▶ Form A – "Application for a License to Practice Optometry" (All applicants must complete the relevant sections)
- ▶ National Board scores directly from the National Board of any/all parts taken
- ▶ Transcript with final optometry degree directly from registrar
- ▶ Form B – "Clearance from Other State Boards" (Includes any jurisdiction where a license has been held). Forms must be completed by each verifying state or jurisdiction sent directly to the Board office, copies of licensure permits are not valid verifications. Each licensing jurisdiction must verify that your license is full, unrestricted and that all continuing education has been met
- ▶ In the case of a federal service optometrist, a statement of good standing, credentialing and quality assurance from Commanding Officer
- ▶ Enclosure of appropriate fee (\$445)
- ▶ Must have passed a licensing examination or certification in optometry in any jurisdiction of the United States that is comparable to VA's examination at the time of initial licensure (contact the Board office for details); Examination subject matter, scoring and the endorsing states' regulations at the time of initial licensure are required (contact the endorsing state to forward the information to Virginia).
- ▶ Must have been engaged in active clinical practice for at least 36 months out of the last 60 months immediately preceding application;
- ▶ Must not be a respondent in a pending or unresolved malpractice claim;
- ▶ Must provide proof of competency in the use of diagnostic pharmaceutical agents (DPA's). This consists of a report from the National Board of passing scores on all sections of Parts I and II of the National Board Examination taken May 1985 or thereafter. If not qualifying through examination, applicant must provide other proof of meeting the requirements for the use of DPA as provided in §§54.1-3220 and 54.1-3221 of the Code of Virginia;
- ▶ Must provide proof of competency in the use therapeutic pharmaceutical agents (TPA's). This consists of a report from the National Board of Examiners in Optometry (NBEO) of a passing score on the TMOD section or a report from the endorsing state on its TPA examination that is comparable to Virginia's examination (6/1991 to 7/1996) or to NBEO/TMOD (7/1996 forward).
- ▶ If a graduate of an optometry school prior to April 12, 1991, must provide proof of postgraduate education in TPA (see Forms C&D);

TPA CERTIFICATION, ALONE

This section is for current Virginia licensees applying for certification to use TPA's, only.

- ▶ Form A – "Application for a License to Practice Optometry or TPA Certification" (Complete the relevant TPA sections);
- ▶ Form B – "Clearance from Other State Boards" (Only for those who are or have ever been licensed in another jurisdiction). Send a copy of this form to each optometry board where you have been licensed. Have them verify your licensure/TPA status on the form and submit it directly to the Board office;
- ▶ Must provide proof of competency in the use therapeutic pharmaceutical agents (TPA's) as stated in "Endorsement Instructions," above. Also, if a graduate of an optometry school prior to April 12, 1991, the same instructions as provided in the "Endorsement Instructions," apply.
- ▶ Enclosure of required fee (\$200) rather than \$445.

Final Regulations



COMMONWEALTH OF VIRGINIA
 BOARD OF OPTOMETRY
 Department of Health Professions
 6603 West Broad Street, 5th Floor
 Richmond, VA 23230-1712
 (804) 662-9910 e-mail: www.optbd@dhp.state.va.us

APPLICATION FOR A LICENSE TO PRACTICE OPTOMETRY or TPA CERTIFICATION	
▼▼▼Must check all appropriate box(s)▼▼▼	
◆ Licensure by Examination []	◆ NBEO Exam Dates: Part I _____ Part II _____ (Requires passage of all parts of the NBEO) Part III _____ TMOD _____
◆ Licensure by Endorsement []	◆ Endorsing State _____ Year Licensed _____
◆ <u>VA Licensee</u> Requesting TPA Certification [] Yes	

Each question must be answered fully, truthfully and accurately. If the space for any answer is insufficient, the applicant must complete his/her answer on a rider signed by him/her specifying the number of question to which it relates and enclose with this application.

APPLICANT: PLEASE COMPLETE ALL SECTIONS (PRINT OR TYPE)				
LAST NAME		FIRST		MIDDLE/MAIDEN
PRINT NAME AS YOU WISH IT TO APPEAR ON WALL CERTIFICATE (limited to OD degree)				
HOUSE/APT #		STREET NAME		CITY
				STATE
				ZIP CODE
AREA CODE/TELEPHONE NO.		FAX NUMBER		E-MAIL ADDRESS
DATE OF BIRTH		PLACE OF BIRTH		*SOCIAL SECURITY NUMBER OR DMV NUMBER*
Month Day Year				
GRADUATION DATE		PROFESSIONAL DEGREE		SCHOOL
Month Day Year				CITY/STATE
APPLICANTS DO NOT USE SPACES BELOW THIS LINE – FOR OFFICE USE ONLY				
APPLICANT NO	RECEIPT NO	LICENSE NUMBER	ISSUE DATE	EXPIRATION DATE
TPA APPLICANT NO	RECEIPT NO	CERTIFICATION NO	ISSUE DATE	EXPIRATION DATE

*In accordance with § 54.1-116 of the Code of Virginia, you are required to submit your Social Security Number or your control number issued by the Virginia Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded.

This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities.

1. Have you ever been known by any other name [] Yes [] No. If yes, state in full every other name by which you have been known, the reason therefore, and dates so used. If name change was made by court order, enclose herein a Certified Copy of such order.

2. Name two persons who will always know your address.

Name	Street	City	State	Zip Code

3. Optometric Professional Experience. (List all Professional Practice in reverse chronological order). Explain any period when not practicing.

Began Date		Ended		Name of Practice And Address	Type of Activity	Status of Applicant (Employee, Owner, Partner)
Month	Year	Month	Year			

4. OPTOMETRIC EDUCATION

Month/Day/Year From	To	Name of School	Degree

5. POSTGRADUATE EDUCATION (TPA) Please refer to Form D (For graduates prior to 4/12/1991)

List all didactic and clinical postgraduate training in the treatment of diseases or abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents:

6. List all jurisdictions that you are or have been licensed to practice optometry.

Jurisdiction	How Licensed	License No.	Date of Issuance	Years of Practice	License Status

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7. Have you ever been denied approval to take an optometry examination given by another jurisdiction? If yes, list dates and jurisdiction: [] Yes [] No
- _____
8. Have you ever been disciplined by an optometry board in another jurisdiction? If yes, list dates and jurisdiction [] Yes [] No
- _____
9. Have you ever voluntarily surrendered your license in any state? If yes, list dates, jurisdiction and reasons. [] Yes [] No
- _____
10. Are you currently under disciplinary investigation by any jurisdiction? If yes, give jurisdiction. [] Yes [] No
- _____
11. Have you been convicted of a violation of/or pled Nolo Contendere to any federal, state, or local statute, regulation, entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence.) Please provide written statement of explanation. [] Yes [] No
- _____
- _____
12. Have you been the subject of any malpractice suits in the last ten years? If yes, provide a letter explaining each case. [] Yes [] No
13. Have you, within the last two (2) years, received treatment for/or been hospitalized for a nervous, emotional, or mental disorder which could impair your practice? If yes, please provide a letter from each of your treating professionals summarizing diagnosis, treatment and prognosis. [] Yes [] No
14. Have you, within the last two (2) years, been treated by, consulted with or been under the care of a professional for any substance abuse? If yes, please provide a letter from the treating professional summarizing diagnosis, treatment and prognosis. [] Yes [] No
15. Do you have a physical condition which could affect your performance of professional duties? If yes, please provide a letter from each of your treating professionals summarizing diagnosis, treatment and prognosis. [] Yes [] No
16. Have you, within the last five (5) years, been adjudged mentally incompetent or been committed to a mental institution? If yes, please provide a letter from treating professional summarizing diagnosis, treatment and prognosis. [] Yes [] No
- _____

THIS SECTION MUST BE NOTARIZED

17. In addition to the foregoing, I add the following:

- (a) I have read and understand the Virginia Board of Optometry statutes and regulations and am aware that if granted a license to practice optometry in Virginia, I am required to comply with any laws and regulations governing the practice of optometry and the use of controlled substances in Virginia.
- (b) I hereby give permission to the Virginia Board of Optometry to secure additional information concerning me or any statement in this application from any person or any source the Board may desire. I further agree to submit to questioning by the Board or any Agent thereof, and to substantiate my statement(s) if desired by the Board.
- (c) I shall present any credentials required or requested by the Board.
- (d) I HAVE ATTACHED A MONEY ORDER OR CHECK IN THE AMOUNT OF \$_____, MADE PAYABLE TO THE TREASURER OF VIRGINIA.
- (e) I hereby certify that in applying to the Virginia Board of Optometry for a license to practice optometry in Virginia, I have made no fraudulent or deceitful statement, nor have I made any misrepresentation of a material fact. I agree that if I am granted a license I will practice my profession of optometry in an ethical manner; that I will not participate directly in any illegal or unethical modes of practice; that I will not practice optometry under a false or assumed name; that I will not knowingly enter the employment of or the association with any person, firm or corporation engaged in the practice of optometry contrary to the laws of the Commonwealth of Virginia; I further certify that I will at all times obey the regulations of the Virginia Board of Optometry and the laws of the Commonwealth of Virginia relating to the practice of optometry.
- (f) I, _____, the applicant herein, depose and say that all facts, statements, and answers contained in this application are true and correct; I am not omitting any information which might be of value to the Board in determining my qualifications and character, whether it is called for or not; and I agree that any falsification, omission, or withholding of information of facts concerning my qualification as an applicant shall be sufficient grounds for the suspension, cancellation, or revocation of my Virginia Board of Optometry License even though it is not discovered until after issuance.

Applicant's Signature

State _____ City/County _____

Before me, the undersigned authority, on this day personally appeared _____ who after being duly sworn by me on his or her oath that all facts, statements, and answers contained in this application are true and correct in every respect.

Applicant's Signature (Signed in Presence of Notary)

Sworn and subscribed to before me this _____ day of _____, 20_____, to certify which witness my hand and official seal of office.

Notary Public

My Commission Expires _____

(SEAL)

OPTAPPLIC2004
7/2004
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Final Regulations

GRADUATE OPTOMETRIC PROGRAMS APPROVED

PLEASE REVIEW PRIOR TO REQUESTING CERTIFICATE OF TRAINING

<u>School</u>	<u>Approved by Committee</u>	<u>Beginning Graduation Date Adopted for Approval in Lieu of Postgraduate Training</u>
University of Alabama at Birmingham	05/10/1991	1983
University of California, Berkeley	11/06/1991	1992
Ferris State College College of Optometry	04/12/1991	1987
University of Houston	06/03/1991	1981
Illinois College of Optometry	05/10/1991	1987
Indiana University	05/10/1991	1984
University of Missouri-St. Louis	05/10/1991	1988
The New England College of Optometry	05/10/1991	1987
State University of New York	11/18/1991	1987
The Ohio State University College of Optometry	04/12/1991	1981
Pacific University College of Optometry	04/12/1991	1981
Pennsylvania College of Optometry	04/12/1991	1987
Southern California College of Optometry	05/01/1992	1982
Southern College of Optometry	04/12/1991	1981
NOVA Southeastern University	05/28/1993	1993

FORM C
(Page 1 of 2)
See also reverse

Revised 2/11/2000
Postgraduate TPA Optometric Program Approved.doc

POSTGRADUATE TPA OPTOMETRIC PROGRAMS APPROVED

School of Optometry

The New England College of Optometry	"Therapeutic Pharmaceutical Agents Program Presented October 1988-September 1990
Northeastern State University	"Ocular Therapeutics/Ocular Disease Management" Presented March 11-19, 1999 (Approved February 3, 1999)
Ferris State University College of Optometry	"Therapeutic Pharmacology and the Management of Ocular Diseases"
University of Houston	"Concentrated Ocular Therapeutic Course"
Illinois College of Optometry	"Therapeutic Approaches Course"
University of Missouri – St. Louis	"Clinical Ocular Therapy/100 Hour Course"
State University of New York	"Ocular Diagnosis and Therapy (NOTE: Must complete Course Nos. ODT01-ODT06)
Pennsylvania College of Optometry	"Pharmacology & Therapeutics for the Practicing Optometrist #701"
Pennsylvania College of Optometry	"Ocular Therapy for Optometric Practitioners #750B"
Southern California College of Optometry	"Therapeutic Management of Ocular Conditions"
The University of California at Berkeley School of Optometry	"Continuing Education Therapeutics Course" (Approved June 1995)
NOVA Southeastern University	Ocular Therapeutics Course

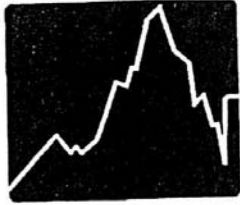
POSTDOCTORAL RESIDENCIES OR FELLOWSHIPS

<u>SCHOOL</u>	<u>APPROVED BY COMMITTEE</u>	<u>BEGINNING DATE ADOPTED FOR APPROVAL OF POSTDOCTORAL RESIDENCY OR FELLOWSHIP IN LIEU OF POSTGRADUATE TRAINING</u>
Pennsylvania College	5/10/1991	1982

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Revised 2/11/2000
Postgraduate TPA Optometric Program Approved.doc

Final Regulations



COMMONWEALTH OF VIRGINIA
Department of Health Professions

Board of Optometry
6603 West Broad Street, 6th Floor
Richmond, Virginia 23230-1717
(804) 662-9910
carol.stamey@dhp.state.va.us

CERTIFICATE OF TRAINING

Every applicant applying for certification to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents shall provide evidence of having completed a full-time approved postgraduate optometric training program, or a full-time approved graduate optometric training program to the Board.

I hereby authorize the director of the postgraduate or graduate training program to release to the Virginia Board of Optometry the information listed below in connection with the processing of my application.

Signature of Applicant

It is hereby certified that _____ completed

the program for _____
Title of Postgraduate Optometric Program

from _____ to _____
(Month/Day/Year) (Month/Day/Year)

School of Optometry _____

Address _____

City, State, Zip Code _____

Program Director

Date

Please return to: Board of Optometry
6603 West Broad Street, 6th Floor
Richmond, VA 23230-1717

SCHOOL SEAL

FORM D

Revised 11/5/2002
CERT_OF_TRAINING

VA.R. Doc. No. R04-280; Filed December 8, 2004, 11:24 a.m.

FAST-TRACK REGULATIONS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

TITLE 8. EDUCATION

BOARD OF EDUCATION

Title of Regulation: 8 VAC 20-360. Regulations Governing General Educational Development Certificates (amending 8 VAC 20-360-10 and 8 VAC 20-360-20; repealing 8 VAC 20-360-30).

Statutory Authority: §§ 22.1-16 and 22.1-224 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until February 28, 2005.

(See Calendar of Events section for additional information)

Effective Date: March 15, 2005.

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

Basis: Section 22.1-224 of the Code of Virginia provides discretion to the board in promulgating "appropriate standards and guidelines for adult education programs," including participation in preparing for and taking the GED tests. It further requires the board to "assist school divisions with all diligence in meeting the educational needs of adults participating in adult education programs to master the requirements for and earn a Virginia General Educational Development (GED) Certificate or high school diploma."

Purpose: Successful achievement on the GED tests provides adults and eligible secondary students who have not or will not earn a high school diploma with the opportunity to earn a well-recognized secondary credential. Those who pass the GED tests earn a GED certificate issued by the Virginia Department of Education. Most employers, colleges, universities, and all of the armed forces recognize the GED certificate.

The current regulation was effective September 1, 1980. Changes to the regulation are necessary in four areas:

1. Section on application and test fees is repealed;
2. Age eligibility requirements for individuals to take the GED tests;
3. Waiting period before permission to retest; and
4. Scoring requirements to earn a Virginia GED certificate.

Current language in the regulation would allow students to "legally withdraw" from school before age 18. This language is contradictory to language in the compulsory attendance law in the Code of Virginia and continues to misinform school division administrators, parents, and potential GED candidates between the ages of 16 and 18 years. This regulation is important in providing easy to understand information for the

aforementioned parties. By referencing the relevant section of the compulsory attendance law in the eligibility section, the regulation can maintain consistency over time with the Code of Virginia.

There is no legitimate interest or educational foundation to require an individual to wait a period of 60 days before retesting. The waiting period arbitrarily assumes that all individuals must have at least 60 days to prepare for the retest and be successful. In some cases, an individual may be so close to passing that taking the necessary subtest in a much shorter time could yield a positive result. The 60-day waiting period could keep individuals from obtaining employment, entering a post-secondary training or education program, or enlisting in one of the branches of the armed services.

GED Testing Service of the American Council on Education has always set the minimum standards that must be met in order for an individual to earn a GED credential (referred to as a Virginia GED Certificate in Virginia). States have the option of setting a higher standard, but not going lower than the GED Testing Service standard. Over the years the standard has changed on several occasions. On January 1, 2002, a new series of GED tests with a completely different scoring structure was released. This new series of GED tests is not psychometrically compatible with previous versions. To properly inform GED recipients, prospective employers, colleges and university admissions staff, armed forces recruiting personnel, and other interested parties, it is important to delineate the score requirements necessary to earn a Virginia GED Certificate based on when the individual took the GED tests.

Rationale for Using Fast-Track Process: The fast-track process was chosen to amend this regulation because the regulation was effective more than 20 years ago and is not consistently followed in practice due to changes in the Code of Virginia and GED Testing Service policies. It is important to ensure that testing centers are in compliance with the appropriate governing regulation and that the governing regulations are consistent with all applicable laws of Virginia and policies of the GED Testing Service.

Substance: The substantive changes to the existing regulation are the following:

1. The section on application and fees is repealed.
2. The existing language in the age eligibility section is repealed and reference is made to the Code of Virginia section defining GED testing eligibility.
3. The scoring requirement information is amended to reflect that a GED certificate is earned according to the scoring requirement in place at the time the individual took the GED tests.
4. The section on requiring individuals to wait 60 days to retest is repealed.

Fast-Track Regulations

Issues: The proposed regulatory action will affect primarily individuals taking the GED tests and those businesses, agencies, and organizations that have an interest in individuals who have earned or will earn a GED credential. The primary advantage to the individual taking the GED tests is the ability to determine his own readiness to test and retest.

There are no anticipated disadvantages.

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 § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H 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 Board of Education (board) proposes to (i) repeal language specifying fees, (ii) clarify age eligibility requirements, (iii) eliminate the waiting period before retaking tests, and (iv) amend the scoring requirements information to reflect that a GED certificate is earned according to the American Council on Education scoring requirement in place at the time the individual took the GED tests.

Estimated economic impact. Repealing test fee language. The board proposes to repeal the section of these regulations that specifies fees. The current regulations specify fees of \$10 to take the entire battery of five tests or \$2.00 for each individual test. On June 6, 1997, the Virginia Superintendent of Public Instruction sent a memo to school division superintendents stating that "As of July 1, 1997 the fee for the GED examination will increase to \$35.00 per battery, and \$7.00 per individual subtest." Thus, in practice, and per the Department of Education's (department) instructions, the 72 local school divisions and 2 community colleges that are approved to operate GED testing centers have been charging higher fees than are specified in the regulations. The board and department intend to continue to instruct the operators of testing centers to charge specified fees that roughly align with their administrative costs as determined by the board. Since repealing the section of these regulations that specifies fees does not in practice affect the fees that testing centers actually charge, the repeal will likely not have a large impact. The repeal may be moderately beneficial in that the public will no longer be misled by regulatory language that is not applied or enforced in practice.

Age eligibility requirements. Concerning the minimum age that an individual can earn a GED certificate, the board proposes to state in these regulations that "Under special circumstances, which are consistent with the Code of Virginia, §§ 22.1-254 and 22.1-254.2, the age limit may be lowered to 16 years of age." The 1999 Virginia Acts of Assembly amended these Code sections in a manner that contradicts

part of the current regulations. Where the Code of Virginia and administrative law are in conflict, the Code of Virginia governs. Nevertheless, the contradictory language has caused some confusion in the public concerning when 16-year old and 17-year old individuals can take the GED tests. Therefore the board proposes to repeal the following regulatory language, which indicates that 16-year old and 17-year old individuals can earn a GED certificate if they can provide one of the following:

- a. A letter from an official of the regular day school last attended stating that the applicant has been legally withdrawn from school for a period of one year;
- b. A letter from an official of the regular day school last attended stating that the applicant has been legally withdrawn from school for a period of six months, and a letter from a director of a high school review program stating that the applicant has successfully completed the program; or
- c. A letter from an employer, a recruiting officer of the armed forces, or an admissions officer of an institution of higher learning or postsecondary training institution stating that the applicant meets all requirements for employment or admissions, with the exception of a General Educational Development certificate, and a letter from an official of the regular day school last attended recommending the applicant be tested.

In particular, producing the following is not sufficient for 16-year old and 17-year old individuals to take the GED tests under the Code of Virginia:

A letter from an employer, a recruiting officer of the armed forces, or an admissions officer of an institution of higher learning or postsecondary training institution stating that the applicant meets all requirements for employment or admissions, with the exception of a General Educational Development certificate, and a letter from an official of the regular day school last attended recommending the applicant be tested.

Under §§ 22.1-254 and 22.1-254.2, such individuals who would have qualified under the above regulatory language would instead need to become enrolled in an individual student alternative education plan (ISAEP). Requirements of the ISAEP include a) career guidance counseling, b) mandatory enrollment and attendance in a GED preparatory program or another alternative education program, and c) counseling on the economic impact of failing to complete high school. Although the proposed amendments to the regulation do not change the effective law, the promulgation of these amendments will likely have some impact since confusion among the public, school divisions, and some test administrators has been such that some individuals have likely taken the GED tests by complying with the above regulatory language after 1999, when the Code of Virginia should have prevented this method in practice.¹ The proposed regulatory language will reduce such confusion and make it less likely that individuals not qualified to take the GED tests will do so in the future.

¹ Ibid

Waiting period. Under the current regulations, "An applicant who fails to qualify for a certificate on the basis of test scores may be retested, provided at least 60 days have lapsed since the last testing." The board proposes to eliminate the requirement that applicants wait 60 days before retaking the tests. The GED Testing Service² has no position on how long a person must wait to retest.³ The GED Testing Service permits applicants to take the tests up to three times per calendar year. (Three different versions of the tests are issued per year.) Proposed language makes clear that applicants will have this opportunity, and that test scores may be combined in accordance with GED Testing Service policy. The proposed elimination of the 60-day waiting period will produce a net benefit in that it enables applicants to have more flexibility as to when they can sit for retests without compromising the value of the tests. (If the Testing Service repeated questions on tests for students who retake the tests within 60 days, then passing such tests would be lesser evidence of the applicant's knowledge than the situation where the applicant encounters new questions on the retest. Since the latter situation occurs in practice, the value of the tests is not compromised by permitting applicants to retest within less than 60 days.) Eliminating the waiting period will potentially enable some individuals to obtain employment, enter postsecondary education, or enter the armed services sooner than would be possible with the required waiting period.

Scoring requirements. The current regulations indicate that the minimum test scores required to acquire a GED certificate are "A standard score battery average of 45 (a total standard score of 225) with no individual test standard score below 34..." This is consistent with the minimum standard set by the GED Testing Service of the American Council on Education for between July 1, 1979, and December 31, 1996. The GED Testing Service's minimum standard has since been revised, but the revised standards have not been reflected in these regulations. The board has in practice required whichever minimum standards the GED Testing Service has maintained for each respective time period. The board proposes to clarify that "For test batteries completed on or after January 1, 2002, individuals must achieve the minimum passing score requirements set by the GED Testing Service of the American Council on Education or such higher score requirements that may be established by the Virginia Board of Education." The board also proposes to indicate the standards for test batteries completed between January 1, 1997 and December 31, 2001, between July 1, 1979 and December 31, 1996, and for the period prior to July 1, 1979. The clarifying language will produce a small benefit by reducing the probability that examiners, GED test takers, and others (e.g. employers, and colleges and universities) will misunderstand what minimum test scores are required to acquire a GED certificate in Virginia.

Businesses and entities affected. The proposed amendments affect the approximately 20,000 GED test takers per year and the 72 local school divisions and two community colleges that are approved to operate GED testing centers.

Localities particularly affected. The proposed amendments affect individuals in all Virginia localities.

Projected impact on employment. Eliminating the waiting period for retaking GED tests will potentially enable some individuals to obtain employment sooner than would be possible with the required waiting period.

Effects on the use and value of private property. Eliminating the waiting period for retaking GED tests will potentially enable some individuals to obtain employment sooner than would be possible with the required waiting period. Obtaining employment sooner will enable these affected individuals to increase their earnings sooner and consequently raise their net worth.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Economic Impact Analysis done by DPB on November 18, 2004. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act.

Summary:

The amendments (i) repeal language specifying fees; (ii) clarify age eligibility requirements; (iii) eliminate the waiting period before retaking tests; and (iv) amend the scoring requirements information to reflect that a GED certificate is earned according to the American Council on Education scoring requirement in place at the time the individual took the GED tests.

CHAPTER 360.

RULES REGULATIONS GOVERNING GENERAL EDUCATIONAL DEVELOPMENT CERTIFICATES.

8 VAC 20-360-10. Eligibility.

Certificates may be issued to ~~adults who are no longer enrolled in regular day school programs and~~ individuals who meet the following ~~minimum~~ requirements:

1. Age. An applicant must be at least 18 years of age ~~and not enrolled in a public or private high school.~~ Under special circumstances, which are ~~considered by local school authorities to be justifiable consistent with §§ 22.1-254 and 22.1-254.2 of the Code of Virginia,~~ the age limit may be lowered if ~~an applicant is legally withdrawn from school.~~ ~~Notwithstanding the foregoing requirement, applicants below 18 years of age shall provide one of the following: to 16 years of age.~~

~~a. A letter from an official of the regular day school last attended stating that the applicant has been legally withdrawn from school for a period of one year;~~

~~b. A letter from an official of the regular day school last attended stating that the applicant has been legally withdrawn from school for a period of six months, and a letter from a director of a high school review program stating that the applicant has successfully completed the program; or~~

~~c. A letter from an employer, a recruiting officer of the armed forces, or an admissions officer of an institution of higher learning or postsecondary training institution~~

² The GED Testing Service, part of the American Council on Education, develops and distributes the GED Tests nationally.

³ Source: Department of Education

Fast-Track Regulations

~~stating that the applicant meets all requirements for employment or admissions, with the exception of a General Educational Development certificate, and a letter from an official of the regular day school last attended recommending the applicant be tested.~~

~~2. High school credit. Not required.~~

~~3. Residency. An individual must be a resident of the Commonwealth of Virginia for a minimum of 30 days immediately prior to making application to take the test.~~

~~4. 2. Minimum test scores score requirements. A standard score battery average of 45 (a total standard score of 225) with no individual test standard score below 35 is required. The following minimum score requirements must be met depending upon when the candidate took the General Educational Development (GED) tests:~~

~~a. For test batteries completed on or after January 1, 2002, individuals must achieve the minimum passing score requirements set by the GED Testing Service of the American Council on Education or such higher score requirements that may be established by the Virginia Board of Education;~~

~~b. For test batteries completed between January 1, 1997, and December 31, 2001, individuals must achieve at least an average battery score of 45, a total standard score of 225, and no individual test score below 40;~~

~~c. For test batteries completed between July 1, 1979, and December 31, 1996, individuals must achieve at least an average battery score of 45, a total standard score of 225, and no individual test score below 35; or~~

~~d. For test batteries completed prior to July 1, 1979, individuals must achieve at least an average battery score of 45 (rounded up), a total standard score of 223, and no individual test standard score below 35.~~

~~3. In-state testing. Only those entities designated by the Department of Education as official Virginia GED testing centers shall determine whether an individual is eligible to take GED tests in accordance with policies of the GED Testing Service of the American Council on Education and § 22.1-254.2 of the Code of Virginia. GED tests shall be administered only at official Virginia GED testing centers or addendum test sites that have been approved by the Virginia GED Administrator and the GED Testing Service.~~

~~5- 4. Credit for scores on GED tests administered out-of-state test scores. Official test scores may be accepted from an approved GED battery of tests administered by an approved GED center state agency, an official jurisdiction responsible for overseeing GED testing, or an official GED testing center outside of Virginia, provided the requirements established by the Commonwealth of Virginia for the issuance of a certificate have been fulfilled.~~

8 VAC 20-360-20. Retesting.

~~An applicant who fails to qualify for a certificate on the basis of test scores may be retested, provided at least 60 days have lapsed since the last testing individual may take the full battery of tests up to three times during a calendar year to qualify for~~

~~a General Educational Development Certificate. Test scores may be combined in accordance with GED Testing Service policy.~~

8 VAC 20-360-30. Application and fees. (Repealed.)

~~A Virginia resident must make application in the school division in which he lives. The application must be approved by the school division superintendent or his designee. An applicant approved by the local school official is required to pay a fee of \$10 to take the entire battery of five tests or \$2.00 for each individual test.~~

VA.R. Doc. No. R05-91; Filed December 2, 2004, 11:32 a.m.



GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 22, 2004

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter of CASE NO. INS-2004-00123
Repealing and Restating the
Rules Governing Health
Maintenance Organizations

SCHEDULING ORDER

On August 16, 2004, the State Corporation Commission ("Commission") entered an Order to Take Notice in this matter permitting any person to comment on the proposed repeal of 14 VAC 5-210, "Rules Governing Health Maintenance Organizations" and promulgation of new rules at 14 VAC 5-211 under the same name. Four persons submitted comments - Piedmont Community Healthcare, Southern Health Services, Inc., the Alliance of Virginia Dental Plans and the Virginia Association of Health Plans. Each of these persons requested a hearing, but also advised that they were willing to work with the Bureau of Insurance to discuss the issues of concern and attempt to narrow the focus of the issues to be addressed at a hearing, if necessary.

THEREFORE, IT IS ORDERED THAT:

(1) A public hearing is hereby scheduled before the Commission on May 3, 2005, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to hear evidence and argument on the repeal of 14 VAC 5-210 and the promulgation of new 14 VAC 5-211 entitled "Rules Governing Health Maintenance Organizations."

(2) Prior to the scheduled hearing date the Bureau of Insurance should meet with those persons who submitted comments and attempt to narrow the issues to be addressed at the hearing.

(3) On or before April 19, 2005, any person intending to appear and be heard at the hearing on the repeal of and promulgation of the new rules shall file a written notice of his intention to do so with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia, and shall reference Case No. INS-2004-00123.

(4) The Commission's Division of Information Resources forthwith shall cause a copy of this Order to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(5) On or before December 1, 2004, the Commission's Division of Information Resources shall make available this Order on the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.

(6) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Alan J. Wood, President & Chief Executive Officer, Piedmont Community Healthcare, P.O. Box 2455, Lynchburg, Virginia 24501-0455; Laura Lee O. Viergever, Corporate Secretary and Director, Regulatory Compliance, Southern Health Services, Inc., 9881 Mayland Drive, Suite 200, Richmond, Virginia 23233; Ren L. Tundermann, Funk & Bolton, 36 South Charles Street, 12th Floor, Baltimore, Maryland, 21201-3111; Joy M. Lombard, Director of Policy and Doug Gray, Executive Director, Virginia Association of Health Plans, 118 N. 8th Street, Richmond, Virginia 23219; and Jacqueline K. Cunningham, Deputy Director for the Bureau of Insurance.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Availability of Monitoring Data

Pursuant to § 62.1-44.19:6 A 3 of the Code of Virginia the Virginia Department of Environmental Quality (DEQ) is giving notice that new data concerning the presence of toxic contaminants in fish tissue and sediments are available for the fish and sediment monitoring performed by DEQ in the calendar year 2003. The routine fish and sediment monitoring in 2003 was performed at selected sites in the small coastal tributaries to the Chesapeake Bay and the Atlantic Ocean and the York River Basin, and at special sites in the James River and in the Guest River in the Tennessee-Big Sandy River basin. Data for the fish and sediment samples collected in 2003 have been posted on the DEQ website at www.deq.virginia.gov/fishtissue/fishtissue.html. For additional information contact Alex Barron directly at (804) 698-4119, or e-mail ambarron@deq.virginia.gov, or call toll free (800) 592-5482 and request Mr. Barron.

Water Quality Study for Back Bay and North Landing River Watersheds

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on a water quality study that is beginning in the Back Bay and North Landing River watersheds. The purpose of the study will be to identify sources of bacteria in the watershed and to determine the reductions in bacteria loadings needed to allow various streams in the watershed to meet water quality goals. The study will result in total maximum daily loads (TMDLs) to address bacteria impairments on several waterways.

The affected streams were identified in Virginia's 1998 303(d) TMDL Priority List and Report and Virginia's 2002 303(d) Report on Impaired Waters as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria. These streams are therefore not supporting the Primary Contact Recreation (swimmable) Designated Use. The impairments include: 3.29 miles of Milldam Creek, 0.09 sq. miles of Nawney Creek, 3.1 miles of Middle West Neck Creek, 0.03 sq. miles of Upper West Neck Creek, and 0.11 sq. miles of London Bridge Creek and Canal #2. These impaired waters are located in Virginia Beach.

General Notices/Errata

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for each pollutant causing a water quality problem or impairment in streams contained in Virginia's 303(d) Report on Impaired Waters.

The second public meeting has been scheduled for Thursday, January 20, 2005, at 7 p.m. in the Advanced Technology Center at Tidewater Community College, Virginia Beach Campus. The purpose of the meeting is to discuss the TMDL development process and to share information on bacteria sources in the watershed. Anyone interested in attending this meeting should contact Jennifer Howell (contact information provided below). Information from this meeting will be made available on the DEQ TMDL website at <http://www.deq.virginia.gov/tmdl/>.

Questions or information requests should be addressed to Jennifer Howell. The public comment period will end on February 20, 2005. Written comments regarding the water quality study and TMDL development should include the name, address, and telephone number of the person submitting the comments and should be sent to Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, FAX (757) 518-2003, or e-mail jshowell@deq.virginia.gov.

Total Maximum Daily Loads (TMDLs) and Implementation Plan Development for Nottoway River Basin

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) and an Implementation Plan (IP) to address multiple impairments in the Nottoway River Basin and its tributaries. The affected streams were identified in Virginia's 1998 303(d) TMDL Priority List and Report and Virginia's 2002 303(d) Report on Impaired Waters as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria. The streams are therefore not supporting the Primary Contact Recreation (swimmable) Designated Use. The impairments include: 17.76 miles of the Nottoway River, 9.85 miles of the Little Nottoway River, 10.35 miles of Big Hounds Creek and 7.17 miles of Beaverpond Creek. These impairments are located in Prince Edward, Nottoway, Lunenburg, and Dinwiddie Counties.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report. Section 62.1-44.19:7 A and C of the Code of Virginia require the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

A public meeting on the development of the Nottoway River Basin TMDL and Implementation Plan will be held on

Wednesday, January 12, 2005, 7 p.m. in the auditorium of the Southern Piedmont Agricultural Research and Extension Center, located at 2375 Darvills Road in Blackstone, Virginia. A map to the facilities can be found on the internet at <http://www.vt.edu>. The purpose of the meeting is to discuss the proposed reductions in fecal bacteria needed in the Nottoway River watershed and to solicit public participation for the IP development.

The public comment period for this phase of the TMDL development will end on February 11, 2005. A fact sheet on the development of the Nottoway River TMDL is available upon request or can be viewed on the DEQ website at <http://www.deq.virginia.gov/tmdl>. Questions or information requests should be addressed to Kelly Wills. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Kelly J. Wills, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-5120 ext. 6042, FAX (434) 582-5125, or e-mail kjwills@deq.virginia.gov.

Total Maximum Daily Load (TMDL) Report for Russell Prater Creek

The Virginia Department of Environmental Quality (DEQ), the Department of Mines Minerals and Energy and the Department of Conservation and Recreation seek written and oral comments from interested persons on the Draft Total Maximum Daily Load (TMDL) Report for Russell Prater Creek near Haysi, Virginia in Buchanan and Dickenson counties. This stream was identified on the 1998 303(d) Total Maximum Daily Load Priority List and Report as impaired due to violations of the state's water quality standard for the Aquatic Life Use - General Standard (benthic).

A public meeting to present the draft Total Maximum Daily Load Report on Russell Prater Creek will be held on Tuesday, January 11, 2005, at 7 p.m. at Russell Prater Elementary School in Prater, Virginia. Russell Prater Elementary School is located on Route 83, east of Haysi in the community of Prater, about 0.5 miles east of intersection of Route 83 and Route 604. Note: Should the school be closed due to snow on January 11, 2005, the meeting will be rescheduled. The rescheduled date will be posted on the DEQ website and on signs in the watershed.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report. The Russell Prater Creek TMDL report addresses reductions to Total Dissolved Solids (TDS) and sediment in the stream which stress the aquatic organisms. The draft document introduces scenarios to reduce these pollutants so that the stream can meet the water quality standards.

Russell Prater Creek is located in Buchanan and Dickenson counties east of Haysi, Virginia. The stream flows in an east to west direction. The watershed includes the communities of Vacey, Prater, Greenbrier and the Town of Haysi. The impairment includes about 11 miles of Russell Prater Creek

from its headwaters at Poplar Gap to its confluence with Russell Fork River in Haysi.

The public comment period will end on February 11, 2005. A copy of the draft report is available upon request or can be viewed at the DEQ website <http://www.deq.virginia.gov/tmdl/>. Address questions or information requests to Nancy T. Norton, P. E. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nancy T. Norton, P. E., Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on December 2, 2004 and December 8, 2004. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Fifty-Seven (04)

Virginia's Instant Game Lottery 632; "7-11-21," (effective 11/19/04)

Director's Order Number Fifty-Eight (04)

Virginia's Instant Game Lottery 631; "Loads of Cash," (effective 11/19/04)

Director's Order Number Fifty-Nine (04)

Virginia's Instant Game Lottery 268; "Snake Rattle & Roll," (effective 11/19/04)

Director's Order Number Sixty-One (04)

Virginia's Instant Game Lottery 602; "The Big Money Game," (effective 11/19/04)

Director's Order Number Sixty-Two (04)

Virginia's Instant Game Lottery 634; "5 Card Stud," (effective 11/23/04)

Director's Order Number Sixty-Three (04)

Virginia's Instant Game Lottery 276; "Aces High," (effective 11/19/04)

STATE WATER CONTROL BOARD

Proposed Consent Special Order - Arlington County Water Pollution Control Plant

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to the Arlington County Board (permittee) regarding the Arlington County Water Pollution Control Plant (WPCP) located in Arlington County, Virginia.

The Arlington County WPCP is subject to VPDES Permit No. VA0025143. The order requires that the permittee upgrade

the WPCP to address the bypasses, perform a pilot project, conduct an updated Sewer System Evaluation Study and continue I/I studies.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through January 26, 2005. Please address comments to Susan A. Oakes, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193. Please address comments sent via e-mail to saoakes@deq.virginia.gov. In order to be considered, comments provided by e-mail must include the commenter's name, address, and telephone number. In order to examine or to obtain a copy of the order, visit the DEQ website at www.deq.virginia.gov. In addition you may also write, visit the Woodbridge address, or call (703) 583-3863 to obtain a copy of the order.

Proposed Consent Special Order - Grand Harbour LTD, LLC and Craig Caron

The State Water Control Board (SWCB) proposes to issue a Consent Special Order (CSO) to Grand Harbour LTD, LLC and Craig Caron regarding violations of the requirements of the State VPDES Storm Water Program. The settlement is a civil enforcement action resolving unpermitted construction activities and requires the removal of sediment from a Smith Mountain Lake cove from unpermitted site discharges. On behalf of the SWCB, the department will consider written comments relating to this settlement for 30 days after the date of publication of this notice. Comments should be addressed to Steven B. Wright, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, N.W., Roanoke, VA 24019.

The final CSO may be examined at the department during regular business hours. Copies are available from Mr. Wright at the address above, by calling him at (540) 562-6792, or by e-mail sbwright@deq.virginia.gov.

Proposed Consent Special Order - Western Virginia Water Authority

The State Water Control Board (SWCB) proposes to issue a Consent Special Order (CSO) to the Western Virginia Water Authority regarding compliance with the Permit Regulation, 9 VAC 25-31, at the Roanoke Regional Water Pollution Control Plant. On behalf of the SWCB, the department will consider written comments relating to this settlement for 30 days after the date of publication of this notice. Comments should be addressed to Robert Steele, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, N.W., Roanoke, VA 24019.

The final CSO is available at www.deq.state.va.us/enforcement/notices.html and at the above office during regular business hours. You may also request copies from Mr. Steele at the address above or by calling him at (540) 562-6777.

General Notices/Errata

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.

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://register.state.va.us>.

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
RESPONSE TO PETITION FOR RULEMAKING-RR13
FAST-TRACK RULEMAKING ACTION-RR14

ERRATA

STATE BOARD OF HEALTH

Title of Regulation: **12 VAC 5-410. Rules and Regulations for the Licensure of Hospitals.**

Publication: 21:6 VA.R. 671-676 November 29, 2004.

Correction to Fast-Track Regulation:

Page 672, 12 VAC 5-410-440 redesignate the subsection identifiers D through I as subdivisions C 1 through 6 and redesignate subsections J through T as subsections D through N.

CALENDAR OF EVENTS

Symbol Key

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

† **January 26, 2005 - 11 a.m.** -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Public comments are welcome.

Contact: Marsha Mucha, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-9312.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Aquaculture Advisory Board

† **January 26, 2005 - 12:30 p.m.** -- Open Meeting
Virginia Farm Bureau Federation, 12580 West Creek Parkway, Conference 3C, Third Floor, Richmond, Virginia.♿

A meeting to discuss issues related to Virginia aquaculture. For directions call 800-768-8323, extension 1155. 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 T. Robins Buck at least five days before the meeting date so that suitable arrangements can be made.

Contact: T. Robins Buck, Board Secretary, Department of Agriculture and Consumer Services, 1100 Bank St., 2nd Floor, Richmond, VA 23219, telephone (804) 371-6094, FAX (804) 371-2945, e-mail Robins.Buck@vdacs.virginia.gov.

Virginia Irish Potato Board

† **January 12, 2005 - 7 p.m.** -- Open Meeting
Eastern Shore Agriculture Research and Extension Center, Research Drive, Painter, Virginia.♿

A meeting to approve the minutes of the previous meeting. In addition, the board will discuss its financial statement and previously funded promotion, research, and education programs. The board will review the annual budget and review and evaluate grant proposals for the next fiscal year. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Butch Nottingham at least five days before the meeting date so that suitable arrangements can be made.

Contact: Butch Nottingham, Program Manager, Virginia Irish Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973.

Virginia Marine Products Board


January 25, 2005 - 6 p.m. -- Open Meeting
Dolphin Cove Restaurant, Route 17, 4329 George Washington Memorial Highway, Gloucester, Virginia.♿

The board will hear the reading and approval minutes of previous board meeting and. In addition, the board expects to hear reports on finance, trade shows, festivals, industry tours, and calendar sales. Cooperative programs with the Virginia Department of Agriculture and Consumer Services and croaker exports will be discussed. 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 for any appropriate accommodation.

Calendar of Events

Contact: Shirley Estes, Executive Director, Department of Agriculture and Consumer Services, 554 Denbigh Blvd., Suite B, Newport News, VA, telephone (757) 874-3474, FAX (757) 886-0671, e-mail Shirley.Estes@vdacs.virginia.gov.


Virginia Sheep Industry Board

January 7, 2005 - 11 a.m. -- Open Meeting
Alphin-Stewart Livestock Arena, Virginia Tech, Blacksburg, Virginia. 

A meeting to approve the minutes of the March 4, 2004, meeting. An updated financial report will be presented. The board will hear reports from the USDA Wildlife Services, Virginia Food Festival, Virginia FFA Foundation, Virginia Highlands Festival, Virginia State Fair, and the Virginia Junior Sheep Breeders Association. New officers will be elected. 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 Michael Carpenter at least five days before the meeting date so that suitable arrangements can be made.


Contact: Michael Carpenter, Program Manager, Department of Agriculture and Consumer Services, 116 Reservoir St., Harrisonburg, VA, telephone (540) 434-0779, FAX (540) 434-5607.

STATE AIR POLLUTION CONTROL BOARD

January 5, 2005 - 1 p.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 


A public meeting on the notice of intended regulatory action to amend the regulations for the control and abatement of air pollution concerning VOC and NO_x emissions control areas (revision D04). The notice of intended regulatory action will appear in the Virginia Register of Regulations on November 29, 2004. The public comment period will close on January 12, 2005.

Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510, e-mail ggraham@deq.virginia.gov.

January 11, 2005 - 6 p.m. -- Open Meeting
Franklin Paul D. Camp Workforce Development Center, Franklin, Virginia. 


International Paper will be hosting a public information meeting on a variance to the regulations for the control and abatement of air pollution establishing a site-wide emissions cap.

Contact: Laurel D. Corl, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2178, FAX (757) 518-2009, e-mail ldcorl@deq.virginia.gov.

† January 20, 2005 - 7 p.m. -- Public Hearing
Frederick County Administration Office Building, Supervisors' Room, 107 North Kent Street, Winchester, Virginia. 

A public hearing on a proposed revision to the Commonwealth of Virginia State Implementation Plan. The hearing will be held to accept testimony concerning the proposed revision. The proposed revision will consist of a determination of reasonably available control technology (RACT) for the control of emissions of nitrogen oxides (NO_x) to the atmosphere from the Global Stone Chemstone Corporation's lime manufacturing plant located in the Frederick County portion of the Western Virginia Emissions Control Area. The RACT determination is being made pursuant to 9 VAC 5-40-310. A state operating permit is being issued as an administrative mechanism to enforce the RACT determination. The permit is being issued pursuant to Article 5 (9 VAC 5-80-800 et seq.) of 9 VAC 5 Chapter 80 and is federally enforceable upon issuance. RACT for emissions of NO_x from the rotary lime kiln has been determined to be proper kiln design and operation capable of not exceeding NO_x emissions of 60.9 lb per hour and 3.2 lb per ton of lime produced.

Contact: Janardan Pandey, Department of Environmental Quality, 4411 Early Rd., Harrisonburg, VA 22801, telephone (540) 574-7817, FAX (540) 574-7878, e-mail jrpandey@deq.virginia.gov.

March 2, 2005 - 9:30 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A regular meeting of the board.


Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmb Berndt@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL BOARD


February 11, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend regulations entitled **3 VAC 5-50, Retail Operations**. The purpose of the proposed action is to prescribe the conditions under which restaurants holding mixed beverage licenses may serve bottles of soju in the original container for on-premises consumption.

Statutory Authority: §§ 4.1-103, 4.1-111 and 4.1-221 of the Code of Virginia.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY , e-mail wccolen@abc.state.va.us.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

† March 22, 2005 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. 

A quarterly meeting.

Contact: Janet L. Honeycutt, Director of Grant Operations, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-9333, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, e-mail janet.honeycutt@vda.virginia.gov.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

February 16, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail alhi@dpor.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

January 12, 2005 - 10:30 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia.

February 11, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to amend regulations entitled **18 VAC 30-20, Regulations of the Board of Audiology and Speech-Language Pathology**. The purpose of the proposed action is to establish criteria for delegation of certain informal fact-finding proceedings to an agency subordinate.

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

Public comments may be submitted until February 11, 2005, Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

January 24, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Conference Room 4W,
Richmond, Virginia. ♿

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the

board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made.

Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail barbercosmo@dpor.virginia.gov.

CEMETERY BOARD

February 24, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Room 453, Richmond,
Virginia. ♿

An informal fact-finding conference.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail oneal@dpor.virginia.gov.

CHILD DAY-CARE COUNCIL

† **January 13, 2005 - 10 a.m.** -- Open Meeting
Department of Social Services, 7 North 8th Street, 6th Floor,
Conference Room, Richmond, Virginia. ♿

A business meeting.

Contact: Pat Rengnerth, Board Liaison, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY ☎, e-mail patricia.rengnerth@dss.virginia.gov.

STATE CHILD FATALITY REVIEW TEAM

January 11, 2005 - 10 a.m. -- Open Meeting

March 11, 2005 - 10 a.m. -- Open Meeting
Office of the Chief Medical Examiner, 400 East Jackson
Street, Richmond, Virginia. ♿


The business portion of the State Child Fatality Review Team meeting, from 10 a.m. to 10:30 a.m. is open to the public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

Contact: Angela Myrick, Coordinator, Department of Health, 400 E. Jackson St., Richmond, VA 23219, telephone (804) 786-1047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail Angela.Myrick@vdh.virginia.gov.


Calendar of Events

STATE BOARD FOR COMMUNITY COLLEGES


January 19, 2005 - 1:30 p.m. -- Open Meeting

† **March 16, 2005 - 1:30 p.m.** -- Open Meeting
Virginia Community College System, James Monroe Building,
101 North 14th Street, Richmond, Virginia.  (Interpreter for
the deaf provided upon request)


Meetings of the Academic, Student Affairs, and Workforce
Development Committee, the Audit Committee, and the
Budget and Finance Committee at 1:30 p.m. The Facilities
Committee and the Personnel Committee will meet at
3 p.m.

Contact: D. Susan Hayden, Director of Public Affairs, Virginia
Community College System, 101 N. 14th St., Richmond, VA
23219, telephone (804) 819-4961, FAX (804) 819-4768, (804)
371-8504/TTY 


January 20, 2005 - 9 a.m. -- Open Meeting

† **March 17, 2005 - 9 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, Godwin-
Hamel Board Room, Richmond, Virginia.  (Interpreter for the
deaf provided upon request)

A meeting of the full board. Public comment may be
received at the beginning of the meeting upon notification at
least five working days prior to the meeting.


Contact: D. Susan Hayden, Director of Public Affairs, Virginia
Community College System, 15th Floor, 101 N. 14th St.,
Richmond, VA 23219, telephone (804) 819-4961, FAX (804)
819-4768, (804) 371-8504/TTY 

COMPENSATION BOARD

† **January 11, 2005 - 2 p.m.** -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor,
Richmond, Virginia. 

A board meeting with Constitutional Officer Association
presidents regarding upcoming legislation.


Contact: Cindy P. Waddell, Compensation Board, P.O. Box
710, Richmond, VA 23218, telephone (804) 786-0786, FAX
(804) 371-0235, e-mail cindy.waddell@scb.virginia.gov.

† **January 26, 2005 - 11 a.m.** -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor,
Richmond, Virginia. 

A monthly board meeting.

Contact: Cindy P. Waddell, Compensation Board, P.O. Box
710, Richmond, VA 23218, telephone (804) 786-0786, FAX
(804) 371-0235, e-mail cindy.waddell@scb.virginia.gov.

COMMONWEALTH COMPETITION COUNCIL

† **January 5, 2005 - 10 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 meeting to receive presentations by various state
agencies.

Contact: Peggy Robertson, Acting Executive Director,
Commonwealth Competition Council, 200 N. 9th St., Room
418, Richmond, VA 23219, telephone (804) 786-3812, FAX
(804) 786-4472, e-mail peggy.robertson@dpb.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

Virginia Cave Board

† **March 19, 2005 - 11 a.m.** -- Open Meeting
Endless Caverns, New Market, Virginia.

Committee meetings will begin at 11 a.m. A general board
meeting will begin at 1 p.m.

Contact: David C. Dowling, Policy and Planning Manager,
Department of Conservation and Recreation, 203 Governor
St., Suite 302, Richmond, VA 23219, telephone (804) 786-
2291, FAX (804) 786-6141, e-mail
david.dowling@dcr.virginia.gov.

BOARD FOR CONTRACTORS

† **January 4, 2005 - 9 a.m.** -- Open Meeting

January 6, 2005 - 9 a.m. -- Open Meeting


† **January 11, 2005 - 9 a.m.** -- Open Meeting

† **January 12, 2005 - 9 a.m.** -- Open Meeting


† **January 20, 2005 - 9 a.m.** -- Open Meeting

† **January 25, 2005 - 9 a.m.** -- Open Meeting

† **February 3, 2005 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 

Informal fact-finding conferences.

Contact: Eric L. Olson, Executive Director, Board for
Contractors, 3600 W. Broad St., Richmond, VA 23230,
telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-
9753/TTY , e-mail contractors@dpoc.virginia.gov.

January 18, 2005 - 9 a.m. -- Open Meeting

March 1, 2005 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A regular meeting to address policy and procedural issues,
review and render decisions on applications for contractors'
licenses, and review and render case decisions on matured
complaints against licensees. The meeting is open to the
public; however, a portion of the board's business may be
conducted in closed session. Persons desiring to participate
in the meeting and requiring special accommodations or
interpretive services should contact the department at (804)
367-2785 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: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.virginia.gov.

February 23, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Tradesman and Education Committee to conduct committee business. The department fully complies with the Americans with Disabilities Act.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.virginia.gov.

BOARD OF COUNSELING

† **February 18, 2005 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

February 25, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-2007 of the Code of Virginia that the Board of Counseling intends to adopt regulations entitled **18 VAC 115-15, Regulations Governing Delegation to an Agency Subordinate**. The purpose of the proposed action is to set criteria for the delegation of certain types of cases to an appropriately qualified agency subordinate to conduct informal fact-finding on behalf of the board.

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

Public comments may be submitted until February 25, 2005, to Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, Richmond, VA 23219.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

BOARD OF DENTISTRY

† **January 20, 2005 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A formal hearing. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail Cheri.Emma-Leigh@dhp.virginia.gov.

January 21, 2005 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to establish the criteria for delegation of certain informal fact-finding to an agency subordinate.

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

Public comments may be submitted until February 11, 2005, to Sandra Reen, Executive Director, Board of Dentistry, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

January 21, 2005 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to update certain requirements and terminology; clarify the board's requirements, especially related to dental education; eliminate a jurisprudence examination; and add requirements for additional training for applicants who have had multiple examination failures. Amendments also modify educational, monitoring and equipment requirements for administration of various forms of analgesia, sedation and anesthesia as minimally necessary to ensure public safety.

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

Public comments may be submitted until January 28, 2005, to Sandra Reen, Executive Director, Board of Dentistry, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

January 21, 2005 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to discuss board business. There will be a public comment period during the first 15 minutes of the meeting.

Contact: Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail sandra.reen@dhp.virginia.gov.

Calendar of Events

BOARD OF EDUCATION

January 12, 2005 - 9 a.m. -- Open Meeting

February 23, 2005 - 9 a.m. -- Open Meeting

† March 23, 2005 - 9 a.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, Main Lobby Level, Conference Rooms C and D, Richmond, Virginia. ☎

A regular business meeting of the board. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last-minute changes in time or location. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency at least 72 hours in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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.

January 18, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-470, Nurses, Physicians, and Therapist Standards**. The purpose of the proposed action is to repeal the regulation because the requirements are unnecessary. Section 22.1-274 of the Code of Virginia states that local school boards may employ school nurses, physicians, physical therapists, occupational therapists and speech therapists under the same provisions as provided by the board regulation. Since the Code of Virginia already permits schools divisions to employ these personnel and board regulations are not required, this regulation is unnecessary.

Statutory Authority: § 22.1-16 of the Code of Virginia.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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, or e-mail mroberts@mail.vak12ed.edu.

February 13, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-200, Diploma - High School Completion**. The purpose of the proposed action is to repeal this regulation. The requirements for a diploma are prescribed by the Standards of Quality in § 22.1-253.13:4 of the Code of Virginia and by the Board of Education in the Regulations for Establishing Standards for Accrediting Public Schools in Virginia, 8 VAC 20-131-50. Additionally,

the Regulations Governing Adult High School Programs, 8 VAC 20-30-20, prescribe the requirements for an adult high school diploma and the Emergency Regulations Governing the General Achievement Diploma, 8 VAC 20-680-10, prescribe the requirements for that diploma. Therefore, this regulation should be repealed because it is no longer necessary.

Statutory Authority: § 22.1-16 of the Code of Virginia.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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, or e-mail mroberts@mail.vak12ed.edu.

February 14, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-260, Regulations Governing Financial Retention Schedule**. The purpose of the proposed action is to repeal the regulation because it is in conflict with the Code of Virginia. Section 42.1-82 of the Code of Virginia vests the Library of Virginia with the authority to set the retention and disposition schedules for public records. The Library of Virginia has developed a retention schedule specific to the maintenance of records in Virginia's public schools. Therefore, the Board of Education no longer has the authority to set this schedule.

Statutory Authority: § 22.1-16 of the Code of Virginia.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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, or e-mail mroberts@mail.vak12ed.edu.

February 14, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-380, Regulations Governing Public School Building Construction (Literary Fund)**. The requirements for literary loans are now prescribed by the Board of Education in the Regulations Governing Literary Loan Applications in Virginia (8 VAC 20-100). Therefore, this regulation should be repealed because the requirements for loans from the literary fund have been promulgated by the Board of Education in another regulation and the provisions in this regulation are no longer correct.

Statutory Authority: § 22.1-16 of the Code of Virginia.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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, or e-mail mroberts@mail.vak12ed.edu.

February 14, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-400, Rules Governing Division Superintendent Salary and Expenses**. Section 22.1-253.13:2 E of the Code of Virginia provides that, pursuant to the appropriation act, support services shall be funded from basic school aid on the basis of prevailing statewide costs. The term "support services" includes those services provided by the superintendent. Therefore, this regulation should be repealed because the requirements are out of date and incorrect.

Statutory Authority: § 22.1-16 of the Code of Virginia.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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, or e-mail mroberts@mail.vak12ed.edu.

February 14, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-430, Regulations Governing Contractual Agreements with Professional Personnel**. The provisions in this regulation are now prescribed by the Board of Education in the Regulations Governing the Employment of Professional Personnel (8 VAC 20-440-10). Therefore, this regulation should be repealed because the requirements have been promulgated by the Board of Education in another regulation making this regulation unnecessary.

Statutory Authority: § 22.1-16 of the Code of Virginia.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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, or e-mail mroberts@mail.vak12ed.edu.

February 14, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-480, Regulations Governing Pupil Rights and Hearings**. This regulation should be repealed because the requirements are unnecessary. The Regulations Governing Management of the Student's Scholastic Record (8 VAC 20-150), require

local school divisions to adhere to provisions of the Family Education Rights and Privacy Act (FERPA). FERPA regulations at 34 CFR 99.21 and 99.22, require that school divisions provide a hearing when the parent or eligible student wants to challenge information in the student's educational record. FERPA also includes the process that must be followed. Since school divisions are required to adhere to the board's regulation and to FERPA, this regulation is redundant and unnecessary.

Statutory Authority: § 22.1-16 of the Code of Virginia.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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, or e-mail mroberts@mail.vak12ed.edu.

† **February 28, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to amend regulations entitled **8 VAC 20-360, Rules Governing General Educational Development Certificates**. The purpose of the proposed action is to increase testing fees, change the language governing to whom a Virginia GED certificate may be issued, and change scoring requirements for issuance of a Virginia GED certificate.

Statutory Authority: §§ 22.1-16 and 22.1-224 of the Code of Virginia.

Contact: Dr. Yvonne Thayer, Director, Adult Education Programs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2293.

DEPARTMENT OF EDUCATION

January 20, 2005 - 8:45 a.m. -- Open Meeting

January 21, 2005 - 8:45 a.m. -- Open Meeting

Richmond Holiday Inn, Koger Center, 10800 Midlothian Turnpike, Richmond, Virginia.

A meeting of the State Special Education Advisory Committee.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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, or e-mail mroberts@mail.vak12ed.edu.

Advisory Board on Teacher Education and Licensure

January 24, 2005 - 8:45 a.m. -- Open Meeting

† **March 21, 2005 - 8:45 a.m.** -- Open Meeting

Location to be announced.

Calendar of Events

A regular meeting. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last-minute changes in time or location. Please note that persons requesting the services of an interpreter for the deaf are asked to do so at least 72 hours in advance so that the appropriate arrangements may be made.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department 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

† **January 11, 2005 - 7 p.m.** -- Open Meeting
Russell Prater Elementary School, Route 83 east of Haysi, Prater, Virginia. ♿

A public meeting on a draft TMDL for benthics for Russell Prater Creek in Buchanan and Dickenson counties. The public comment period begins with publication of the notice in the Virginia Register of Regulations on December 27, 2004, and closes on February 11, 2005.

Contact: Nancy T. Norton, Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

† **January 12, 2005 - 7 p.m.** -- Open Meeting
Southern Piedmont Agricultural Research and Extension Center, Auditorium, 2375 Davills Road, Blackstone, Virginia. ♿

A public meeting on the development of TMDLs and an implementation plan to address multiple impairments in the Nottoway River Basin and its tributaries located in Prince Edward, Nottoway, Lunenburg and Dinwiddie Counties. The public comment period begins with publication of the notice in the Virginia Register of Regulations on December 27, 2005 and closes on February 11, 2005.

Contact: Kelly J. Wills, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-5120, FAX (434) 582-5125, e-mail kjwills@deq.virginia.gov.

† **January 20, 2005 - 7 p.m.** -- Open Meeting
Advanced Technology Center, Tidewater Community College, Virginia Beach Campus, Virginia Beach, Virginia. ♿

The second public meeting on the development of bacteria TMDLs for waters in the Back Bay and North Landing River watersheds located in Virginia Beach. The public comment period begins with publication of the notice in the Virginia Register of Regulations on December 27, 2004, and closes on February 20, 2005.

Contact: Jennifer Howell, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23462,

telephone (757) 518-2111, FAX (757) 518-2003, e-mail jshowell@deq.virginia.gov.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **January 18, 2005 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to hear possible violations of the laws and regulations governing the practice of funeral service.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ♿, e-mail elizabeth.young@dhp.virginia.gov.

BOARD FOR GEOLOGY

January 5, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A regular meeting.

Contact: David E. Dick, Executive Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ♿, e-mail geology@dpor.virginia.gov.

GOVERNOR'S EMERGENCY MEDICAL SERVICES ADVISORY BOARD

February 3, 2005 - 3 p.m. -- Open Meeting
The Place at Innsbrook, Glen Allen, Virginia.

A regular meeting to review suggested changes to specific EMS regulations.

Contact: Michael D. Berg, Manager, Regulation and Policy, Department of Health, 109 Governor St., Suite UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, e-mail michael.berg@vdh.virginia.gov.

STATE BOARD OF HEALTH

January 28, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled **12 VAC 5-410, Rules and Regulations for the Licensure of Hospitals**. The purpose of the proposed action is to extend the storage time of breastmilk from 24 to 48 hours and to reformat section 440 of the regulations.

Statutory Authority: § 32.1-127 of the Code of Virginia.

Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, Center for Quality Health Care Services, 3600 W.

Broad St., Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149 or e-mail carrie.eddy@vdh.virginia.gov.

* * * * *

† **February 1, 2005 - 7 p.m.** -- Public Hearing
16441 Court Street, Amelia Court House, Virginia.

† **February 2, 2005 - 7 p.m.** -- Public Hearing
109 North Cross Street, Tappahannock, Virginia.

† **February 3, 2005 - 7 p.m.** -- Public Hearing
302 North Main Street, Culpeper, Virginia.

† **February 28, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled **12 VAC 5-585, Biosolids Use Regulations**. The purpose of the proposed action is to provide standards for installation and operation of biosolids storage areas on permitted sites.

Contact: C.M. Sawyer, Division Director, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7463, FAX (804) 864-7475 or e-mail cal.sawyer@vdh.virginia.gov.

DEPARTMENT OF HEALTH

Sewage Handling and Disposal Appeal Review Board

January 19, 2005 - 10 a.m. -- Open Meeting
February 23, 2005 - 10 a.m. -- Open Meeting
County of Henrico, 8600 Dixon Powers Drive, Human Services Board Room, 2nd Floor, Richmond, Virginia ☎

A meeting to hear appeals of health department denials of septic tank permits and/or Indemnification Fund Claim requests.

Contact: Susan Sherertz, Secretary to the Board, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7464, FAX (804) 864-7475, e-mail susan.sherertz@vdh.virginia.gov.

BOARD FOR HEARING AID SPECIALISTS

January 19, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia ☎

An informal fact-finding conference.

Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail hearingaidspec@dpor.virginia.gov.

† **March 21, 2005 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation
3600 West Broad Street, 4th Floor, Richmond, Virginia ☎

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at 804-367-8590 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: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail hearingaidspec@dpor.virginia.gov.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

NOTE: CHANGE IN MEETING TIME

January 11, 2005 - 12:30 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia.

Agenda materials will be available on the website approximately one week prior to the meeting at www.schev.edu. A public comment period will be allocated on the meeting agenda. To be scheduled, those interested in making public comment should contact the person listed below no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

Contact: Lee Ann Rung, State Council of Higher Education for Virginia, 101 N 14th St., Richmond, VA, telephone (804) 225-2602, FAX (804) 371-7911, e-mail LeeAnnRung@schev.edu.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

January 18, 2005 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia ☎


A general business meeting.

Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY ☎, e-mail steve.calhoun@dhcd.virginia.gov.

Calendar of Events

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

State Building Code Technical Review Board

January 21, 2005 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to hear appeals concerning the application of state building and fire regulations and issues interpretations concerning the content of those regulations to recommend future changes.

Contact: Vernon Hodge, Secretary, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA, 23219-1321, telephone (804) 371-7150.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† January 19, 2005 - 9 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. 

This will be the regular meeting of the Board of Commissioners to review and, if appropriate, approve the minutes from the prior monthly meeting; consider for approval and ratification mortgage loan commitments under its various programs; review the authority's operations for the prior months; and consider such other matters and take such other actions as deemed appropriate. Various committees of the Board of Commissioners, including the Programs Committee, the Audit/Operations Committee, the Executive Committee, and the Committee of the Whole, may also meet during the day preceding the regular meeting and before and after the regular meeting and may consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.


Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY 

STATEWIDE INDEPENDENT LIVING COUNCIL

† January 19, 2005 - 7:30 a.m. -- Open Meeting
Sheraton Richmond West, 6624 West Broad Street Restaurant, Richmond, Virginia.

A meeting of the Executive Committee. Directions to the meeting sites may be obtained by visiting the council's website at www.vasilc.org, by calling the council office at (804) 897-7228, or via Virginia Relay at 711 (804) 897-8088. If interpreter services or other accommodations are required, please notify the SILC office no later than Wednesday, January 5, 2005. The Statewide Independent Living Council respects individuals with chemical sensitivity by requesting that all attendees refrain from using scented products during all meetings.

Contact: Lisa Grubb, Executive Director, Statewide Independent Living Council, 11655 Explorer Dr., Richmond, VA 23114, telephone (804) 897-7228, e-mail VirginiaSILC@comcast.net.


† January 19, 2005 - 9:30 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Conference Rooms 101, 103 and 105, Richmond, Virginia. 

A regular meeting. Directions to the meeting sites may be obtained by visiting the council's website at www.vasilc.org, by calling the council office at (804) 897-7228 or via Virginia Relay at (711) 804 897-8088. If interpreter services or other accommodations are required, please notify the SILC office no later than Wednesday, January 5, 2005. The Virginia Statewide Independent Living Council respects individuals with chemical sensitivity by requesting that all attendees refrain from using scented products during all meetings.

Contact: Lisa Grubb, Executive Director, Statewide Independent Living Council, 11655 Explorer Dr., Richmond, VA 23114, telephone (804) 897-7228, e-mail VirginiaSILC@comcast.net.


VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Wireless E-911 Services Board

† January 12, 2005 - 9 a.m. -- Open Meeting
110 South 7th Street, 1st Floor, Telecommunications Conference Room, Suite 100, Richmond, Virginia. 

A meeting of the CMRS subcommittee. A request will be made to hold the meeting in closed session.


Contact: Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 110 S. 7th St., Richmond, VA, telephone (804) 371-0015, FAX (804) 786-4177, toll-free (866) 482-3911, e-mail steve.marzolf@vita.virginia.gov.

† January 12, 2005 - 10 a.m. -- Open Meeting
110 South 7th Street, 4th Floor, Auditorium, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular monthly meeting.

Contact: Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 110 S. 7th St., Richmond, VA, telephone (804) 371-0015, FAX (804) 786-4177, toll-free (866) 482-3911, e-mail steve.marzolf@vita.virginia.gov.

STATE LIBRARY BOARD

January 27, 2005 - 8:15 a.m. -- Open Meeting
† March 14, 2005 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 

Meetings of the board to discuss matters pertaining to the Library of Virginia and the board. Committees of the board will meet as follows:

8:15 a.m. - Public Library Development Committee, Orientation Room
Publications and Educational Services Committee, Conference Room B
Records Management Committee, Conference Room C

9:30 a.m. - Archival and Information Services Committee, Orientation Room
Collection Management Services Committee, Conference Room B
Legislative and Finance Committee, Conference Room C

10:30 a.m. - Library Board, Conference Room, 2M

Contact: Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-2000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY ☎, e-mail jtaylor@lva.lib.va.us.

COMMISSION ON LOCAL GOVERNMENT

† **January 10, 2005 - 10 a.m.** -- Open Meeting
The Jackson Center, 501 North 2nd Street, 1st Floor Board Room, Richmond, Virginia. ♿

A regular meeting to consider such matters as may be presented.

Contact: Ted McCormack, Associate Director, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, (804) 828-1120/TTY ☎, e-mail ted.mccormack@dhcd.virginia.gov.

VIRGINIA MANUFACTURED HOUSING BOARD

† **January 20, 2005 - 10 a.m.** -- Open Meeting
The Jackson Center, 501 North Second Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to carry out administration of the Manufactured Housing Licensing and Transaction Recovery Fund Regulations by handling license questions, claims to the recovery fund, consumer complaints and warranty provisions in the regulations.

Contact: Curtis L. McIver, State Building Code Administrator, Department of Housing and Community Development, State Building Code Administrative Office, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY ☎, e-mail curtis.mciver@dhcd.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

January 5, 2005 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Board Room, Suite 1300, Richmond, Virginia. ♿

A meeting of the Medicaid Transportation Advisory Committee to discuss issues and problems in Medicaid transportation with the advisory committee and community.

Contact: Robert Knox, Transportation Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8854, FAX (804) 786-5799, (800) 343-0634/TTY ☎, e-mail robert.knox@dmas.virginia.gov.

January 7, 2005 - 11 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia. ♿

A meeting of the Dental Advisory Committee to discuss streamlining the administrative processes and procedures that are impediments to dental provider participation in Medicaid.

Contact: Stephen Riggs, DDS, Dental Consultant, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-6635, FAX (804) 786-0414, (800) 343-0634/TTY ☎, e-mail va.smiles@dmas.virginia.gov.

January 28, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-141, Family Access to Medical Insurance Security Plan**. The purpose of the proposed action is to implement a program of retrospective and prospective utilization review of pharmacy services for noninstitutionalized fee-for-service and PCCM FAMIS enrollees who are prescribed more than nine unique prescriptions within a 180-day period.

Statutory Authority: § 32.1-351 of the Code of Virginia; Item 324 H of Chapter 1042 of the 2003 Acts of Assembly.

Contact: Linda Nablo, Director, Child Health Insurance Programs, FAMIS Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4212, FAX (804) 786-1680 or e-mail Linda.Nablo@dmas.virginia.gov.

BOARD OF MEDICINE

† **January 11, 2005 - 9 a.m.** -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

† **January 25, 2005 - 9:15 a.m.** -- Open Meeting
Clarion Hotel, 3315 Ordway Drive, Roanoke, Virginia.

An informal conference committee will convene informal conferences to inquire into allegations that certain practitioners(s) may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. Further, the committee may review cases with staff for case disposition including consideration of consent orders for settlement. The committee will meet in open and

Calendar of Events

closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler/Renee Dixon, Staff, Board of Medicine, 6603 W. Broad St., Richmond, VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.virginia.gov.

January 21, 2005 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Board Room 2, 5th Floor, Richmond, Virginia. 📍

A meeting of the Executive Committee to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

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January 21, 2005 - 8:15 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

January 28, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled:

18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic;

18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners;

18 VAC 85-50. Regulations Governing the Practice of Physician Assistants;

18 VAC 85-80. Regulations for Licensure of Occupational Therapists;

18 VAC 85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists Limited;

18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists;

18 VAC 85-120. Regulations Governing the Certification of Athletic Trainers.

The purpose of the proposed action is to establish or amend standards for professional conduct, to include, but not be limited to, retention and release of patient records; patient confidentiality; practitioner-patient communication and termination of that relationship; sexual contact; and practitioner responsibilities.

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

Public comments may be submitted until January 28, 2005, to William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, (804) 662-7197/TTY ☎, e-mail elaine.yeatts@dhp.virginia.gov.

February 11, 2005 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Board Room 2, 5th Floor, Richmond, Virginia. 📍

A meeting to consider regulatory matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Acupuncture

February 2, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of acupuncture. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Athletic Training

February 3, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of athletic training. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board of Occupational Therapy

February 1, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of occupational therapy. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Physician Assistants

February 3, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of physician assistants. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Radiologic Technology

February 2, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of radiologic technologists and radiologic technologists-limited. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Respiratory Care

February 1, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of respiratory care. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

January 5, 2005 - 1 p.m. -- Open Meeting
Henrico Area Mental Health and Retardation Services, 10299 Woodman Rd., Glen Allen, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the H3R Advisory Committee to consider the periodic review and recommendations for the Human Rights Regulations in accordance with Executive Order 21.

Contact: Margaret S. Walsh, Director, Office of Human Rights, State Mental Health, Mental Retardation and Substance Abuse Services Board, Jefferson Bldg., 1220 Bank St., 13th Floor, Richmond, VA 23219, telephone (804) 786-3988, FAX (804) 371-2308, e-mail margaret.walsh@co.dmhmr.sas.virginia.gov.

† **January 6, 2005 - 9:30 a.m.** -- Open Meeting
Henrico County Training Center, 7701 Parham Road, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting of the State and Local Advisory Team pursuant to §§ 2.2-5201 through 2.2-5203 of the Code of Virginia. A public comment period is scheduled.

Contact: Pamela Fitzgerald-Cooper, Director of Adolescent Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-2183, FAX (804) 786-1587.

† **January 26, 2005 - 1 p.m.** -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

A meeting of the Community Integration Implementation Team.

Contact: Kathie Shifflett, Administrative Assistant, Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23288, telephone (804) 662-7069, FAX (804) 662-7663, e-mail Kathie.Shifflett@drs.virginia.gov.

VIRGINIA COMMISSION ON MILITARY BASES

January 7, 2005 - 10 a.m. -- Open Meeting
The College of William and Mary, Alumni House, Williamsburg, Virginia. ♿

A quarterly meeting.

Contact: Valerie Hubbard, Communications Manager, Virginia Commission on Military Bases, P.O. Box 798, Richmond, VA 23218, telephone (804) 225-3743, FAX (804) 786-1121, e-mail vhubbard@YesVirginia.org.

MOTOR VEHICLE DEALER BOARD

† **January 10, 2005 - 8:30 a.m.** -- Open Meeting
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. Licensing Committee - Immediately following Dealer Practices. Advertising Committee - 9:30 a.m. or immediately after Licensing, whichever is later. Transaction Recovery Fund Committee - Immediately following Advertising. Franchise Law Committee - To be scheduled as needed. Full board meeting - 10 a.m. or 5-45 minutes following Transaction Recovery Fund. NOTE:

Calendar of Events

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@mvdb.virginia.gov.

VIRGINIA MUSEUM OF FINE ARTS


January 4, 2005 - 8 a.m. -- Open Meeting

February 1, 2005 - 8 a.m. -- Open Meeting

March 1, 2005 - 8 a.m. -- Open Meeting

Virginia Museum of Fine Arts, Main Lobby Conference Room, 200 North Boulevard, Richmond, Virginia. 

A meeting for staff to update the Executive Committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220-4007, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

January 24, 2005 - 9 a.m. -- Open Meeting


January 26, 2005 - 9 a.m. -- Open Meeting

January 27, 2005 - 9 a.m. -- Open Meeting


† **March 14, 2005 - 9 a.m.** -- Open Meeting

† **March 16, 2005 - 9 a.m.** -- Open Meeting

† **March 17, 2005 - 9 a.m.** -- Open Meeting


Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A panel of the board will conduct formal hearings with licensees and/or certificate holders. Public comment will not be received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.virginia.gov.


January 25, 2005 - 9 a.m. -- Open Meeting

† **March 15, 2005 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 W. Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A general business meeting including committee reports, consideration of regulatory action and discipline case decisions as presented on the agenda. Public comment will be received at 11 a.m.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-

9512, (804) 662-7197/TTY , e-mail jay.douglas@dhp.virginia.gov.

† **February 8, 2005 - 9 a.m.** -- Open Meeting


† **February 14, 2005 - 9 a.m.** -- Open Meeting

† **February 15, 2005 - 9 a.m.** -- Open Meeting

† **February 22, 2005 - 9 a.m.** -- Open Meeting


Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A Special Conference Committee comprised of two or three members of the Virginia Board of Nursing or agency subordinate will conduct informal conferences with licensees and certificate holders. Public comment will not be received.


Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.virginia.gov.

JOINT BOARDS OF NURSING AND MEDICINE

† **February 23, 2005 - 9 a.m.** -- Open Meeting


Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. 

A meeting of the Joint Boards of Nursing and Medicine.

Contact: Jay P. Douglas, RN, MSM, CSAC, Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.virginia.gov.

BOARD OF NURSING HOME ADMINISTRATORS

January 19, 2005 - 9 a.m. -- Public Hearing

Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. 

February 11, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing Home Administrators intends to amend regulations entitled **18 VAC 95-20, Regulations Governing the Practice of Nursing Home Administrators**. The purpose of the proposed regulation is to establish criteria for delegation of certain informal fact-finding in disciplinary cases to an agency subordinate.

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

Public comments may be submitted until February 11, 2005, to Sandra K. Reen, Executive Director, Board of Nursing Home Administrators, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

January 19, 2005 - 9:15 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor Richmond, Virginia. ♿

A meeting to discuss business matters. There will be a public comment period during the first 15 minutes of the meeting.

Contact: Sandra Reen, Executive Director, Board of Nursing Home Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail sandra.reen@dhp.virginia.gov.

† **January 19, 2005 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ♿

The Special Conference Committee will meet to hold informal conferences. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-7457, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail Cheri.Emma-Leigh@dhp.virginia.gov.

OLD DOMINION UNIVERSITY

NOTE: CHANGE IN MEETING DATE

February 14, 2005 - 3 p.m. -- Open Meeting

† **March 21, 2004 - 3 p.m.** -- Open Meeting

Webb University Center, Old Dominion University, Norfolk, Virginia. ♿

A regular meeting of the Board of Visitors' Executive Committee to discuss business of the board and the institution as determined by the Rector and the President.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

BOARD OF OPTOMETRY

January 21, 2005 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 3, Richmond, Virginia. ♿

February 11, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed regulation is to establish criteria for delegation of certain informal fact-finding in disciplinary cases to an agency subordinate.

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

Public comments may be submitted until February 11, 2005, to Elizabeth A. Carter Ph.D., Executive Director, Board of Optometry, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

PESTICIDE CONTROL BOARD

† **January 20, 2005 - 9 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor
Boardroom, Richmond, Virginia. ♿

A meeting open to the public to discuss general business matters requiring board action. However, portions of the meeting may be held in closed session pursuant to § 2.2-3711 of the Code of Virginia. The board will entertain public comment at the beginning of the meeting on all other business for a period not to exceed 30 minutes. Any person desiring to attend the meeting and requiring special accommodations in order to participate in 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 for any appropriate accommodation.

Contact: Dr. W. Wayne Surles, Program Manager, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., 4th Floor, Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, toll-free (800) 552-9963, e-mail Wayne.Surles@vdacs.virginia.gov.

BOARD OF PHARMACY

January 20, 2005 - 8:45 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed regulation is to establish criteria for delegation of certain informal fact-finding in disciplinary cases to an agency subordinate.


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

Public comments may be submitted until February 11, 2005, to Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

Calendar of Events

BOARD OF PHYSICAL THERAPY

January 28, 2005 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. 

February 11, 2005 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Physical Therapy intends to amend regulations entitled **18 VAC 112-20, Regulations Governing the Practice of Physical Therapy**. The purpose of the proposed regulation is to establish criteria for delegation of certain types of cases by an agency subordinate.

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


Public comments may be submitted until February 11, 2005, to Elizabeth Young, Executive Director, Board of Physical Therapy, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.


POLYGRAPH EXAMINERS ADVISORY BOARD

March 3, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulations,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter 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: Kevin Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail kevin.hoeft@dpor.virginia.gov.

BOARD OF PSYCHOLOGY

January 11, 2005 - 9:30 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 1, Richmond, Virginia. 

February 11, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled **18 VAC 125-15, Regulations Governing Delegation to an Agency Subordinate**. The purpose of the proposed regulation is to establish criteria for

delegation of certain types of cases by an agency subordinate.


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

Public comments may be submitted until February 11, 2005, to Evelyn B. Brown, Executive Director, Board of Psychology, 6603 West Broad Street, Richmond, VA 23230-1712.


Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

January 11, 2005 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 


A business meeting to include reports from standing committees and any other disciplinary or regulatory matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.virginia.gov.


REAL ESTATE APPRAISER BOARD

January 11, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Room 453, Richmond,
Virginia 


Informal fact-finding conferences.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail karen.oneal@dpor.virginia.gov.

REAL ESTATE BOARD

January 6, 2005 - 9 a.m. -- Open Meeting
† **January 20, 2005 - 9 a.m.** -- Open Meeting
† **February 3, 2005 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Room 453, Richmond,
Virginia. 


An informal fact-finding conference.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail karen.oneal@dpor.virginia.gov.


DEPARTMENT OF REHABILITATIVE SERVICES

January 10, 2005 - 3 p.m. -- Public Hearing
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to provide the public the opportunity to discuss the annual DRS State Plan. The December 14 hearing will be in videoconference format and broadcasted from Richmond.

Contact: Elizabeth Smith, Policy and Planning Director, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone (804) 662-7071, FAX (804) 662-7696, toll-free (800) 552-5019, (800) 464-9950/TTY , e-mail elizabeth.smith@drs.virginia.gov.

Commonwealth Neurotrauma Initiative Trust Fund Advisory Board

January 20, 2005 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, 1st Floor Conference Rooms, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting.

Contact: Kristie Chamberlain, CNI Program Administrator, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 662-7154, FAX (804) 662-7663, toll-free (800) 552-5019, (804) 464-9950/TTY , e-mail kristie.chamberlain@drs.virginia.gov.

STATE BOARD OF SOCIAL SERVICES


January 28, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled **22 VAC 40-325, Fraud Reduction/Elimination Effort**. The purpose of the proposed action is to amend the criteria for local departments of social services to receive full reimbursement for program costs, expand the responsibilities of local departments of social services' fraud units and enhance the definitions section of the regulation.

Statutory Authority: §§ 63.2-217 and 63.2-526 of the Code of Virginia.


Contact: S. Michelle Lauter, Manager, Division of Fraud Management, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7679, FAX (804) 726-7669 or e-mail michelle.lauter@dss.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

† January 19, 2005 - 2 p.m. -- Open Meeting
Department of Transportation 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A work session of the Commonwealth Transportation Board and transportation staff.


Contact: Carol A. Mathis, Administrative Staff Assistant, Virginia Department of Transportation 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2701, FAX (804) 786-2940, e-mail Carol.Mathis@VDOT.Virginia.gov.

† January 20, 2005 - 9 a.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A regularly scheduled meeting to transact board business, such as permits, additions/deletions to the highway system, and other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the 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: Carol A. Mathis, Administrative Staff Assistant, Virginia Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2701, FAX (804) 786-2940, e-mail Carol.Mathis@VDOT.Virginia.gov.

TREASURY BOARD

† January 19, 2005 - 9 a.m. -- Open Meeting
101 North 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia. 

A regular meeting.

Contact: Melissa Mayes, Secretary, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011, FAX (804) 225-2142, e-mail melissa.mayes@trs.virginia.gov.

DEPARTMENT OF VETERANS SERVICES


Joint Leadership Council of Veterans Service Organization

† January 11, 2005 - 11 a.m. -- Open Meeting
Richmond, Virginia, site to be determined

A regular meeting.

Contact: Steve Combs, Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond, Virginia, telephone (804) 786-0294, e-mail steven.combs@dvs.virginia.gov.

BOARD OF VETERINARY MEDICINE

February 3, 2005 - 9 a.m. -- Public Hearing
Hotel Roanoke, Roanoke, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Veterinary Medicine

Calendar of Events

intends to amend regulations entitled **18 VAC 150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed regulation is to establish criteria for delegation of certain informal fact-finding in disciplinary cases to an agency subordinate.

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

Public comments may be submitted until February 11, 2005, to Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6603 West Broad Street, Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

January 11, 2005 - 1:30 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

January 28, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled **9 VAC 20-80, Solid Waste Management Regulations**. The purpose of the proposed action is to establish an expedited process for permitting waste piles.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Contact: Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327 or e-mail mjdieter@deq.virginia.gov.

STATE WATER CONTROL BOARD


January 31, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-260, Water Quality Standards**. The purpose of the proposed action is to include updated numerical and narrative criteria to protect designated uses from the impacts of nutrients and sedimentation. The rulemaking will also include new and revised use designations for the Chesapeake Bay and its tidal tributaries.


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

Contact: Eleanore M. Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111, FAX (804) 698-4522 or e-mail emdaub@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS


March 9, 2005 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business.


Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail waterwasteoper@dpor.virginia.gov.

INDEPENDENT


BOARD FOR PROTECTION AND ADVOCACY

† January 25, 2005 - 9 a.m. -- Open Meeting
Virginia Office for Protection and Advocacy, Byrd Building, 1910 Byrd Avenue, Suite 5, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


This is an open meeting and public comment is welcomed and will be accepted at the start of the meeting. If you wish to provide public comment via telephone, or if interpreter services or other accommodations are required, please contact Lisa Shehi at 1-800-552-3962 or via e-mail at lisa.shehi@vopa.virginia.gov no later than Tuesday, January 11, 2005.


Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, Virginia, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail lisa.shehi@vopa.virginia.gov.

VIRGINIA RETIREMENT SYSTEM

February 15, 2005 - Noon -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. 

A meeting of the Optional Retirement Plan Advisory Committee. No public comment will be received.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail lking@vrs.state.va.us.

February 16, 2005 - 11 a.m. -- Open Meeting
† March 23, 2005 - 11 a.m. -- Open Meeting
Bank of America, 1111 East Main Street, Virginia Retirement System Investment Department, Pavilion, 4th Floor, Richmond, Virginia. 

A regular meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

Contact: Phyllis Henderson, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219,

telephone (804) 697-6675, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@vrs.state.va.us.

February 16, 2005 - 2:30 p.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

Meetings of the following committees:
2:30 p.m. - Benefits and Actuarial
4 p.m. - Audit and Compliance
4 p.m. - Administration and Personnel

No public comment will be received.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@vrs.state.va.us.

February 17, 2005 - 9 a.m. -- Open Meeting
† **March 24, 2005 - 9 a.m.** -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Board of Trustees. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main Street, Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, or e-mail lking@vrs.state.va.us.

LEGISLATIVE

JOINT COMMISSION ON ADMINISTRATIVE RULES

† **January 11, 2005 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room B, Richmond, Virginia. ♿

A meeting to discuss certain agency regulations.

Contact: Elizabeth Palen, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail EPalen@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 4, 2005
† Contractors, Board for
Museum of Fine Arts, Virginia

January 5
Air Pollution Control Board, State
† Competition Council, Commonwealth
Geology, Board for
Medical Assistance Services, Department of
- Medicaid Transportation Advisory Committee

Mental Health, Mental Retardation and Substance Abuse Services, Department of

January 6
Contractors, Board for
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State and Local Advisory Team
Real Estate Board

January 7
Agriculture and Consumer Services, Department of
- Virginia Sheep Industry Board
Medical Assistance Services, Department of
- Dental Advisory Committee
Military Bases, Virginia Commission on

January 10
† Local Government, Commission on
† Motor Vehicle Dealer Board

January 11
† Administrative Rules, Joint Commission on
Air Pollution Control Board, State
Child Fatality Review Team, State
† Compensation Board
† Contractors, Board for
† Environmental Quality, Department of
Higher Education for Virginia, State Council of
† Medicine, Board of
Psychology, Board of
Real Estate Appraiser Board
† Veterans Services, Department of
- Joint Leadership Council of Veterans Service Organization

January 12
† Agriculture and Consumer Services, Department of
- Virginia Irish Potato Board
† Contractors, Board for
Education, Board of
† Environmental Quality, Department of
† Information Technologies Agency, Virginia
- Wireless E-911 Service Board

January 13
† Child Day-Care Council

January 18
Contractors, Board for
† Funeral Directors and Embalmers, Board of
Housing and Community Development, Board of

January 19
Community Colleges, State Board for
Health, Department of
- Sewage Handling and Disposal Appeal Review Board
Hearing Aid Specialists, Board for
† Housing Development Authority, Virginia
† Independent Living Council, Statewide
Nursing Home Administrators, Board of
† Transportation Board, Commonwealth
† Treasury Board

January 20
Community Colleges, State Board for
† Contractors, Board for
† Dentistry, Board of
Education, Department of
- Special Education Advisory Committee
† Environmental Quality, Department of

Calendar of Events

† Manufactured Housing Board, Virginia
† Pesticide Control Board
† Real Estate Board
Rehabilitative Services, Department of
- Commonwealth Neurotrauma Initiative Trust Fund
Advisory Board
† Transportation Board, Commonwealth

January 21
Dentistry, Board of
Education, Department of
- Special Education Advisory Committee
Housing and Community Development, Department of
- State Building Code Technical Review Board
Medicine, Board of

January 24
Barbers and Cosmetology, Board for
Education, Department of
- Advisory Board on Teacher Education and Licensure
Nursing, Board of

January 25
Agriculture and Consumer Services, Department of
- Virginia Marine Products Board
† Contractors, Board for
† Medicine, Board of
Nursing, Board of
† Protection and Advocacy, Board for

January 26
† Agriculture and Consumer Services, Department of
- Virginia Aquaculture Advisory Board
† Aging, Commonwealth Council on
† Compensation Board
† Mental Health, Mental Retardation and Substance Abuse
Services, Department of
- Community Integration Implementation Team
Nursing, Board of

January 27
Library Board, State
Nursing, Board of

February 1
Medicine, Board of
- Advisory Board on Occupational Therapy
- Advisory Board on Respiratory Care
Museum of Fine Arts, Virginia

February 2
Medicine, Board of
- Advisory Board on Acupuncture
- Advisory Board on Radiologic Technology

February 3
† Contractors, Board for
Governor's Emergency Medical Services Advisory Board
Medicine, Board of
- Advisory Board on Athletic Training
- Advisory Board on Physicians Assistants
† Real Estate Board

February 8
† Nursing, Board of

February 11
Medicine, Board of

February 14
† Nursing, Board of
Old Dominion University

February 15
† Nursing, Board of
Retirement System, Virginia

February 16
Asbestos, Lead, and Home Inspectors, Virginia Board for
Retirement System, Virginia

February 17
Retirement System, Virginia

February 22
† Nursing, Board of

February 23
Contractors, Board for
Education, Board of
Health, Department of
- Sewage Handling and Disposal Appeal Review Board
† Nursing and Medicine, Joint Boards of

February 24
Cemetery Board

March 1
Contractors, Board for
Museum of Fine Arts, Virginia

March 2
Air Pollution Control Board, State

March 3
Polygraph Examiners Advisory Board

March 9
Waterworks and Wastewater Works Operators, Board for

March 11
Child Fatality Review Team, State

March 14
† Library Board
† Nursing, Board of

March 15
Health Professions, Department of
† Nursing, Board of

March 16
† Community Colleges, State Board for
† Nursing, Board of

March 17
† Community Colleges, State Board for
† Nursing, Board of

March 19
† Conservation and Recreation, Department of
- Virginia Cave Board

March 21
† Education, Department of
- Advisory Board on Teacher Education and Licensure
† Hearing Aid Specialists, Board for
† Old Dominion University

March 22
† Alzheimer's Disease and Related Disorders Commission

March 23
† Education, Board of
† Retirement System, Virginia

March 24
† Retirement System, Virginia

PUBLIC HEARINGS

January 10
Rehabilitative Services, Department of

January 11

Psychology, Board of
Waste Management Board, Virginia

January 12

Audiology and Speech-Language Pathology, Board of

January 19

Nursing Home Administrators, Board of

January 20

† Air Pollution Control Board, State
Pharmacy, Board of

January 21

Dentistry, Board of
† Medicine, Board of
Optometry, Board of

January 28

Physical Therapy, Board of

February 1

† Health, State Board of

February 2

† Health, State Board of

February 3

† Health, State Board of
Veterinary Medicine, Board of

February 18

† Counseling, Board of

Calendar of Events
